[LB77 LB222 LB462 LB588]

The Committee on Business and Labor met at 1:30 p.m. on Monday, February 12, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB77, LB222, LB462, and LB588. Senators present: Abbie Cornett, Chairperson; Kent Rogert, Vice Chairperson; Ernie Chambers; Steve Lathrop; Amanda McGill; Norman Wallman; and Tom White. Senators absent: None.

SENATOR CORNETT: Good afternoon, and welcome to the Business and Labor Committee. I'd like to introduce the members of the committee and the committee staff and briefly explain the procedures we are going to follow today. To my far left is Senator Tom White, from Omaha; next to him is Senator Amanda McGill, from Lincoln; Senator Chambers, when he joins us, will be next; we have legal counsel, Lori Thomas; Senator Kent Rogert, from Tekamah; and Senator Lathrop, from Omaha, will be joining us shortly; and Senator Wallman, from Cortland; oh, and excuse me, and Tessa Warner, our committee clerk. I'm going to go over some of the procedures today. First, if anyone has a cell phone, this is the time to turn the cell phone off or to silence. Please turn it off vibrate because we can hear that and it shows up on the committee hearing tape. As you come up to testify, you need to drop the testifier sheet in the box next to Tessa Warner, it's right there on the corner. When you testify I need you to say your first name and spell your last name; if you don't I will stop you and have you spell your name. The first bill that we are going to be hearing today is LB588. And what I would like you to do is, everyone here that is to testify on LB588 in support, please raise your hand. In opposition? Okay. I thought there would be some more testifiers, so I won't limit the amount of testifying time. This opens the hearing on LB588.

LORI THOMAS: Good afternoon, Chairperson Cornett and members of the Business and Labor Committee. For the record, I'm Lori Thomas, T-h-o-m-a-s, and I've been asked to introduce LB588 on behalf of the committee. LB588 addresses the hospital fee schedule for workers' compensation claims under Section 48-120. Currently, the compensation court establishes a schedule of maximum fees for such services. The maximum fee schedule is bill charges minus a set percentage. LB588 states that the fees for hospital services shall not exceed the lowest price negotiated with any private insurance carrier or third-party payer, not including Medicaid or Medicare. Finally, the bill provides prompt pay provisions where there is an incomplete claim submitted by the provider a payer or employer will be required to notify the provider within 20 days after receiving a claim as to what information is needed to process the claim. If a payer or employer fails to notify the provider within those 20 days, it will be assumed that the claim is complete. Payers will have 30 days to pay the claim once all the necessary information has been provided. Failure to pay within the 30 days after the receipt of a complete claim would force the payer to pay normal billed charges as opposed to the scheduled fees. And that completes my opening remarks. [LB588]

SENATOR CORNETT: Thank you. Any questions from the committee? Thank you. First proponent? [LB588]

DALLAS JONES: (Exhibit 1) Good afternoon, Dallas Jones, D-a-l-l-a-s J-o-n-e-s. Chairman Cornett, members of the committee, I appreciate the opportunity to be here this afternoon. I will try to make this brief, even though you've given us some extra time, more than I anticipated. I am here representing three different organizations today: Nebraskans for Workers' Compensation Equity and Fairness, the NFIB as well as the Nebraska State Chamber, in support of LB588. I'll hand these handouts around. What I want to do today is highlight several items that's in my testimony. I'm not going to read through that, for sake of brevity. First of all, what's most important? The organizations that I am here representing are principally employers. What's most important to employers, I want to say at the outset, is the opportunity for their employees to have high-quality, timely medical care. We don't want to do anything that inhibits the access of the most important resource of our people to that type of care that they need when they are injured on the job. What we want to do is precisely the direction that the committee is taking which is to replace a system that presently is broken that essentially is a system that I refer to as: bill what you will, less a discount. There are numerous problems with that type of system. I won't review all of those but some of the most important or most significant problems will be hospital it encourages significant amounts of dispute because there is no objective standard by which to measure what the appropriate level of reimbursement is for a bill that's incurred. The employer and the hospital may both, in good faith, wish to resolve that issue, but they come at it from completely separate directions. And without an objective standard we're not going to fix that problem. It encourages significant litigation as a result of that built-in problem that exists right now. What we are in favor of is either a system that the committee has come up with or, quite frankly, we would probably prefer a Medicare Plus system because Medicare is a system that everybody understands, both payer and the payee. It's objective, it's revisited regularly. And the only question then is a political one each year which is: what's the plus going to be? How much above the Medicare benchmark should a hospital receive for its services? We are mindful of the hospital's concern about timely payment. There should be a provision which obligates timely payment on behalf of either the carrier or the TPA representing the employer. Some concerns that we have with that, that we would want to make sure that the committee addresses would be the concept of a clean claim. When is it when there is enough information there that the payer should be making the payment and when is there not enough information? It seems to me that that information is the same in every case and we ought to be able to have a system that leaves very little doubt with regard to what that is. Secondly, it's also important to understand, and I know you do, but it's important that the bill makes some recognition of this from our perspective and that is, that workers' compensation, unlike health coverage, has that component of compensability. Is the claim one that is compensable? And that, obviously, has to be a part of this because if we're dealing with a claim where there is legitimate dispute about the compensability of it, obviously, you

can't have a time line that's running obligating the employer to pay that if there is a real, legitimate, reasonable basis to dispute that payment. We appreciate the committee introducing LB588. We remain willing to provide any input to the committee to help work through this. Nebraska is at a place where we are paying as employers nearly more than any other state; there will be some folks behind me who will lay that out in particular. There has not been any data that we have seen to suggest that the contrary is true and if there is such data, we are ready to look at that, analyze it, and respond to is as appropriate. But for now, what we know is, unless we are shown differently, we are paying more as a state than almost any other place in this country and that's simply not something that's justifiable under our system. Thank you. [LB588]

SENATOR CORNETT: Questions from the committee? Senator White. [LB588]

SENATOR WHITE: Thank you for coming here. I note that you prefer or perhaps would prefer, Medicare Plus. That puts us in a situation of negotiating prices in an industry with which we are unfamiliar. As a proponent of private enterprise, doesn't that make you nervous that governments start setting prices that your clients have to pay? We might do a bad job. [LB588]

DALLAS JONES: It does, Senator, but we are in that system right now. We are in a captive system. And until we divorce ourselves from that system, I don't think you could have one without the other. [LB588]

SENATOR WHITE: And as a captive system we haven't done you very well, have we? [LB588]

DALLAS JONES: No. [LB588]

SENATOR WHITE: Okay, so don't you think it's about time that we make a change? [LB588]

DALLAS JONES: I advocate a change. I am assuming that we will continue to be a captive system when I gave my comments. But I am open to opening it up and allowing employer choice which is about the only way I know to get there. [LB588]

SENATOR WHITE: Well if, for example, we go with the committee bill as drafted, we basically take advantage of private enterprise negotiations and ensure the employers the benefit of that price. Are you not more comfortable with that than with people who may not understand the first thing about medical pricing...setting prices? [LB588]

DALLAS JONES: I'm comfortable with that. I do have some concerns about the administration and I know this committee is concerned about trying not to create more disputes than fewer. And I...if there is a way, and I'm open to listening to it, as are my

groups to administer that, yes. [LB588]

SENATOR WHITE: If you have...anytime a person's injured, as you know, and they go to a hospital in a work situation, the employer immediately is in contact. They have a representative there now. They would simply have to get ahold of the hospital and ask them what their best price is and what the payment terms are and then abide it or pay the normal cost. [LB588]

DALLAS JONES: That sounds like it would work nicely, as long as you get the information. And I have been involved in litigation on behalf of employers where there have been hospital charges where it's not quite that easy to get the information, and perhaps the committee can fix that problem at the same time. [LB588]

SENATOR WHITE: Well, now you're looking at human nature not following the law and police officers and lawyers have made their livings on it for hundreds of years. [LB588]

DALLAS JONES: And we probably will still do so. [LB588]

SENATOR WHITE: I don't know that we'll change that part of human nature. You also mentioned the problem of dispute, a legitimately disputed case. [LB588]

DALLAS JONES: Right. [LB588]

SENATOR WHITE: Do you recall that? Would you agree that we need to get the worker care and then sort it out? [LB588]

DALLAS JONES: That is certainly the best approach from a public policy standpoint. [LB588]

SENATOR WHITE: All right. Then if, for example, we put into a law a provision that said, the worker shall be given care, the employer shall pay it but shall have the right to recoup that from the healthcare provider who in the event it was found not to be compensable, who then can go after private insurance or the employee. Would you agree that would solve that objection? [LB588]

DALLAS JONES: I'm not sure that that would be the best approach, quite honestly. [LB588]

SENATOR WHITE: Well, your clients get their money right away and then maybe...how does that hurt you? [LB588]

DALLAS JONES: I'm not sure how my clients...the employer gets its money right away. [LB588]

SENATOR WHITE: I'm sorry, the hospital gets paid right away and then you have a right to recoup it from the hospital, if you win your case. [LB588]

DALLAS JONES: I understand that. I guess I can't agree that that's going to be the best way to approach that. [LB588]

SENATOR WHITE: Well, I've represented people who have been caught in that situation and they've had horrible injuries and been unable to get medical care. I don't find that as an acceptable situation, do you? [LB588]

DALLAS JONES: One would hope that there is a better solution to that, Senator. [LB588]

SENATOR WHITE: Well, if we give the employer the chance to get their money back and the employee at least gets care, isn't that better? It may not be perfect. [LB588]

DALLAS JONES: It solves the issue that you raised, Senator. [LB588]

SENATOR WHITE: Thank you for your courtesy. [LB588]

SENATOR CORNETT: Any further questions from the committee? [LB588]

SENATOR LATHROP: Sure. Dallas, the way the system is set up right now, doesn't the work comp court set a fee schedule? [LB588]

DALLAS JONES: The work comp, of sorts for hospitals. Actually, what it is, is there's a fee schedule for physicians' charges which says for this particular procedure, look at the schedule and you pay that much. For hospitals though it's something separate, for hospitals it is...there is no limitation within the law and the hospitals may tell you there are certain limits that they follow in billing, but our law does not limit what the initial bill can be. What is says is on the backside, we're going to reduce that bill by a certain percentage, depending on where the hospital is and who it is. [LB588]

SENATOR LATHROP: So we we're encouraging the hospitals to start from the highest price for the services they're providing, just so they will get to a place where they want to end up in the end? [LB588]

DALLAS JONES: I think looking at this thing broadly, absolutely, Senator. You would hope that that would not be the case, but I think it encourages that. [LB588]

SENATOR LATHROP: Okay. You mentioned employer choice when you were answering a question for Senator White. Is that employer physician choice that you are

talking about? [LB588]

DALLAS JONES: Well, if you are going to have a completely free market system I think it has to go the entire distance where the employer, if we are going to make it free market, and the employer is going to have to pay for the hospital charges, and you want the employer to shop around or somebody to shop around, you are going to have to have, I think, the payer make that selection where the hospital is going to be. Otherwise, you don't get the benefit that at least the free market systems suggests that you get. [LB588]

SENATOR LATHROP: Okay. And would you agree that if we pass this bill or some version of this bill that we are interfering in a positive way with the free market system? Everybody's going to get X number of dollars for a back surgery and three days in the hospital. [LB588]

DALLAS JONES: I think what you're passing is a companion to the already captive system that we have and is placing some limits on a system where, if you don't have those limits, it goes awry. [LB588]

SENATOR LATHROP: Okay. And this is the next question... [LB588]

DALLAS JONES: It's not consistent with free market, to answer your question directly. [LB588]

SENATOR LATHROP: Then this is the next question I have for you. Are we okay, and we're not going to see the employers come in, next year, with a bill proposing that they get to choose where the employee is treated? [LB588]

DALLAS JONES: I have not been party to any discussions where that's going to be the employer's intention to come in and do that. I brought up employer choice simply in response to Senator White's fair market issue. [LB588]

SENATOR LATHROP: I know, and it's something that I'm interested in, the topic. And so as long you brought it up I wanted to...this is not having a rein on hospital expenses is one of your arguments for employer choice, am I right? [LB588]

DALLAS JONES: I think it would be. I'm not here arguing about employer choice or advocating that. I have been here, in some years past, advocating for a bill that did that. [LB588]

SENATOR LATHROP: I know you have, I know you have and that's why I'm talking to you about it because you brought it up in the context of this bill. [LB588]

DALLAS JONES: Right. [LB588]

SENATOR LATHROP: So not having a handle on hospital expenses is one of your arguments for employer choice. And if we get a handle on hospital charges for the treatment of injured workers, that is one less reason for employers to come back here and ask for the right to choose an employee's physician, would you agree? [LB588]

DALLAS JONES: That certainly follows, yes. [LB588]

SENATOR LATHROP: Okay, that's all I've got, thanks. [LB588]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you, Dallas. [LB588]

DALLAS JONES: Thank you. [LB588]

SENATOR CORNETT: Next proponent? [LB588]

CHARLES BURHAN: (Exhibits 2, 3, 4, and 5) I have some pass outs. Let me do the instructions first. My name is Charles Burhan, B-u-r-h-a-n. I'm assistant vice president for public affairs for Liberty Mutual Insurance. And rather than have more disruption, may we pass out the numerous pass outs, first. First, because we have a number of charts using terminology, we... [LB588]

SENATOR CORNETT: Sir, why don't you go ahead and give the handouts to the page and he'll take care of that for you. [LB588]

CHARLES BURHAN: Good afternoon. My name is Charles Burham, B-u-r-h-a-m, from Liberty Mutual Insurance. I first want to thank you for the opportunity to speak to the committee on the topic of medical cost containment. First of all, Liberty Mutual is usually either the second or third largest work comp carrier in the country, usually the same in the world. In Nebraska I think we're number two or three, once again, based upon competitive pressures every year and loss and gain of market share. But basically, we're a large and representative carrier. The charts before you kind of detail information which was first passed out, I think, last year in last year's hearings, plus a number of the interim meetings held by the work comp court, along with the Legislature. One chart, or the one pass is definitions, because some of the terminology used may be a bit arcane. And Dallas Jones had actually volunteered to help point out body parts, if you have questions about the various DRG parts indicated. The first chart I'd like to point your attention to is going to be...this scatter graph, dollars admitted? Now all the data represents just data from Liberty Mutual. It is not meant to be representative of the whole work comp community, obviously. It's purely data from Liberty Mutual which includes both medium-sized accounts and what's called national market account, like

UPS. It includes a number of Nebraska-based risks including trucking companies, retailers, restaurant chains, etcetera. What we've done is compared data for the Nebraska market versus our national market. And once again, this is just hospital admissions for a two-year period showing the cost of admission and Nebraska is a tremendous outlier across the whole country. And bear in mind please that in terms of the cost drivers, what's emerged both in Nebraska and nationally is that the lost wages, the workers' salary component has gone down as a relative percentage of the cost drivers of comp. It's more and more the cost of medical, which makes sense. The same basic medical trends you see driving Medicare and Medicaid and private health insurance see themselves manifested in workers' compensation, only much more so, because the cost controls and the competitive forces, which are allowed to play out in those other markets, don't pertain in...where comp, especially in Nebraska. And the issue is, as Dallas said, what kind of a system do you want to have? You currently have a cost reimbursement modification system. Theoretically, you have Medicare Plus. I say that only because everything can be redefined as Medicare Plus X percent. You happen to have an incredibly high percent. You're dramatically over what other states are. If you go to your next chart, the color chart, which is Nebraska versus all the other states, you are 81 percent higher than all of the states across the country, again this is for Liberty Mutual admissions. And the data set should be representative, the Nebraska cases are 180 admits and they are admissions for the DRG codes which were provided to the committee last year by the hospital association, the top 25 DRG codes. And all of the data for the other states was converted into DRGs by our medical team. The reason you got a sliding middle portion, that either burgundy or magenta, whatever, color scale that it is, the left-hand side represents Nebraska and then you go down across all the states. Now, what's interesting is that most states the longer the stay, the higher the costs; that's not true for Nebraska. You have very short stays which should generate low dollars, but instead you have high dollars and lowest length of stay. That's kind of analogous to what happened in Illinois. Illinois, traditionally, before they went to their new system, which was supposed to cap costs but didn't, had very low costs because everything would be recouped within a very short time period because they had very poor cost controls. You also have very poor cost controls as you look towards your cost per admission. And what we've done is taken the data which is in that last, and to me indecipherable, chart or matrix of all the DRGs and redisplay them versus all your neighboring states. If you look at DRG 496, which is the combined anterior posterior spinal fusion which, basically I think, Dallas, is the neck portion? Thank you. Right. The cost of that is displayed on the third chart. You are a highest state. Again this is national data for all markets, all SIC codes, all occupations, anyone having this procedure. And this 496, by the way, is not the highest charge, necessarily, across the country. There are some states where it is not the highest, depending upon their reimbursement system, for a number of states it is, and in Nebraska it is also. And then looking at your last slide, DRG 498, I then asked my folks to look at the most frequent, and again Nebraska, both on frequency and severity, severely outpaced all other states. Now, I want to make something very, very clear. This is not to meant to bash hospitals. We

believe actually, in different kinds of reimbursement systems. We encourage other states' reimbursement systems where we can pay more than the fee schedule in return for quality. We believe in quality-based outcomes, quality-based medicine, something which Medicare started doing this last year, as a matter of fact. It's more productive. It's not because we are altruistic, it just makes more sense. You get better patient outcomes, you get fast return to work, across the board it makes more sense. Now I am versed, to some degree, in the Missouri system. I work in 11 states and I've done work comp reform, fees schedules in most of those states. The text you have before you in LB588 is very similar to the Missouri-based system and there you do have certain little wrinkles. Missouri is an employers' choice state. An employer choice, in some ways, is an emulator for the cost controls because you have the ability, in part, to engineer your network. It's one refinement, if you will, above and beyond managed care. You have managed care of a sort in this state but you are managing off a very, very high base. So it's not true managed care in terms of what you can get as a quality outcome nor as a cost-control outcome. Missouri does work; it works painfully and I believe, Senator, to answer your question earlier, would you find a midpoint here at some point? I'd sure hope so, but it's going to be difficult and painful. The big problem is there are literally, as I'm sure my folks know, my friends in the hospital association will tell you, there are hundreds and hundreds of fee arrangements and they change across the year. Logically, most would change towards the end of the calendar year because that's when all of us sign-up for health insurance benefits, but they change during the course of the year and they are proprietary. So the hospitals in Missouri have fought release of that information and what happens is you go through a lot of discovery process. Now in Missouri that got tempered because you have physician choice by the employer. So a lot of those friction issues were addressed up front. It does not mean you'll have the same outcome here in Nebraska, and I'm sure there would be some concerns about costs through a comp court. If you want to keep the current version, we all find ways of living with what we're given. I would recommend, however, that you put in a penalty for hospitals who are recalcitrant, because that further delays the necessity for going to a court proceeding. And for that matter, if you go to a work comp court as your outcome, have the prevailing party pay. Once again, it acts as a disincentive for either party being untoward. And if it's somewhere near what we think is a fair range things get worked out. It is not a seamless procedure, however, and it does not guarantee the lowest possible cost. Workers' compensation reimbursement is not meant to be a given for the carrier. It's not something which we grant in legislation, this is covenant between the employer and the employee. By the same token, it's not meant to be a high profit margin for the hospitals, but it's worked out that way through time. I don't know how old your reimbursement system is, it probably goes back to your major comp reform in the early nineties. But when you look at the amount of money being spent on hospital care without any guarantee of quality because high-cost care does not equate automatically with high-quality outcomes, and while in past years, I think this is my third year testifying on this topic in Nebraska, we've heard the hospitals say that, well, you get more difficult patients coming in. There is no (inaudible) study, there is no peer-reviewed study which

shows that a workers' compensation patient is more difficult to treat than a Medicare patient. Conversely, Medicare patients are usually less healthy because they are older and they are not working, whereas a working population, by its same indication, is by its very nature healthier and working. Now in every single DRG system there is what is known as outliers. There are reimbursement mechanisms when you have a very difficult case that escalates, so you come in with a broken arm and all of a sudden it gets infected and you get sepsis, you get all kinds of complications, you quickly go into the outlier category. The charts I've given you are for the run-of-the-mill admission. And at the run-of-the-mill admission the standard defined DRG without outlier, 80 percent of all our cases are coming in way above. So I'm not here to argue, to go down to Medicare Plus 105, Medicare Plus 112, which I think is what Pennsylvania did, or to become as draconian as either Texas or Florida; they overdid it. That doesn't help me because it means I have physicians and hospitals walking away from the system. What we want is a moderate system and there are several ways you can do this. During the last year we recommended that one approach that was given to us by regulators in Missouri, which we're still trying to transact, it's not in effect anywhere, it's looking to the states' own healthcare reimbursement system. You are the largest negotiator in the state for your healthcare system. You are the largest employer in the state and we believe that the rate you negotiate, which once again is proprietary, is a fair rate. If you look across the country I believe the Workers' Comp Research Institute, which they are a not-for-profit group out of Massachusetts which does benchmark studies in 11 states, sometimes at the behest of state government, other times at the behest of employers and carriers. I believe when you look at all the Medicare fee schedule states, it works out to something like Medicare Plus, 57 percent. So if you came in at that rate I believe it would still be cheaper than your current system. But what you do above Medicare is purely a public policy decision. Since we believe that Medicare is a correct rate in terms of the actual costs, everything above and beyond that is what you, for public policy purposes, deem to be important. Now, why is it so critical to hospitals and why would they fight so hard? It's a high profit-margin business. Nationally, the average reimbursement for hospitals is 3 percent of gross revenues for both work comp and for no-fault auto. That is not a large portion. It is however, a high profit-margin business. They will fight hard for this. But the question again is, is it fair to cost-shift against employers and local government? Because right now that's exactly what's going on is cost-shifting. Now it turns out the state, we discovered, does negotiate its work comp rate. I don't know how much above the rate they pay for their group health, but it's less than what we pay. So certainly to some degree the state's largest employer is paying for procedures at a cheaper rate both for work comp and for group health. And I have never been able to understand why a member of this body who gets injured at the Capitol and has a broken arm should pay a rate different than they go back home and aren't working on behalf of legislative time. They should be charged the same rate by the same hospital for the same procedure and in fact, that's exactly what happens in this state plus or minus a few points. It's not the case for us. I have been a patient at Bryan Memorial Hospital which actually has a very fine ER, it's an excellent facility, I highly recommend it, if you have to go to a

hospital. I was impressed by the quality. I know if I'd gone there for work comp my firm would have paid a lot more than what they paid for group health. The question goes back to how much? And whatever we can do to help provide information. Jennifer Trounce (phonetic) has been here previously before, the previous committee and she helped generate these charts. She is actually home sick with the stomach flu. And with the Chairperson's permission we would certainly be very keen about either providing additional data. We have what's known as a Data Mart back in Boston. We can slice and dice almost any question you ask us based upon cost, procedure, length of stay, facility. One of the questions that came up previously is, would you harm the rural hospitals? The reality is most of your hospital beds are in urban suburban areas. Most of your work comp stays are in urban suburban areas. Most of your workers are, obviously, in urban suburban areas. If you have a very difficult case, a trucker, for example, who gets injured and is taken to a local hospital, they have a reimbursement system and again the question is, what is a fair reimbursement? I don't believe that a rural hospital is going to have a huge volume of cases coming in. One, indeed if they have a difficult case, usually they are air evacuated out. And if, indeed, the case escalates, the very nature of DRGs allows their pricing flexibility to go outward as the case intensity becomes more important to be reimbursed at the higher rate. So again, we are not here to argue for slash and burn medical costs, but you are paying way too much. And frankly, I don't understand why anyone would pay retail when you can pay wholesale? [LB588]

SENATOR CORNETT: Do you have testimony from the other person that was unable to be here today that you want entered into the record? [LB588]

CHARLES BURHAN: It's actually the charts, Madam Chair, and again we'd like to be able to embellish upon this by way of a letter to the committee, with your permission, if they... [LB588]

SENATOR CORNETT: That would be fine. [LB588]

CHARLES BURHAN: Thank you. [LB588]

SENATOR CORNETT: Questions from the committee? [LB588]

SENATOR LATHROP: I have some, if that would be all right. [LB588]

SENATOR CORNETT: Senator Lathrop. [LB588]

SENATOR LATHROP: Is it Mr. Morgan, is that your last name? [LB588]

CHARLES BURHAN: Burhan, B-u-r-h-a-n. [LB588]

SENATOR LATHROP: Okay, Mr. Burhan. Pardon me for that, I should do a better job of writing down the names of people. [LB588]

CHARLES BURHAN: I should be clearer, too. [LB588]

SENATOR LATHROP: Did I hear you testify, just a moment ago, that the increase in work comp expenses is related to the increase in costs of the medical expenses verses or in contrast to increasing indemnity expenses? [LB588]

CHARLES BURHAN: They both go up. The major cost driver, you're now at the point where more than 51 percent of your cost drivers are medical. That's true, it varies state by state. [LB588]

SENATOR LATHROP: Okay. So when we're looking at, as a group working on policy in the work comp arena, when we talk about this last piece which is the hospitals containing the costs with respect to care, are we going to realize a savings in work comp premiums in this state? [LB588]

CHARLES BURHAN: Two answers, if I can. First there are...testimony in the record indicating that I think Nebraska's fourth or fifth most expensive. That testimony was across both practitioner charges and hospital charges. I believe the most recent data I've seen is that the hospital is roughly about 38 percent of the total medical costs. What I'd recommend...when you go to a cost-based system, like Medicare Plus or using the state healthcare plan, you should apply that to everybody, not just hospitals, not just physicians. And there's been a recent modification by the comp court within the last eight months I believe, to lower physician charges. And in certain areas you're still way above the national average. But your second question about premium, there's a different between a rate and a premium. Premium is a reflection of what I charge you based upon how competitive I am versus another company based upon how much my loss ratio is, how expensive I am to do business. You are in what is known as a soft market right now. It's a very soft market, it's a very competitive market. [LB588]

SENATOR LATHROP: Let me ask the question maybe a little more specifically. You're talking about what we pay for hospital and how we are high in relationship to other states in the country when it comes to figuring out what we are going to pay for a spinal fusion or some procedure. You are asking us to essentially regulate what the hospitals are going to receive when they provide care to an injured worker. My question to you is, is that going to be passed on to employers in the state of Nebraska if we come up with a different plan for reimbursing hospitals? Are we going to see premiums go down or will they remain where they are at and Liberty Mutual makes more money and you tell us those are market conditions? [LB588]

CHARLES BURHAN: Okay. Fair. A fair question. Let me give you an equally complex

response, first of all... [LB588]

SENATOR LATHROP: Okay. Did you say equally complex response? Because I don't think the question was complicated. [LB588]

CHARLES BURHAN: Yes. Yes, it actually is more complicated than you realize, with all due respect, Senator. [LB588]

SENATOR LATHROP: All right. Okay. [LB588]

CHARLES BURHAN: First, in any state at least one-third of the marketplace is self-insured. So the question is, will employers lower their costs of doing business and then will you see that in lower prices to the consumers or and this is part one of the complex answer, in some states where you have this kind of flexibility, self-insureds have said, you know what, we now have more benefit dollars, this is historic classic HR benefit dollar, and if a large employer wants to compete because they have lower work comp rates by saying, I will lower your co-pay and health insurance. Does that mean the cost of doing comp is lower? Yeah. You see lower prices? No, you saw it manifested in other areas. It may be more vacation time. In some states you have also had situations where there are incentives for employees to use generic drugs for comp, where it is not mandated, in return for more vacation time for that production unit. But in terms of the prices, how much I'll charge? That's going to be a reflection of (a) we all know the stock market is a critical factor, the stock and bond market. If the market tanks then our investments tank and then that reflects in terms of what we have as a margin to play with. But again we are in a competitive marketplace, hospitals are not in a competitive marketplace. [LB588]

SENATOR LATHROP: You know we have people here from the Chamber of Commerce, I can see them waiting to testify or they are certainly listening. Mr. Jones is here for the folks from the Chamber of Commerce, that is the employers in the state of Nebraska, principally. And to answer my question, are we going to see premiums go down by you telling me that we might see a smaller co-pay in health insurance or a couple of days more of vacation, I don't think is really responsive and I'm not criticizing you, but I want to try to get a more direct answer. [LB588]

CHARLES BURHAN: Look, I'll be as direct as I can. I am trying to be as direct as possible without...I can't guarantee you an outcome because I can't guarantee a lot of variables. The rates are a reflection again, of experience as well as your cost drivers. If I have within my portfolio with several large trucking companies, if I have let's say, ten major death claims, that is going to affect my rate. So for me to say, yes the rates will go down, that's disingenuous. It depends upon the experience, the loss control, as well as the mix of business I have. [LB588]

SENATOR LATHROP: I'd like to take out of the equation the self-insureds, because if they save money then they're going to save money and they can spend it on whatever they want including the bottom line. But if we just talk about the people who buy from Liberty Mutual or anybody else, work comp insurance, all other things being equal, and by that I mean, forget the stock market, it's going to go up and it's going to go down and it's going to affect premiums in whatever way it affects premiums. But all other things being equal, if we impose a different price structure on hospitals who treat injured workers, are we going to see premiums go down? [LB588]

CHARLES BURHAN: I'll try again, you should see premiums reflect what the cost drivers are. And again I...you are asking for a simplistic answer to a complicated question. For example, a lot of policy holders will choose a higher deductible. The deductible is built into the pricing. It's like your auto insurance. Your premium is adjusted by what decisions you make personally. Will the premiums go down? The cost drivers across the whole industry will go down, either for TPAs, self-insureds, and carriers. If I don't adjust my prices I'll lose market share. So is there a further governor in terms of the marketplace? Yeah, I can jack prices up and lose market share and where does that get me? If it is a competitive market, you respond to competitive pressures. And by way of example, when states lower premium taxes you usually see a reflection in the premium. [LB588]

SENATOR LATHROP: You know, it seems like, I've got a business degree and I've been in business and I'm concerned about the small business owner and if we're going to take a step where we tell the hospitals you are going to have to accept less for the care of injured people, then we need to know today, as the Business and Labor Committee, that we are helping small businesses in the state of Nebraska and that the money isn't just going to Liberty Mutual out in Boston, Massachusetts. [LB588]

CHARLES BURHAN: Again, I think it strains credulity to think that you would not have such an amazing political pressure and regulatory pressure and the carriers wouldn't respond. But you are asking for me to make...I will not commit to something which is not fairly, anyone will commit to. I mean, Senator, I'm not questioning what your business is, but if you had someone tell you that a major cost driver would be removed, would you guarantee right now a year ahead that you'd lower prices by X? Could you? [LB588]

SENATOR LATHROP: Well we know that can go to one of two places, it can go to work comp carriers' profit margin or it can go to small businesses in the form of lower premiums. And it sounds to me like you can't guarantee that that's going to be the result of any changes we make in what the hospitals in Nebraska have to accept for care and treatment of injured workers. [LB588]

CHARLES BURHAN: With all due respect, if you ask the state's risk manager, as an example, what was the experience when they lowered their rates? What happened to

your own state budget for those theorists? It is certainly our intention to reflect that, but if medical, for example, part of your trade-off is going to be to raise benefits, does that mean that our premium will go down if you raise benefits? I don't think so. [LB588]

SENATOR LATHROP: I think I've gotten...I think I understand your answer. [LB588]

CHARLES BURHAN: I hope so. [LB588]

SENATOR LATHROP: I think I do. [LB588]

SENATOR ROGERT: Senator White. [LB588]

SENATOR WHITE: I had a couple of questions. First, your chart which the members of the audience don't have advantage of seeing. The chart says hospital costs are 81 percent higher than all other states. So if the average cost is $100, Nebraska would be $181? [LB588]

CHARLES BURHAN: That's averaging across for those 25 DRGs. [LB588]

SENATOR WHITE: And then I note that the average length of stay, which often relates to costs in Nebraska, we have the shortest in the area. [LB588]

CHARLES BURHAN: Right. As I said, Senator, the, I'm sorry... [LB588]

SENATOR WHITE: So we have short stays and high costs. [LB588]

CHARLES BURHAN: Um-hum. [LB588]

SENATOR WHITE: And the closest state to us in cost per admission, South Dakota, has longer stays on average than we do. [LB588]

CHARLES BERHAN: Right. Anomaly isn't it? [LB588]

SENATOR WHITE: So we're paying more to get less days of service than anywhere else. [LB588]

CHARLES BURHAN: But bear in mind, length of stay is never meant to be a metric for quality. [LB588]

SENATOR WHITE: But it is a metric, at least if you go to a hotel, for costs. [LB588]

CHARLES BURHAN: But by...with all due respect... [LB588]

SENATOR WHITE: How long bed days are considered a normal cost. [LB588]

CHARLES BURHAN: No, that's not correct. The federal government, for example, Medicare tries to encourage rapid discharge and in terms of exposure the last thing you want to do is be in a hospital longer than you have to be. [LB588]

SENATOR WHITE: Now you wanted to say also it seemed that, until we have employer choice, we'll have some type of a captive or governed system, is that what you said? [LB588]

CHARLES BURHAN: No, we're merely referring to what Missouri has done, because your language is similar to Missouri. [LB588]

SENATOR WHITE: Now, do you think employer choice would be an improvement? [LB588]

CHARLES BURHAN The states...you know it depends on how you put everything together. I mean you shouldn't do this as a series of piecemeal steps, for example, I'm trying to answer your question... [LB588]

SENATOR WHITE: Would employer choice be an improvement? Yes or no? [LB588]

CHARLES BURHAN: If you have utilization review as a part of it, yes. If you simply have employer choice without other safeguards, no. [LB588]

SENATOR WHITE: Would you let me go out and negotiate your heart transplant cost? [LB588]

CHARLES BURHAN: Well my health employer does it. [LB588]

SENATOR WHITE: Not necessarily. You have a choice in a range, unless you are in a very unusual health policy. [LB588]

CHARLES BURHAN: Well, first, with all due respect, those aren't work comp procedures usually. But... [LB588]

SENATOR WHITE: No, but there is still life and death and there's still a human being on the table, you know? [LB588]

CHARLES BURHAN: Forty-two states, Senator, have cost controls, including your state. You just happen to have the worst cost controls. And I want to point out there's been no study of adverse outcomes due to cost controls except for physicians leaving the system and then those states have had to adjust their reimbursement rates upward.

There is nothing inherently wrong in cost control. [LB588]

SENATOR WHITE: No and I think we are trying to work on one here. My question is, if an employer somehow can get the information to negotiate effectively lower cost controls, why can't we do it by piggybacking on what they're negotiating anyway? [LB588]

CHARLES BURHAN: Well first of all employers...right now you cannot do that because... [LB588]

SENATOR WHITE: I can or can't? [LB588]

CHARLES BURHAM: You cannot in this state because you've set this artificial price scaling... [LB588]

SENATOR WHITE: Well, we are talking about changing that. [LB588]

CHARLES BURHAN: If you change that then you're ask...the law, it's kind a broad-based question. If...to use your, Senator, your question about small business, I'm not quite sure small business has the sophistication, the time to go and negotiate what are very complicated situations. Let me be very clear about this, Medicare Plus has worked in a number of states. It tends to work and for all parties' benefit because it clears up confusion. You don't have to have questions about what the right rate is. [LB588]

SENATOR WHITE: Well, except for us, we don't know what a fair price is. [LB588]

CHARLES BURHAN: Exactly. [LB588]

SENATOR WHITE: So we get to buy a pig in a poke. And we get to set a price when we don't have the slightest clue if we are overpaying or underpaying. [LB588]

CHARLES BURHAN: Let me go back to the example of what you are doing right now as a state. You apparently have your own fee schedule for work comp for the state. That is working because I don't see state workers being turned away from hospitals for work comp procedures, so... [LB588]

SENATOR WHITE: I see a very full hearing room with employers who are less than thrilled with the rates they're paying. [LB588]

CHARLES BURHAN: For what? I'm sorry. [LB588]

SENATOR WHITE: For work comp insurance. They're...believe me, take a straw poll,

they're not happy. [LB588]

CHARLES BURHAN: I agree. And that includes my policyholders. I'm a mutual company and that's why I'm here. But my point is you have cheaper reimbursement systems in effect right now, not hypothetical, in effect right now. And you have large employers who no doubt, for example if you are a large company and you dominate the market in a rural area, you can probably negotiate not only your group health but also your work comp rates. But rarely does anyone have that kind of leverage, it usually takes unique variables of size and geographic isolation. Atypical. [LB588]

SENATOR WHITE: Thank you. [LB588]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you very much. [LB588]

CHARLES BURHAN: Thank you. [LB588]

SENATOR CORNETT: Next proponent? [LB588]

DON CLEASBY: Good afternoon, Madam Chair and members of the committee, my name is Don Cleasby, D-o-n C-l-e-a-s-b-y, and I'm with Property Casualty Insurers Association of America, the PCI, which is a national trade association representing over 1,000 property and casualty insurance companies. Our members write 36 percent of Nebraska's workers' compensation coverage and we appreciate this opportunity to comment on LB588. What I've heard from the members is that we are encouraged that there is serious consideration being given to a fee schedule for hospitals here in Nebraska. We do have some of the concerns or questions that have been previously raised, Senator White, about what's in this particular bill. And that is how the insurers or payers are going to get information about what is the lowest price negotiated between a hospital and any private insurance carrier third party payer. If there is a way to assure that that information is available then maybe this kind of approach makes a lot of sense and gets us out of trying to set prices for hospitals. As Mr. Burhan mentioned, there is something similar, not exactly identical, but something similar in Missouri. And I can tell you one of my member companies writing work comp there has already been in litigation about how to interpret, how you determine, what is the lowest price negotiated. Let's see, Senator Lathrop, we were talking about pricing. What I can tell you is that prices and work comp rates do go up and down. In fact I think the latest filing by the NCCI, which is an organization which recommends rates for many workers' comp carriers, was a rate decrease here in Nebraska. I think what Mr. Burhan was mentioning is if overall costs decrease you will see that reflected in the rates because competition in the work comp marketplace is going to force carriers to price it or else they are going to lose business to other work comp writers. So we do see prices go up and down. I can also tell you that in states that have adopted reforms we have seen significant rate

reductions. I think California is an example of that. Now they have reforms that go well beyond what you are talking about in this bill, but when reforms have been enacted that reduce costs of the system, that does get reflected in the rates. We've heard a little bit about Medicare-based fee schedules. I would just offer up to you that our members are still more comfortable with that than what we're talking about in LB588. They see a lot of benefits controlling for inflation because it's not as heavily influenced by the charges being billed, ease of maintenance because the federal government is updating it on a yearly basis. It's available to the public, you can get on the web site and find out what the fee schedule is. It's transparent because you don't have a third-party proprietary fee schedule, such as Blue Cross Blue Shield, and it's familiar to people because you are working with it in the Medicare system. There are a handful of states right now which have adopted a Medicare-based fee schedule, I think we are about five or six. One of the most recent is South Carolina and I have a study...they just adopted theirs last year. I have a study from the Hospital Advisory Committee, a report they issued last June, where they concluded that a Medicare Plus fee schedule at 40 percent on hospital inpatient and outpatient services would reduce the overall workers' compensation costs by $62.2 million. So that gives you some idea what the cost savings could be. That would be my testimony. I'll be happy to try to answer any questions. [LB588]

SENATOR CORNETT: What would you recommend or what would you, from an insurance point of view, think the Plus should be? Fair and equitable. [LB588]

DON CLEASBY: Yeah, well we need three things in a fee schedule. Hospitals need to be fairly compensated. Workers need easy access to quality healthcare, so a fee schedule can't jeopardize that. And we do want some cost containment. So that's going to be a subject of negotiation. Maryland is one of the states that has a Medicare-based fee schedule. It's at 109 percent of Medicare, pretty stringent. I can tell you, because I work Maryland, it's one of my other states, that it was leading to access difficulties with orthopedic surgeons in the eastern shore, the rural areas of Maryland, because they felt they couldn't get fairly compensated and they weren't willing to treat work comp patients. And the resolution of that was to increase the fee schedule for that specialty, orthopedic surgeons to, I think it's 140 percent and now there's access to care. So these are things you can work on with the fee schedule if you see there are some troubles or difficulties that surface with any particular practitioner or service. [LB588]

SENATOR CORNETT: Questions from the committee? Senator White. [LB588]

SENATOR WHITE: I have a series of them. First of all, we talk about, you know, access with service and it sounds like a planned problem. What I have seen in my practice is people with unstable neck fractures trying to get surgery scheduled. Okay? It's not access to service it's about whether some poor some sot is going to end up paralyzed or live with permanent nerve damage that was unavoidable because we are trying to figure out the right economic balance. So there's a human cost to this that we need to

pull the cover off so we can all acknowledge. When you talk about access to service, we're talking about people in pain not getting treated; that's number one. The second thing is, why do you think this is the right place for us to negotiate those prices? It could be 200 percent of Medicare, it could be 50 percent of Medicare and I cannot objectively tell you which is fair or why. I mean, and neither can you. Yes, Senator Cornett asked you a direct question, said what's the percentage and you said, well, we'll have to work on it. Why do you think we are equipped to negotiate that? In my experience when you negotiate with government one of two things happen, either we act like a big bully like Texas in which case workers don't get treated, or we give away the store which apparently we've been doing. [LB588]

DON CLEASBY: I guess my comment to that, Senator, is take a look at what's happening in some of the states which have adopted this approach and see if they're encountering the very troubles that you are mentioning, because I've not heard that in the states that have a Medicare-based fee schedule. And there might be lessons that can be learned from the states that are already doing this. [LB588]

SENATOR WHITE: Well but certainly the costs in Maryland are different than the costs in Nebraska. I mean, if Medicare Plus 30 in Maryland works, why do you think it works here or Medicare Plus 40 in California? We have entirely different economic problems, different costs of living, different reimbursement rates, our physicians have different expectations on compensation. I mean, how informative is that? And again, why don't we instead turn it over to private industry which is much more fluid and flexible with the employers who have this ability to negotiate good prices and just piggyback on them? [LB588]

DON CLEASBY: That has a lot of appeal. But as I said, what we would want is the assurance that information is readily available about what hospitals are charging or collecting on the services they are providing. [LB588]

SENATOR WHITE: And given the history of trying to find information that this committee, before I joined it, this committee has had from the hospitals, I share your concern. But believe me there are legal remedies that can make it much more painful not to turn it over than to turn it over. But if we find ourselves pushing this, in a large part it is because we have been starved for meaningful financial information and people seem to want us to continue to set prices in the dark. Well, if that's going to be the case, the prices that at least I advocate are going to be very painful for those who would keep us in the dark. [LB588]

SENATOR CORNETT: Senator Lathrop. [LB588]

SENATOR LATHROP: I do have a couple of questions. Obviously, you are a fan of the Medicare Plus. I want to ask a question that I don't know the answer to it. Is Medicare

adjusted for region? [LB588]

DON CLEASBY: Yes. [LB588]

SENATOR LATHROP: So if they're charging something in New York under Medicare it's different than what it would be in Nebraska? [LB588]

DON CLEASBY: Yes. It's calculated for each state and it's calculated for regions within the state. [LB588]

SENATOR LATHROP: And you may not know the answer to this probably the hospital guys will, if they'll tell me, and that is, at what percentage is...is the hospital making money on the Medicare rate? I mean I've listened to it, I've heard it over in Judiciary Committee, we're losing money on the Medicare. [LB588]

DON CLEASBY: I couldn't answer that question, I don't know. [LB588]

SENATOR LATHROP: Okay. You said five or six states have gone to that system. Do you know what the typical number is? Is it 140 or 130? One hundred nine, obviously apparently is too low in Maryland. [LB588]

DON CLEASBY: A hundred and nine in Maryland and I think it goes up to about 155 or 160, but I can get that information to you, Senator. [LB588]

SENATOR LATHROP: Thank you, that's all I have. [LB588]

SENATOR CORNETT: What, pardon me, did you say the percentage was for South Carolina? [LB588]

DON CLEASBY: A hundred and forty. [LB588]

SENATOR CORNETT: A hundred and forty. And they saved $62 million at... [LB588]

DON CLEASBY: No, they projected... [LB588]

SENATOR CORNETT: Projected... [LB588]

DON CLEASBY: ...because it just got implemented, but this task force projected a $62.2 million savings. [LB588]

SENATOR WHITE: In South Carolina? [LB588]

DON CLEASBY: In South Carolina. [LB588]

SENATOR WHITE: Based on their base. [LB588]

DON CLEASBY: Based on their base, yes. [LB588]

SENATOR CORNETT: Thank you. Any further questions? [LB588]

SENATOR LATHROP: Yeah, that does lead me to ask, forgive me, Senator Chambers. [LB588]

SENATOR CHAMBERS: I was just going to ask, that 62-something, is that, what percentage would that be if it were of the savings? [LB588]

DON CLEASBY: Oooh, Senator, I don't know if I have the information or the data needed to give you that. [LB588]

SENATOR CHAMBERS: Okay, okay, that's okay. [LB588]

DON CLEASBY: All right. [LB588]

SENATOR LATHROP: That was kind of the same question I had. How does that compare, is their population similar to Nebraska's? They probably have more people don't they? More claims? [LB588]

DON CLEASBY: And again, I'd have to do some research and see if I even can have that data. [LB588]

SENATOR LATHROP: Okay. That's all I have. [LB588]

SENATOR CORNETT: If you do not have that data, can you compile that data for us? [LB588]

DON CLEASBY: Sure, we'll get in touch with whoever the people were who put this report together and see what we can provide to you. [LB588]

SENATOR CORNETT: Thank you. [LB588]

DON CLEASBY: All right. Thank you. [LB588]

SENATOR CORNETT: Seeing no further questions, next proponent? [LB588]

RON SEDLACEK: Good afternoon, Madam Chair and members of the Business and Labor Committee, my name is Ron Sedlacek and that's spelled S-e-d-l-a-c-e-k. I'm here

today representing the Nebraska Chamber of Commerce. And I'd like to enter testimony in regard to LB588 as a proponent. The state chamber has a broad-based membership and we are made aware of a variety of opinions that are expressed by various segments of our membership regarding a legislative hospital fee schedule. And it's been a difficult issue over the years for us. We would encourage and are supportive of continued discussion and study of the concept of fee schedules with the understanding that such a schedule, if legislatively addressed, would take into consideration and hopefully resolve both the concerns of the employer community at large as well as the provider, the hospital, and medical communities. We offered and we continue to offer to serve, at least within our membership, as an organization to facilitate continued discussion among this diverse membership and hopefully reach either an understanding or a consensus or perhaps even a resolution on the issue. It's my understanding that some other stakeholders are present here today involved in the issue and they may propose an alternative plan. I have not reviewed that plan. I haven't seen it, not in writing anyway, any proposed amendments. However, it's my understanding that a proposal might be offered. And we'd like to defer judgement on it at this point and try to grasp it and get further information before any particular decision would be made in that regard. So while we are supportive of the general concepts of the hospital fee schedule, we still would like to accommodate those various segments of our industry and we would like to be included and continue to be included in the discussion and that's all. [LB588]

SENATOR CORNETT: Thank you, Ron. I appreciate the difficult position you're in because you represent somewhat both sides of the coin here. Any questions from the committee? Seeing none, thank you. [LB588]

RON SEDLACEK: Thank you, Senator. [LB588]

SENATOR CORNETT: Next proponent? [LB588]

DICK JOHNSON: Good afternoon, senators, my name is Dick Johnson, J-o-h-n-s-o-n. I'm here this afternoon representing Associated Builders and Contractors. We're a statewide group of commercial industrial contractors that range in size from a small one or two person shop all the way up to some of the largest construction companies in the state. The one common problem that we all have is the continued rise in the cost of workers' comp. And we saw a little relief in the mid-nineties and now we are seeing it start to escalate again to where...it's hard for my members to understand if they send their son to a hospital to get a broken arm fixed and the total cost is $180 why they have to send a worker to the same hospital to get the same treatment and the cost can be as high at $320. What different service was given for the two identical type of injuries? The quality of care is always an issue but at the same hospital, the same injury for all practical purposes. And when my members hear stories like this, they want to know what they can do to help control the cost of workers' compensation. And so I'm simply

here today to say maybe this isn't the solution but boy, we got a lot of work to do. And I've been involved the last two or three years on committees trying to come up with a solution and lack of information out there is a concern. If there's any questions, I'll be happy to answer. [LB588]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB588]

DICK JOHNSON: Thank you. [LB588]

SENATOR CORNETT: Next proponent? [LB588]

DANIEL FRIDRICH: Thank you. My name is Dan Fridrich, I'm...F-r-i-d-r-i-c-h and I'm here on behalf of Werner Enterprises, and I'm speaking in favor, a proponent of LB588. I'll try not to be redundant in anything that's been said. I think Mr. Jones (sic) kind of voiced my general thoughts about this bill which is we need some sort of system in place to reduce the costs that are escalating on hospital care in the state of Nebraska. Werner Enterprises, obviously we have employees in Omaha and we have employees throughout the country. And so the care that we pay for is scattered throughout the country. I can't say that I can compare hospital costs in South Dakota versus Nebraska, I haven't done that type of analysis. But what I do know is that the system we have in place isn't creating any incentive for cost reduction in that it allows a percentage discount off of the total price bill. And so therefore we need to do something to create some sort of incentive to reduce costs. The other thing that I would like to point out is that employers are generally sincere when they say: we don't want to see a reduction in access for injured workers; I think people may think that's just talk. But one of the things I get to see in my position at Werner Enterprises is people trying to get care throughout the country in states such as Texas and Florida, and in fact I got a call on it just today. We've been trying to get a gentleman to get treatment from a osteopathic physician in Texas and we simply can't find someone who will take workers' comp. The second you tell them that, they say, we don't take workers' comp. And it's a real situation and it puts us in a bind because we want the injured worker to get better, he wants to get better, but we can't find anyone to treat him. So it's a genuine concern for employers. We want them to get good care, but we want it to be at a fair price. And so we'd ask that something be done but something be done where the hospitals still make a profit. That's all I have and if anyone has any questions? [LB588]

SENATOR CORNETT: Senator Chambers. [LB588]

SENATOR CHAMBERS: If nobody treats the worker, what becomes of the worker? [LB588]

DANIEL FRIDRICH: Well, in this case that we have we are continuing to search for a

facility that will treat him. Fortunately, in states such as Florida we have a number of employees that work down there. So if the guy calls us up since he can choose, and says, I can't find a doctor that will treat me, many times we'll know a place in his area. Maybe he'll have to drive a little bit or distance, we'll know someone that can treat him. In this case that I got a call on today we're still looking. It's a specific type of treatment we're trying to find and we haven't found anyone. [LB588]

SENATOR CHAMBERS: Excuse me, what's wrong with him? What's the nature of his injury? [LB588]

DANIEL FRIDRICH: He has a low back hip injury and a doctor of osteopathic medicine has prescribed a type of osteopathic manipulation of the hip. And so we're trying to find an osteopath to treat him. We might have to go to... [LB588]

SENATOR CHAMBERS: In the meantime he's just suffering... [LB588]

DANIEL FRIDRICH: He's working but yes, he's...I would presume he is in some type of pain. [LB588]

SENATOR CHAMBERS: You don't use "ball-peenology" do you? (Laughter) That's a hammer. You don't do that...okay. [LB588]

DANIEL FRIDRICH: I'm not treating him. [LB588]

SENATOR CHAMBERS: I was just curious, seriously, how long a person might have to go without treatment under those circumstances? [LB588]

DANIEL FRIDRICH: Hopefully, not long. I mean, in this case, and he's represented by an attorney and his attorney and I have been talking... [LB588]

SENATOR CHAMBERS: Okay. [LB588]

DANIEL FRIDRICH: ...we've been on the phone today trying to find someone. [LB588]

SENATOR CHAMBERS: Okay. That's all right. Thank you. [LB588]

DANIEL FRIDRICH: But it...yes. [LB588]

SENATOR CORNETT: Isn't it fair to say that what Texas has enacted is fairly draconian? [LB588]

DANIEL FRIDRICH: I don't know what they've done, but given the results, I would have to answer yes, but again I haven't reviewed the legislation. [LB588]

SENATOR CORNETT: Okay. Thank you very much. [LB588]

DANIEL FRIDRICH: Thank you. [LB588]

SENATOR CORNETT: Seeing no further questions, next proponent? Are there anymore proponents to the bill? Opponents? [LB588]

SCOTT WOOTON: (EXHIBIT 6) Good afternoon, senators, Madam Chair, I'm Scott Wooten, W-o-o-t-e-n, is my name and I do have handouts of my comments. On behalf of Alegent Health I would like to thank you for the opportunity to visit with you today about LB588. I would just like to share with you three brief comments. First a little bit about Alegent and secondly the impact that the July 2006 regulation has had on Alegent Health and then thirdly, a brief dialogue about the proposals, how we would propose to the senate might consider pursuing our principles. Many of you are familiar with Alegent Health. We are a faith-based health ministry. We are sponsored by Catholic Health Initiatives and also by Immanuel Health Systems. Those are founded in the traditions of the Sisters of Mercy of Omaha and also the Evangelical Lutheran Church of America, the Nebraska Synod. We represent over nine hospitals, five of which are in the immediate Omaha metropolitan area, over 100 sites of service. We employ over 8,500 employees. We see over 300,000 individuals and patients in those hospitals and in our physician clinics over 500,000 individuals a year. We see a lot of people and take care of a lot of people. And we are a not-for-profit provider. Our payer mix is roughly 50 percent government, Medicare and Medicaid, 40 percent approximately in managed care, 7 percent self-pay, and approximately 3 percent are workers' comp. To the second point. There's been a $2 million cash impact to Alegent Health, unfavorable, related to the July 2006 regulation specifically regarding the cap or limits with regards to implant reimbursement and you all are familiar with the $10,000 limit which was placed there. The third point that I wanted to share with you was more to encourage the committee to embrace consumer-driven principles, or worker consumer-driven principles in the reform which is under consideration, and crafting reforms that would benefit the worker as well as the employer. But ultimately the individual has to be in the driver's seat in order to understand their healthcare. There's virtually no other industry where an individual cannot get information on the services that they are going to receive. In consumer-driven healthcare studies, many, it's been proven or documented, that many people spend more time analyzing their large-screen TV purchase than they spend in an entire year on what kind of healthcare they will consume. As it relates to workers' comp specifically, we would ask you to craft a reimbursement system that is designed to benefit the patient/worker, specifically access to quality care and specifically one which is not dependent upon price controls. Price controls economic theorists suggest, are not a sustainable cost-control mechanism in the long term. I'm not an economist, so I'm going to just tell you that's about all I know about that theory. But it is not documented as a long-term cost-control mechanism that's sustainable. The principles of worker

consumerism healthcare that we would encourage the committee to consider would be the workers' access to information quality, as well as cost; it's critical in order to put the worker in the driver's seat. The second principle that we would encourage the committee to consider is one of access and access points which help the individual receive care or service at the minimum necessary cost for the best quality and outcome. You can't have...make that decision as an individual if you don't have the information transparency which was the first point. The second point is access at the minimal cost. And then thirdly, incentives, incentives for the individual, for the worker to both help them stay safe as well as get healthy. That concludes my comments. [LB588]

SENATOR CORNETT: My first question is, could you please explain, looking at some of the data that we have received and have received in the past, why Nebraska is so much higher compared to the other states surrounding us, and compared to other states nationally in the costs? [LB588]

SCOTT WOOTON: No, I cannot. I would rely on the individuals who brought that testimony to explain that. [LB588]

SENATOR CORNETT: Do you have data available that shows us something different? Do you have data to provide to use? [LB588]

SCOTT WOOTON: Alegent operates in the states of Iowa and Nebraska, but we are not privy to information across other states. And when you look at workers' comp, I haven't analyzed the two different states, to answer your question. [LB588]

SENATOR CORNETT: Senator White may touch on this, but what has been proposed in this bill and what he is advocating is based on the free market, am I correct? It's a negotiated rate that the hospitals would have negotiated? The proposed bill? [LB588]

SCOTT WOOTON: My understanding...I would ask you to clarify that. [LB588]

SENATOR CORNETT: Oh, have you read the bill? [LB588]

SCOTT WOOTEN: I have not. [LB588]

SENATOR CORNETT: Oh, okay. Never mind. Thank you very much. Any questions from the committee? Senator White. [LB588]

SENATOR WHITE: Yes, I have a series of questions. If I understood your testimony, Mr. Wooten, and did I pronounce that right, Wooten? [LB588]

SCOTT WOOTEN: Yes, sir. [LB588]

SENATOR WHITE: You think price controls are not sustainable over the long-term, correct? [LB588]

SCOTT WOOTON: That was my statement yes, sir. [LB588]

SENATOR WHITE: Well, Medicare Plus is price control, correct? [LB588]

SCOTT WOOTEN: That Medicare...any form of a fee schedule, whether it be based on Medicare Plus or not, would be a nonnegotiated price and therefore I would say, yes, it would be a price control. [LB588]

SENATOR WHITE: Then does Alegent feel comfortable in providing let's say a cervical fusion, C3 and C4 and the hospital services at the best price it provides, to any private healthcare to the workers' compensation people? Would Alegent be comfortable with that? [LB588]

SCOTT WOOTON: Alegent, no. [LB588]

SENATOR WHITE: Why not? I mean it's good enough for your negotiated private payers, why on earth should the people of the state of Nebraska pay more? [LB588]

SCOTT WOOTON: The negotiated prices have other terms and conditions which are not necessarily associated with the bill. [LB588]

SENATOR WHITE: Well, how do you know that? I mean the bill says the best price. For example do you mean timing of payment? We provide for a 30 day payment after a clean bill is done. So the time value, money is taken care of, correct? [LB588]

SCOTT WOOTON: In the timing criteria that is correct. [LB588]

SENATOR WHITE: Okay. What are the other major loose factors? [LB588]

SCOTT WOOTEN: There are all kinds of administrative activities including authorization and denial. And other payment terms which are factors that I do not believe the bill embraces. [LB588]

SENATOR WHITE: Well, I don't think you have to worry about authorization and denial for work comp. I mean if somebody comes down and the doctor says they need this, the carrier is there and says, what's your best charge? That's all you need to know. [LB588]

SCOTT WOOTON: The determining...establishing a fee schedule does not embrace transparency of cost or quality and is not really going to inform the individual on the best way for them to consume healthcare. [LB588]

SENATOR WHITE: Do you really think a guy laying on a table let's say with third degree burns over 40 percent of his body, is really in a position to negotiate the best fee schedule or which hospital he should be at or who's the best doctor or what's a fair price, really? [LB588]

SCOTT WOOTON: One of the purposes for insurance is to establish contracted rates with providers. [LB588]

SENATOR WHITE: Here's what I am troubled by, you don't like price controls which are fee schedules and you don't like the free market. What do you like? Besides you just get to say what you want to charge? [LB588]

SCOTT WOOTON: I would like to correct any perception, I did not intend to state that I did not prefer the free market. [LB588]

SENATOR WHITE: Well then when you negotiate with a low-cost provider that is the free market, is it not? We are taking advantage on our side of the biggest guy on the other side of the table from you. [LB588]

SCOTT WOOTON: Which is not the free market, sir. [LB588]

SENATOR WHITE: Oh, really? So when you negotiate... [LB588]

SCOTT WOOTEN: Government legislating prices, at whatever prices they are, is not the free market. That is government price control. [LB588]

SENATOR WHITE: We're not setting the price, sir. We're saying that whatever you negotiate with, let's say the biggest guy on the block is United Healthcare, or maybe it's the Blue's, all right? We're saying we get that price. We're not telling you what price to negotiate with them, we are just saying we get that price, and you say that's not the free market? [LB588]

SCOTT WOOTON: The contract between two willing parties are subject to multiple terms and conditions, price is only one of those factors. [LB588]

SENATOR WHITE: Are you saying it's impossible when a guy, let's say, the galvanizing tank at a big industrial plant in the western edge of Douglas County had a mistake and it burned this man horribly. Now we're saying that we're looking a massive costs. Are you saying that it's too complicated for an insurance representative, the comp carrier, to sit down with one of your people right away and say, okay, what are we looking at? What are your overall best prices? Give them to us, so we can advise on whether we take him or not. That's too complicated? [LB588]

SCOTT WOOTON: The terms and conditions of many of our contracts include confidentiality information. So it would be very difficult to adjudicate the nature of that type of a scenario. [LB588]

SENATOR WHITE: I understand that, I understand that you...oh it's easy. We pass a law, sir, that says you no longer have privacy and it disappears. It's really not hard. I understand Alegent did not provide all kinds of information for a number of years regarding charges under that rubric and look where it got you. Does Alegent have some kind of answer why it apparently is charging as much as 300 percent more than other hospitals for the same services? [LB588]

SCOTT WOOTON: Alegent just recently released a web site, mycost.com, making costs for the 500 most commonly purchased healthcare services at Alegent Health available to any consumer purchaser. You can go to alegenthealth.com. You can log on and identify who you are, if you are insured or not, and you can identify specifically what your cost of healthcare will be for the service you wish to purchase. We believe very much in transparency of cost information as well as quality information. [LB588]

SENATOR ROGERT: On that web site does that...whose cost does that reflect? [LB588]

SCOTT WOOTON: The web site that I referred to mycost.com is...those are facility costs only, the costs for Alegent Health facilities, and they do not reflect any physician-related cost, professional fees, at all. So they are solely costs at Alegent Health. [LB588]

SENATOR ROGERT: So it really doesn't reflect what you are going to bill, but it reflects what it costs the hospital? [LB588]

SCOTT WOOTON: No, no. What it does, it allows an individual to determine their own personalized out-of-pocket costs, so what their out-of-pocket payment will be as well as the total payment, the portion which will come from their insurance, as well if they would be insured. So it is a payment tool, a cost tool if you are a worker who has to pay an out-of-pocket portion. [LB588]

SENATOR ROGERT: Does that include work comp? [LB588]

SCOTT WOOTON: Workers' comp is on the web site, and it will reflect what 85 percent of the charges are as the total payment, the individualized portion for individuals' out-of-pocket costs related to that. Those specifics are not built into that tool right now given the third-party clearinghouse that it provides the data, the beneficiary and coverage information on data, we don't have that at that level of specificity on workers'

comp. [LB588]

SENATOR ROGERT: Okay. Thank you. [LB588]

SENATOR CORNETT: Senator Lathrop. [LB588]

SENATOR LATHROP: Okay, you have a web site. It's called mycost.com? [LB588]

SCOTT WOOTEN: It's alegenthealth.com and there's a big button that says, My Cost. [LB588]

SENATOR LATHROP: My Cost. And you were talking about how you believe in transparency and I got to tell you I'm just going to say what everybody is thinking up here and that is, we've been trying to find out from the hospitals what it costs it provide care or what you are paying when it's a Blue Cross patient, or getting when it's a Blue Cross patient, and nobody will give us the information. And if you are sensing a little frustration it's because you left us feeling around in the dark and we can't tell what to do and you're saying, trust me. Even your mycost.com or your alegent.com, you're not providing...if I'm a Blue Cross Blue Shield insured, you are not telling us what Blue Cross is paying, you are only going to tell me on that web site what my deductible is going to be, isn't that true? [LB588]

SCOTT WOOTON: We're telling you where you are at in your plan year what your out-of-pocket costs would be for that service. [LB588]

SENATOR LATHROP: Okay, so... [LB588]

SCOTT WOOTEN: But to your point, sir, it is not a price comparison among all the different insurances which we do contract. And we are not allowed to provide that information, a comparative price comparison at this time given the confidentiality terms of our contracts. [LB588]

SENATOR LATHROP: Okay, so there isn't, in fairness, there isn't full transparency in this web site. All we're doing is telling somebody what their co-pay or deductible will be, given where they are at in the plan year and given what plan they're on, is that true? [LB588]

SCOTT WOOTON: We are trying to help individuals who are shopping for healthcare at the most relevant cost information relative to the financing which they have chosen. They've chosen that insurer, they made that decision, and now we are trying to help them make a prudent buyer decision relative to what their costs will be if they choose to purchase services at Alegent Health. [LB588]

SENATOR LATHROP: Okay, but in terms of this committee and our job today with this bill is to try to figure out how much the hospitals should be paid for their care they're providing and it looks like they're being paid more than we are willing to let them be paid for care provided. Your web site isn't going to help us, and we're getting no information from Alegent or any of the other hospitals about what it costs to provide that care, would you agree with that? That we've asked you for that information and you haven't provided it? [LB588]

SENATOR CORNETT: In the past. I was just going to say in the past. [LB588]

SCOTT WOOTON: I, personally, was not present, so it's difficult for me to agree with you. But I would go on your good statement that that apparently is the case, sir. [LB588]

SENATOR LATHROP: All right. Let me ask you another question. We've talked today, or we've had different witnesses talk about a Medicare Plus schedule. Is Alegent...a third of your patients are Medicare patients, is that right? [LB588]

SCOTT WOOTON: Yes. [LB588]

SENATOR LATHROP: I think that was the statistic in your testimony? [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR LATHROP: Thirty-three percent are Medicare? [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR LATHROP: Is Alegent making money, breaking even? Where's Alegent at with Medicare? When you treat a Medicare patient you're not turning them away and you're not turning the business away. [LB588]

SCOTT WOOTON: That's correct. It's part of our not-for-profit mission to not turn individuals away based on their ability to pay. Alegent lost approximately $48 million on Medicare last year. That had to be paid for by other payers. Workers' comp is one other payer who helps offset that deficit. [LB588]

SENATOR LATHROP: At what point would Alegent not have a deficit if they are providing care to injured workers on a Medicare Plus basis? Do you have an opinion about that? [LB588]

SCOTT WOOTON: Are you asking about the Medicare Program or about... [LB588]

SENATOR LATHROP: No, I'm asking you...we've heard people, another witness, talk

about the Medicare Plus scheme as a means of determining how much hospitals ought to be reimbursed for care that's provided. Do you have a number, is it 130 percent is where you break even? [LB588]

SCOTT WOOTON: One of the problems with that is, you know, there are Toyota's and there are Lexus's. And to answer your question assumes that there is only one color and one make to one automobile. And there are different levels of needs based on the complexity of the specific health condition. So the answer to the question is specific to the complexity of the care and the costs of the care. No, to answer your question. [LB588]

SENATOR LATHROP: You don't have an answer for me. [LB588]

SCOTT WOOTON: You asked me, I understood your question to be, what is the break-even point of workers' comp. [LB588]

SENATOR LATHROP: Well, you just told me that Alegent lost $48 million last year because they treated a certain number of Medicare patients. [LB588]

SCOTT WOOTEN: Medicare, yes, yes, sir. [LB588]

SENATOR LATHROP: We don't of course, in this information that you're giving me, know how many people that took before you lost that much money. But if you were to break even, would you have needed to charge them a 110 percent of what Medicare pays or 300 times what Medicare pays? Do you follow the question? [LB588]

SCOTT WOOTON: I'm understanding you to ask me at what level of Medicare reimbursement would workers' comp be a break-even payment? [LB588]

SENATOR LATHROP: Well, that may be my point, but that's not really the question... [LB588]

SCOTT WOOTEN: Okay, then I'm not understanding the question, I'm sorry. [LB588]

SENATOR LATHROP: ...and maybe the problem we're having is you're trying to get ahead of me on my questions, but let's go with that one. At what point in a Medicare Plus system would Alegent break even on providing the care to injured workers? [LB588]

SCOTT WOOTON: It would be specific to each respective DRG. [LB588]

SENATOR LATHROP: How about overall? What we are trying to do is talk to you, talk to the hospitals about how we are to come up with a reimbursement rate. [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR LATHROP: We have one idea that's in the bill that is presently...will just take the best price any insurance company's negotiated with Alegent or we can, I suppose, leave it alone, which I don't think we are inclined to do. And the third thing would be to come up with a Medicare Plus. Now we are going to go into exec committee after this is over and make a decision and I'm looking for some input and to tell me that it depends upon the procedure isn't being very helpful. I'm not lecturing you or badgering you, but I'm looking for information. [LB588]

SCOTT WOOTON: That's okay. I'm not trying to be, I'm not trying to dodge the question in any way, Senator. Alegent Health as an employer employs 8,500 individuals. And we have a lot of healthcare costs including workers' comp costs at Alegent Health. Broader than workers' comp just in our total health care costs, they went up 18 percent last year at Alegent Health...pardon me, two years ago for our 8,500 employees. This last year our costs went up 8 percent. What was the thousand paces point difference for our total cost of healthcare on 8,500 employees? We adopted consumer-driven healthcare which literally provided information to our employees about quality and low cost. They can go out on a web site and they can look at the cheapest purchase of a pharmacy med at any Walgreens, etcetera. [LB588]

SENATOR LATHROP: But here's the problem with that is that there is no deductibles and co-pay for work comp. So that the employer, and we can take a construction worker that has a herniated disk, he doesn't have any incentive to go into the marketplace and find out what the least amount is he's going to pay because he is not going to pay anything. [LB588]

SCOTT WOOTON: Why do we allow that system to occur, Senator? [LB588]

SENATOR LATHROP: That's work comp... [LB588]

SCOTT WOOTEN: Why don't we create incentives? That's one of the components of consumerism that I'm embracing or are suggesting we embrace. [LB588]

SENATOR LATHROP: Okay, okay. I think that's all I have. But thank you for answering my questions. [LB588]

SENATOR CORNETT: Senator Wallman, then Senator White. [LB588]

SENATOR WALLMAN: Mr. Wooten, I think you have a fine hospital in Omaha. We've had a son in there already, but basically with nonprofit hospitals, you said you didn't make...you lost money. Did you actually lose money at the end of the year? [LB588]

SCOTT WOOTON: The statement I attempted to make was on Medicare we lost about approximately $40 million. Your question is, did Alegent Health lose money in total last year? The answer is no, we did not. And we had to invest a lot of capital expenditures, so we needed surplus in order to fund those assets back in the community. [LB588]

SENATOR WALLMAN: Thank you. [LB588]

SENATOR CORNETT: Senator White. [LB588]

SENATOR WHITE: Is it your position that it is the obligation of the Nebraska Workers' Compensation system to make up your losses on Medicare? Is that what I hear buried inside your testimony, sir? [LB588]

SCOTT WOOTON: I have not intended to suggest that notion. There was, in previous testimony, a question, I believe, by Senator Lathrop, regarding whether or not hospitals are losing money or making money on Medicare and I was attempting to answer that question. [LB588]

SENATOR WHITE: And are you seriously proposing to us that a worker injured on the job who already is going with no pay or a much reduced pay, should pay a co-pay to help Alegent out of the spot it finds itself in? Is that really your recommendation? Because then we'll talk about it. [LB588]

SCOTT WOOTON: I was not suggesting any form of co-pay for a workers' comp individual, what I was suggesting was considering embedding one of the principles of consumerism which is incentives and incentivizing individuals both to pursue the necessary minimum cost care as well the optimal quality based on that individual's judgement and the information that they have. [LB588]

SENATOR WHITE: And the final question is, why can you tell us about $48 million you allegedly lost in Medicare and that's not a trade secret and privileged, and you can't tell us how you made it up? But you can talk about a loss, but you can't tell us what your real costs of goods are? Doesn't seem consistent to me. [LB588]

SCOTT WOOTON: I'm not sure of the question, sir. [LB588]

SENATOR WHITE: Okay. [LB588]

SENATOR CORNETT: Senator Chambers. [LB588]

SENATOR CHAMBERS: I'm going to ask a couple of theoretical questions and if they are difficult for you to understand just let me know and then I will rephrase it so that I

can get across to you what I have in my mind in order that you might be able to give me an answer. [LB588]

SCOTT WOOTEN: Yes, sir. [LB588]

SENATOR CHAMBER: When a hospital is nonprofit, what does that mean? Does that mean that the hospital never takes in more than it gives out? This is not a test, you don't have to write it down, I'll say it again. [LB588]

SCOTT WOOTON: No, I think I understood your question, sir. [LB588]

SENATOR CHAMBERS: Okay. Would you give me an answer? [LB588]

SCOTT WOOTEN: Yeah. What is not-for-profit status for a hospital mean? [LB588]

SENATOR CHAMBERS: Um-hum. [LB588]

SCOTT WOOTEN: What that means is that any surpluses which occur in that organization are reinvested in the community. [LB588]

SENATOR CHAMBERS: Reinvested where? [LB588]

SCOTT WOOTEN: In the community. [LB588]

SENATOR CHAMBERS: Which would be where, precisely? [LB588]

SCOTT WOOTON: Wherever that location of the not-for-profit resides. [LB588]

SENATOR CHAMBERS: Okay, on what types of items, activities, services or what? [LB588]

SCOTT WOOTEN: Uhm, uh, well... [LB588]

SENATOR CHAMBERS: When you say invest, that means you're spending whatever your surplus is. [LB588]

SCOTT WOOTEN: Yes, sir. [LB588]

SENATOR CHAMBERS: Okay. Have you ever thought about reducing your charges to people who come for your hospital services as a way of getting rid of that surplus? Or do you invest it always some other way? [LB588]

SCOTT WOOTON: No. Yes, sir, we have intentionally reduced our charges to people

who come for services, specifically individuals who are in the category of the poor and underserved. We have a very, very generous, probably the most generous financial assistance policy for individuals who do not the resources for healthcare insurance in probably the state. [LB588]

SENATOR CHAMBERS: What does that generosity consist of? [LB588]

SCOTT WOOTEN: What does that generosity consist of...that? [LB588]

SENATOR CHAMBERS: Um-hum. [LB588]

SCOTT WOOTON: That My Cost tool that I told you about on the Internet, will allow an individual to click a box that says, I don't have insurance and to go in and through a series of filling in the boxes and pointing and clicking, identifying if they qualify for our financial assistance policy which allows a family of four--an individual--I'm going to get the numbers not quite precise but a family of four who has a family income of approximately $42,000, has the potential to receive up to an 80 percent discount on their healthcare. [LB588]

SENATOR CHAMBERS: Okay. [LB588]

SCOTT WOOTEN: A family who makes approximately $5,000 less would receive totally free care. [LB588]

SENATOR CHAMBERS: When you mentioned in response to somebody's question that there are Toyota's and there are Lexus's was that referring to the quality of care for the types of treatments that would be made available based on the kind of coverage or ability a person had to pay? Would I get Toyota service and Senator Lathrop would get Lexus service if he can pay and I can't? [LB588]

SCOTT WOOTON: The cost of care is different depending on the type of problem, that health problem that exists. [LB588]

SENATOR CHAMBERS: If he and I both had the same problem... [LB588]

SCOTT WOOTON: Specifically on the...no, you would not receive different care or service at Alegent Health. You may receive a...the physician may judge that a part that you required may be different and you could place a judgement on the part that you received. That it may be a Lexus or a Toyota. For example I have a plate with five screws here, unfortunately I went down a quarter pipe on some roller blades. Those parts are Toyota parts, they are not Lexus parts. [LB588]

SENATOR CHAMBERS: You mean they constructed that plate out of old Toyota parts?

(Laughter) [LB588]

SCOTT WOOTEN: If they did, I'm in good shape, I'm sure. [LB588]

SENATOR CHAMBERS: In the barber shop where I used to work we would tell a person they couldn't bring us a Volkswagen head and get a Rolls Royce haircut. In other words we worked with what we had... [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR CHAMBERS: ...but when it comes to treatment of a medical nature, that's different. I think you were pointing out that we could have the same condition but a physician would decide that we needed differing treatments, is that what you were saying, or did I misunderstand? [LB588]

SCOTT WOOTON: The individual in partnership with their caregiver or physician, could make a decision to go the Toyota route or the Lexus route based on the decision criteria of that individual worker or consumer, yes, sir. [LB588]

SENATOR CHAMBERS: Would that physician, through consultation, help persuade that worker what the best treatment might be for him or her? [LB588]

SCOTT WOOTON: Many physician-worker conversations... [LB588]

SENATOR CHAMBERS: ...with the patient, um-hum... [LB588]

SCOTT WOOTEN: ...do directly, yes, they do have those types of conversations. And in fact the feedback under My Cost tool, which I was describing to you from our medical staff, some 1,200 physicians, was, gee, this could increase and influence the nature of our conversations with our worker-patients and...yes, yes it could, yes, sir. [LB588]

SENATOR CHAMBERS: Okay, that's all I would have. Okay, thanks. [LB588]

SENATOR CORNETT: Mr. Wooten, it is Wooten, correct? [LB588]

SCOTT WOOTEN: Yes, ma'am. [LB588]

SENATOR CORNETT: My legal counsel contacted your hospital in regards to the My Cost, they were having a seminar, I believe, in Omaha? [LB588]

SCOTT WOOTEN: Okay. [LB588]

SENATOR CORNETT: And we were told by the person we spoke to and I don't have

her name with me at the moment, but we have it upstairs, that workers' comp did not apply to this. [LB588]

SCOTT WOOTON: If it doesn't, it can very shortly, because it is a very simple change. [LB588]

SENATOR CORNETT: But you've testified that it does. [LB588]

SCOTT WOOTEN: To my knowledge it did. [LB588]

SENATOR CORNETT: Pardon me? [LB588]

SENATOR LATHROP: It's always going to be zero. [LB588]

SENATOR CORNETT: It's going to be zero, but... [LB588]

SENATOR LATHROP: Because there is no deductible. [LB588]

SCOTT WOOTEN: Well, the individual portion would be, yes, sir. [LB588]

SENATOR LATHROP: But that's what this calculates, the individual's responsibility after insurance. [LB588]

SENATOR CORNETT: So all you're going to see is zero on the web site, am I correct? [LB588]

SCOTT WOOTEN: For the individual's portion, that would be correct. [LB588]

SENATOR CORNETT: So how is it... [LB588]

SCOTT WOOTON: I think I stated previously that the data exchange which provides the individual's specific out-of-pocket amount does not include workers' compensation. If I didn't state that previously, my apologies. [LB588]

SENATOR CORNETT: So how is it applicable at all to this discussion? [LB588]

SCOTT WOOTEN: I think I shared the My Cost information under the suggestion that Alegent did not support transparency and I was using that as an example of the... [LB588]

SENATOR CORNETT: Is, can the worker look up...but it really is not applicable to this conversation. [LB588]

SCOTT WOOTON: Well, what I understand from the information you've shared is worker compensation by nature does not include any individual incentives. And therefore it would not be relative because the entire structure and methodology of workers' comp does not encourage an individual to participate in the cost of their care. So the answer to your question I believe is yes. [LB588]

SENATOR CORNETT: So you just threw out the My Cost as... [LB588]

SCOTT WOOTON: Example of transparency... [LB588]

SENATOR CORNETT: ...an example that you were trying to provide numbers in regards to your costs. [LB588]

SCOTT WOOTEN: I used My Cost as an example of the first of its kind patent-pending tool in the world to help individual worker consumers identify what the cost of their healthcare could be at Alegent Health. [LB588]

SENATOR CORNETT: Fair enough. The second part is when...this kind of follows up Senator Chambers' questioning when we were talking Toyota and Lexus parts. [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR CORNETT: Are the Medicare patients receiving the Toyota parts and the workers' comp patients receiving the Lexus parts? Are we...it comes back to the question of, are we making up the difference for the loss of Medicare on our work comp patients? And obviously there's a percentage that's shared across the board, but is workers' comp picking up a larger percentage of that loss than other areas? [LB588]

SCOTT WOOTON: Mike Longley is a spine surgeon in Omaha and he's a friend of mine. I believe that Mike Longley makes the clinical decisions that help that individual recover and get back to the best the health and the most quickest road to recovery. I do not believe that Mike Longley makes a Toyota or Lexus decision and I don't believe that's the case with all of our other good physicians. [LB588]

SENATOR CORNETT: Thank you. Any further questions? Senator White. [LB588]

SENATOR WHITE: Just answer a question, does work comp help Alegent make up its claim shortfall from Medicaid and Medicare? Yes or no? [LB588]

SCOTT WOOTON: Workers' comp as well as all business who have insurance cross-subsidizes Medicare losses, yes. [LB588]

SENATOR WHITE: Thank you. I appreciate that. [LB588]

SENATOR CORNETT: The second part of the question was, does workers' comp make up a larger percentage than the companies you negotiate a rate with? [LB588]

SCOTT WOOTON: I'm not trying to... [LB588]

SENATOR CORNETT: When you are talking about the percentage, the money you lose on Medicare, Medicaid, there's a cost-sharing across private insurance and workers' comp, am I correct? You spread that loss out, am I correct? [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR CORNETT: Is workers' comp bearing a higher percentage of that loss because we do not negotiate the rates? [LB588]

SCOTT WOOTEN: The uhm... [LB588]

SENATOR CORNETT: You negotiate rates with insurance companies, am I correct? [LB588]

SCOTT WOOTEN: Yes. [LB588]

SENATOR CORNETT: Can you negotiate lower rates because you are caught passing the cost of Medicare, Medicaid off on workers' comp? [LB588]

SCOTT WOOTON: Okay, I, I think the answer to your question is yes. When you negotiate a contract with an insurance company it includes everything from spine procedures, which is one of the high-cost items for workers' comp and also babies. And believe it or not, babies don't pay for themselves. And so there are cross-subsidizations which occur even within a specific payer contract. But I think the question, could I restate what I think your question is? [LB588]

SENATOR CORNETT: Please. [LB588]

SCOTT WOOTEN: I think your question is, is there a disproportion...does workers' comp bear a disproportionate share of the Medicare loss in its payment? Is that...okay. [LB588]

SENATOR CORNETT: Yes, yes. [LB588]

SCOTT WOOTEN: And I haven't done that analysis. I did do an analysis recently comparing four or five spine procedures across different managed care payers including workers' comp. There was a four to five hundred basis point spread and workers' comp

was not the high point; it wasn't the low point either. And when I say four to five hundred basis points that's the number on the left side of the decimal. [LB588]

SENATOR CORNETT: Was private pay included in that? [LB588]

SCOTT WOOTEN: Those were insurance plans I was comparing. [LB588]

SENATOR CORNETT: Okay. Thank you. Seeing no further questions, thank you. [LB588]

SCOTT WOOTEN: Thank you. [LB588]

SENATOR CORNETT: Next opponent? [LB588]

BRAD SHER: My name is Brad Sher, S-h-e-r. I'm the vice president of managed care and public policy for BryanLGH Medical Center here in Lincoln, Nebraska. I wasn't going to testify, but I thought I'd help with some clarity on some things and I was just writing down a bunch of stuff to talk about a little bit. BryanLGH is a large hospital, actually two facilities here in Lincoln and we cover a great portion of the state of Nebraska delivering care and so forth. Nonprofit does not mean we do not make a margin in order to keep the business self-sustainable. Nonprofit means we don't pay taxes on our profit. BryanLGH is a community organization and by that we don't have shareholders, we are beholden to the people we serve in the community and our obligations and decision-making go on what is best for the patient and best for the community versus other organizations that might be best for the shareholders or somebody else like that. And I often...I'm the guy that deals with the contracts. I'm the guy that deal with Blue Cross. I'm the guy that negotiates it. I'm the one that's been dealing with all the workers' comp stuff for the last three years as we've this discussed this in the state. And I want to answer some of the reimbursement questions that you've had because that's my job; I don't think it was Mr. Wooten's job per se. I think he deals mostly with workers' comp issues which I don't deal with other than certain payment issues and trying to get paid by the companies. When you ask, does workers' comp pay for the shortfalls of Medicare and Medicaid and nonpaying people, the answer is yes. Okay? Because we know we do not negotiate with Medicare; we do not negotiate with Medicaid. We have had minimal rate increases at best over the last six years plus in terms of the Medicaid program. I'm the last person left in a great area doing mental health and serving that population, so I'm not getting paid for Medicaid by Medicaid to do that very well. They do not cover my costs and so forth. So the answer is yes. The percentage of dollars to make up? If you take it on an overall basis it depends and I would use a Toyota-Lexus argument a little differently. I think I would use that as saying what kind of hospitals do we have in the state? You have small rural hospitals, 63 of which are critical-access hospitals in the state which means that they've got to deal with the federal government that says, we're going to pay your costs and give you a one

percent bottom line to regenerate yourself in order to sustain rural healthcare in the country. And that was passed in 1997 under the Balanced Budget Act and a lot of our hospitals converted to that. Then the remainder of the hospitals are either on a DRG or a payment system somehow with Medicare and they're different. So there's a difference between a Hastings, Mary Lanning Hospital and North Platte versus a Bryan Memorial Hospital or university hospital in terms of just who and what they are. And when you asked the question, Senator Lathrop, what does it take as a percentage? I would say with a small rural hospital you are talking about a few percentage points, okay? Because if they are already getting costs plus on 80-90 percent of their business, they don't need much. I get 55 to 60 percent government reimbursement between Medicare and Medicaid and Champus and VA and all that other stuff of which I have no choice at all. I get, that's 60 percent of the payers. The rest of the 40 percent not counting the 5 to 10 percent that don't...that are self-pay or no pay, then we are left with about 30 or 40 percent in terms of who actually pays bills. I would probably say from a Medicaid perspective at my facility, you could be looking at anywhere from 130 to 140 or 145 percent in order to break even. Okay? But my cost structure and my reimbursement via Medicare and Medicaid will be different than St. Elizabeth's because of their cost-structure and payment and mix. Because of the percentage I get paid for certain DRGs is different when you have hearts and surgery and OB and neonatal and regular medical and so forth. So that's where you are getting a lot of variations; that's why you can't get a straight answer out of anybody. Right? [LB588]

SENATOR WHITE: No, I disagree with you. [LB588]

BRAD SHER: Okay. But, (laugh) okay, but we've...and I want to tell you just from my perspective of it. It's different for the university because they have a different cost structure. So when you say, what do they need in terms to break even, they have a different cost structure. So I told you whatever I thought it was for BryanLGH and I talked to Senator Cornett about this in terms of data that we had prior to the...a couple of weeks ago. Why the Blue Cross rates for workers' comp was one of the questions you had? You'd like to do that using...piggybacking on the best payer, a Blue Cross, United Health Care and so forth. If that's the direction you choose to go, we had proposed something from the Hospital Association which Kevin Conway is going to come up and talk about. You can do that. The concern we've had in these discussions over the last three years is when I negotiate with Blue Cross I do a lot of trading with that based on a lot of other rules that I don't have with workers' comp. The first one is the issue of prompt pay which you've addressed with, well, why don't we pay you first and then if it resolves later, I will give the money back. I've used that same argument with the insurance companies. They want to keep the money because they want to keep it in their bonds and stocks and stuff like that. We do this with Blue Cross and Medicare and Medicaid which is they'll pay and if they want the money back, they pick up the phone and they call us and say, give us the money back and it takes about 30 days and we pay the money back. Okay? We haven't been able to get over that. The

other issue with Blue Cross and/or United and so forth is there are other administrative rules in terms of clarity of how to resolve issues, how to resolve hassles and so forth and we've had a lot of problems that we've documented and I've gone to the workers' comp administration about the problems we've had with workers' comp payers. And then the other issue with Blue Cross or United is the issue of volume. It's how much volume they're bringing to the contract, much like somebody who can buy more they're going to usually get better discounts. And unfortunately workers' comp doesn't have that kind of volume in this state. It's 3 percent of Alegent, it's about 1 to 1.5 of my business at BryanLGH. Okay? It has gone down over the last couple of years because of the surgery centers in Lincoln and the surgical hospital in Lincoln taking the workers' comp business and doing more of it at their place. Okay? The other...just clarification is doctors determining the parts and so forth. Hospitals provide the facility for physicians to practice at. When somebody comes in if somebody needs a certain type of hip or certain kind of part, we provide that for the physicians. The physicians determine what is best for the patient and so forth. And we try to talk with physicians about trying to limit the number of vendors and the kind of things to just try to control our supply costs but for the most part physicians determine that. The other issue has to do with negotiation with workers' comp. We, in the process of talking with workers' comp carriers or in this looking at workers' comp reform, we talked about a system of trying to have a system that did allow for negotiations between providers for workers' comp carriers that could steer business. The issue of steering business just doesn't seem to go very far around here, I think you probably would agree with that. So we didn't get to there, so we don't really have a free market in terms of if I'm WalMart and I want to sell here and I want to steer that business, if you can get it at WalMart they want a real cheap price, but you know as a provider of a good or a service, they're going to bring you a lot of volume, that's kind of how the free market, we can't quite get that in workers' comp. We all know why in terms...there's lots of pros and cons to it and so forth and I just want to point that issue out. The last thing I just want to illustrate is the issue of a clean claim. I started doing managed care contracting in California in 1983 and so that's been a few years now and I have yet to see a good definition of a clean claim. Because anytime an insurance company will tell you, well, you don't give me this or you don't give me that little thing, then automatically it's unclean and it's--you can't define it. As best as we can there's no easy definition of what is a clean claim. I'll take any questions...just anything you want to ask. [LB588]

SENATOR CORNETT: Senator Lathrop. [LB588]

SENATOR LATHROP: Just a few--I appreciate the fact that you've been candid with us and explained that it's not as simple as just us dropping a percent on it but I do have a couple of questions. [LB588]

BRAD SHER: Sure. [LB588]

SENATOR LATHROP: First of all, in this bill there is a provision for prompt payment. [LB588]

BRAD SHER: Sure. Um-hum. [LB588]

SENATOR LATHROP: Does that look to be a workable solution? They get so much time to tell you what they want, they make a list of what they want, you get so much time to give it to them and then they get 30 days to pay? [LB588]

BRAD SHER: Well, it's not going to solve the prompt payment problem that hospitals have experienced with workers' comp. Because then you get into--it doesn't define it enough to say well, what's reasonable, in order to make a determination whether you pay the bill or not. Okay? I like the provision...we've said taking compensability away, because I understand the issue of insurance companies, is it really work-related or is it not and all that kind of stuff. But in terms of things, I get paid in seven to fourteen days from Blue Cross, routinely. And that's really unheard of in the industry and that has been their reason for saying, I want a better rate and I'm going to pay you a lot faster. And they don't hassle with the little nitpicky things. I'm just concerned we're going to get the little nitpicky because people are going to do that. [LB588]

SENATOR LATHROP: Do you think that problem might be resolved by providing for a penalty for not paying? In other words if there is not a reasonable controversy with respect to the indemnity payments they have to pay a 50 percent penalty. [LB588]

BRAD SHER: It could, you just got to have a mechanism of who arbitrates whether they did it or not and gets the penalty. Because I've worked with Chris Peterson (phonetic) and Glenn Morton about issues of getting people to pay and it's...you should talk to them about how creative people can be on not paying claims and why. [LB588]

SENATOR LATHROP: I've seen it, I've seen it. [LB588]

BRAD SHER: And I'm sure you've seen it. [LB588]

SENATOR LATHROP: You told me that you thought that the, or your testimony was you thought the break-even point, if we can use that term, is 130 to 140 percent of Medicare. [LB588]

BRAD SHER: Um-hum, um-hum. [LB588]

SENATOR LATHROP: Where are you at right now? If we tried to calculate where you are at as a percentage of Medicare, are you at 250 percent of Medicare right now? [LB588]

BRAD SHER: For... [LB588]

SENATOR LATHROP: For work comp? I realize we are talking about averages and generalizations but... [LB588]

BRAD SHER: Well, okay, but wait, wait, wait...let me do it in my head. I'm just...all right, I'm looking at the sheet. We have a 15 percent discount right...15 to 20 percent, let's say it's 20 percent discount with workers' comp if you pay within the time period. And let's just use that not counting the implant hit and I took about a $400,000 to $600,000 hit in July on the implants for a calendar year. Our break-even on a charge-to-cost ratio at BryanLGH is probably about 55 percent of our billed, okay? [LB588]

SENATOR LATHROP: No, not okay. What do you mean by that? [LB588]

BRAD SHER: Okay, well wait, at $100 I get about $55. It takes me $55 to break even on average. Okay? [LB588]

SENATOR LATHROP: Is this out of a work comp dollar? [LB588]

BRAD SHER: That's overall--costs. If I take all my costs out of $100 of our billed, it takes about $55. This is for me. Everybody's different. Because of where their charges and their costs are in relationship. Okay? So if you're at $80 and I say it's $55, then the difference is $25? Okay? So you're making...you're paying 125 percent, so I'm making 25 percent on workers' comp on average. On Medicare I get paid $55, if I get about 38 percent of my billed, I'm losing 20-some odd percent on Medicare business that comes in the door, with the federal government looking at cutting $17 billion this year in hospital costs, proposed in the President's budget. Medicaid can go a little lower than that. So if you are in the budget this year and you want to increase Medicaid, I'm all for that, okay? Medicare payments to providers. [LB588]

SENATOR LATHROP: I think you gave me the answer and that has to do with where you are at right now with the...well, I'm not sure I did get the answer and maybe it's in the numbers that you gave me and if I sat down and calculated it... [LB588]

BRAD SHER: Yeah and I could sit down and walk through it with you, if you'd like to do that, but it's... [LB588]

SENATOR LATHROP: How about a percent from you. Can you just tell me, are you at 200 percent of Medicare right now on a work comp claim, generally? [LB588]

BRAD SHER: In terms of payment, in terms of payment, probably about, I'm just doing this rough, I think I'd probably say about 180 percent. [LB588]

SENATOR LATHROP: Okay. So if we made this 180 percent of Medicare, would, you'd probably be about...it would be a wash for you. [LB588]

BRAD SHER: Yeah, the reason I'm pointing out the different numbers is because we're all paying for the federal government and arguably, state government underpaying on Medicare and Medicaid, that we're making up on health insurance and on workers' comp and anybody else that's still left paying which it's getting smaller and smaller. I'm just... [LB588]

SENATOR LATHROP: And then let me wade into another complexity of running a hospital. If I'm Werner Trucking, for example, and I have a self-funded health plan and a self-funded work comp plan, and we lower what Werner's going to pay on a work comp claim to a hospital, aren't they going to realize that the cost for the hospital treatment under the health plan is going to go up? You've got to make it up somewhere don't you? [LB588]

BRAD SHER: Well, to the...dependent upon who their insurance company is, because I cannot suddenly go, okay, Werner Industries or Lincoln Plating here in Lincoln suddenly gets lower workers' comp rates. I can't suddenly turn around and go to Blue Cross, and hey, you've got to make this up. That's a negotiation we do each and every year and that's the free market going back and forth trying to negotiate at that point in time. So it's not that easy. [LB588]

SENATOR LATHROP: But isn't that the consequence? [LB588]

BRAD SHER: Will I try to do that? Absolutely, I'm going to try and do that. The degree that I'm going to get a dollar-for-dollar offset is not easy to do anymore. [LB588]

SENATOR LATHROP: I didn't mean specifically, but just generally. If we cut what you get with work comp, aren't you going to have to go get it someplace else? [LB588]

BRAD SHER: I'm going to try. [LB588]

SENATOR LATHROP: All right. [LB588]

BRAD SHER: My success in doing that as we progress in more people being under fixed contracts, be it the managed care plans, being under any kind of reimbursement and the people who pay just on bill charges is very, very minimal. It's easily less than 5 percent at this point in time. And I'm not counting the uninsured or the people who can't pay, because we have charity care policies that cover up to 200 percent of the federal poverty level, plus, because we go up and offer the managed care rates of those who have no insurance as part of our charitable mission. And we don't take property, we don't do things like that from our own collection purposes as BryanLGH. [LB588]

SENATOR LATHROP: Okay. You answered my questions, I appreciate it. [LB588]

BRAD SHER: Okay, no problem. [LB588]

SENATOR CORNETT: Senator White. [LB588]

SENATOR WHITE: When you talk about 100 percent and you get 55 percent of what you charge would be break-even? [LB588]

BRAD SHER: Would cover my...on average, yes. [LB588]

SENATOR WHITE: On average. The 100 percent would include a reasonable amount of money to fund future investments, things like that, correct? [LB588]

BRAD SHER: The 100 percent represents what I bill, okay? [LB588]

SENATOR WHITE: I understand. [LB588]

BRAD SHER: If I got all 100 percent? If everybody paid me 100 percent, I'd have so much money I wouldn't know what to do with it. [LB588]

SENATOR WHITE: All right, so you send out a bill... [LB588]

BRAD SHER: I mean, because we just don't do that and the prices have gone up. [LB588]

SENATOR WHITE: So you send out bills that you don't expect anybody to pay, except maybe the guy who is kind of the slowest fellow at the table. [LB588]

BRAD SHER: No, no, I expect and we try to get everybody to pay... [LB588]

SENATOR WHITE: ...100 percent but you don't really... [LB588]

BRAD SHER: ...as much of the bill as we can or according to the terms of the agreement we have, whether it's Medicare, Medicaid or anybody else. [LB588]

SENATOR WHITE: Ever hear the saying that if you sit down at a poker game and you don't immediately know who the fish is, you are? (Laughter) Don't you think state government's been the fish long enough and the comp system? [LB588]

BRAD SHER: The state of Nebraska overall or the state of Nebraska as an entity? I mean there's a... [LB588]

SENATOR WHITE: Well, the state of Nebraska work comp. [LB588]

BRAD SHER: I would agree. And the hospitals have been very consistent in the last three years of working with the workers' comp administration in trying to craft a bill, a comprehensive workers' comp reform bill to work towards legislation. Our perspective has been if, and we've proposed something, Senator, we proposed something to Senator Cunningham before, we've come to the table. We worked out the implant agreement that happened last year. Alegent told you it cost them $2 million; it cost us $400,00 to $600,000. I think the hospitals have responded, absolutely, okay? And we're not saying that you all shouldn't do anything. We've tried to talk about what is the right thing to move forward. Part of my concern about just slapping 150 percent of Medicare... [LB588]

SENATOR WHITE: It's arbitrary. [LB588]

BRAD SHER: ...it's arbitrary, it's the free market, I agree with that. And the other one that nobody tells you about, none of the workers' come insurers could administer the damn thing, pardon my...sorry, didn't mean to swear. [LB588]

SENATOR WHITE: Well, that's all right with me. [LB588]

BRAD SHER: But the problem is, I've already got a hard enough time when they can't even do a percent of the charges, getting them to pay a bill. [LB588]

SENATOR WHITE: Maybe if they could save money, they'll grow into the job. [LB588]

BRAD SHER: Well, maybe...so. [LB588]

SENATOR WHITE: Now, not all DRGs are as profitable as others, correct? [LB588]

BRAD SHER: Absolutely. [LB588]

SENATOR WHITE: So Medicare...you're talking about overall on the DRGs, but where comp tends to have high profit DRGs. Things like spinal fusions are very profitable, generally, across the industry, aren't they? Relative to... [LB588]

BRAD SHER: Yes. Relative to other things. [LB588]

SENATOR WHITE: ...birth and babies and stuff. [LB588]

BRAD SHER: (A) it involves surgery, which tends to be more profitable, correct. [LB588]

SENATOR WHITE: Thank you. [LB588]

SENATOR CORNETT: Brad, I just want a clarification on something very quickly. When you say that you're losing $400,000 to $500,000 a year on implants, you're not actually losing money, you're not paying like, $100 for an implant and losing 50 percent of that amount, you're... [LB588]

BRAD SHER: Let me clarify what that meant. [LB588]

SENATOR CORNETT: You're...okay, you're actually making... [LB588]

BRAD SHER: I have less reimbursement on the implants than I did a year ago. [LB588]

SENATOR CORNETT: There you go, all right. So that's...you're not really losing money on those implants, you have less reimbursement. [LB588]

BRAD SHER: Correct. [LB588]

SENATOR WHITE: What's your margin today and what was it a year ago? [LB588]

BRAD SHER: The implant deal is that you get your cost plus...Glen? Twenty-five. [LB588]

SENATOR CORNETT: That would be twenty-five. [LB588]

SENATOR WHITE: That's today? [LB588]

BRAD SHER: That's today. [LB588]

SENATOR WHITE: Twenty-five percent margin just for taking it out of the box? [LB588]

BRAD SHER: Correct, correct. Just to take it out. And there are implants that are $10,000 and greater. The biggest issue and this occurred because of this case that was out in the middle of the state, where they had a four times markup. [LB588]

SENATOR WHITE: Four hundred percent for taking it out of the box? [LB588]

BRAD SHER: Yes, I believe it was four times, okay? Our markup on those things is 1.8 at BryanLGH. [LB588]

SENATOR WHITE: One hundred and eighty percent? [LB588]

BRAD SHER: Correct. Okay? So... [LB588]

SENATOR WHITE: So you get...a $100 thing, you get $80 for taking it out of the box and then you get paid for installing it and... [LB588]

BRAD SHER: Correct, correct, correct. [LB588]

SENATOR WHITE: Okay. [LB588]

BRAD SHER: And to give you an example as one thing. Medicare pays us about, I don't know, $24,000-$26,000 for a pacemaker. To take it out of the box it's $28,000. I can't make that up in volume, okay? But that's... [LB588]

SENATOR CORNETT: Yeah, there you are actually losing money. [LB588]

BRAD SHER: Yeah, I'm losing that, that's not a win all the way around, correct. [LB588]

SENATOR CORNETT: But there's a difference. [LB588]

BRAD SHER: Correct, correct. [LB588]

SENATOR CORNETT: Because you're not actually losing money on implants now under the workers' comp system. [LB588]

BRAD SHER: Correct, correct. [LB588]

SENATOR CORNETT: All right. I just wanted to clarify that point. [LB588]

BRAD SHER: So yes, I'm making less but it does have an impact because it's going up. And like I said, Senator White, the hospitals have come forward and said, here's our proposal, here's a starting point to try to work towards something and I think we should be given credit for making those steps of working towards that. I haven't seen a lot of other issues like, are we going to get lower rates? Are we going to get better other kinds of cares and things that make the system a better system for the patients, for the employers for the insurance companies and everybody else? And that's been our hope is this isn't just about cutting fees, because we are not going to solve the workers' comp problem by just cutting provider fees. If that was true, then we wouldn't have a Medicaid problem of costs today would we? Or Medicare problem in this country because it's much more complex than that and we just need to keep that in mind. There's much more to what it takes to help try to control costs. And we sat down with Senator Cornett and told her about our experience at BryanLGH of being a better employer and working with employees in preventing claims and having better safety at work, of having better return-to-work programs, and working with our employees in getting them back because we want happy employees, employees who want to be back and so forth. And we cut

our costs by two-thirds by being more diligent as an employer and I hope other employers do that as well. [LB588]

SENATOR CORNETT: Seeing no further questions, thank you. [LB588]

BRAD SHER: Sure. Thank you. [LB588]

SENATOR CORNETT: Next opponent? Neutral? [LB588]

KEVIN CONWAY: (Exhibit 7) Good afternoon, my name is Kevin Conway, that's C-o-n-w-a-y, vice president of health information for the Nebraska Hospital Association, and I appreciate the buildup by Brad Sher, so now I'm here to deliver his promises. On the 85-member hospitals in the Nebraska Hospital Association and the 39,000 people they employ, the Nebraska Hospital Association is neutral on LB588. However, we support the intent of changing the hospital fee schedule. As major employers in Nebraska hospitals recognize the desire to control the expense related to workers' compensation. The NHA member hospitals have participated in work groups that took place last year. Within the work groups the NHA helped identify areas that should be part of a comprehensive reform package. These areas include: hospital fee schedule, billing and claims standards, dispute resolution process, care management, return-to-work programs, workplace safety, and treatment guidelines. These issues are complicated and intertwined. As both providers and employers we understand that a hospital fee schedule should be part of the comprehensive reform package, but fee schedules alone are not the answer to controlling workers' compensation expenses. It is our conclusion that the other issues will not be discussed in earnest without a new hospital fee schedule in place. We also understand that payers are not satisfied with the current fee schedule that was implemented in 2006. The NHA has proposed a process to establish a diagnostic-related grouping, or DRGs fee schedule which is attached. Implementation of a DRG fee schedule, while not the panacea of workers' compensation reform, is a step in the right direction. The proposed DRG fee schedule establishes reimbursement for 14 common workers' compensation DRGs performed in urban and referral hospitals. These 14 DRGs account for over half of all workers' compensation cases, hospitalizations, and 69 percent of total workers' compensation charges. The majority of workers' compensation cases are treated in urban and regional hospitals. While 66 of Nebraska's rural hospitals would not be impacted by the proposed DRG fee schedule, those 66 hospitals only account for five percent of the workers' compensation cases. The NHA proposes these changes realizing that a DRG fee schedule decreases future hospital reimbursement. These decreases are a continuation of the trend of additional discounts provided in 2006 including a cap on orthopedic implants. Thank you for the opportunity to testify regarding ongoing efforts to accomplish meaningful workers' compensation reform in Nebraska. The NHA looks forward to continuing its work with the Business and Labor Committee and the Worker's Compensation Court Administrator on issues such as hospital fee schedule, billing and

claims standards, dispute resolution process, care management, return-to-work programs, workplace safety, and treatment guidelines. That concludes my testimony, and at this point I will entertain questions. [LB588]

SENATOR CORNETT: Thank you very much, Kevin. [LB588]

KEVIN CONWAY: Thanks. [LB588]

SENATOR CORNETT: I appreciate you bring this for the committee. Any questions? Senator White, please? [LB588]

SENATOR WHITE: First of all, sir, with regard to, let's say for example, 496, combination anterior/posterior spinal fusion, $82,514 on a normal fee amount, outlier amount $165,028. Can you tell me right now how that compares to what Alegent and its Lutheran Hospital, or at, well, any of its hospitals charging Blue Cross Blue Shield? [LB588]

KEVIN CONWAY: I am not privy to what the individual hospitals have negotiated with their payers, so I have no idea at this point what Blue Cross is paying Alegent for that? [LB588]

SENATOR WHITE: So while you've given us numbers, you cannot assure this group that any of them have any kind of realistic correlation to the marketplace because you do not know what the market's bearing right now. Isn't that true? [LB588]

KEVIN CONWAY: That's correct, I do not know. [LB588]

SENATOR WHITE: So we're just going to pick numbers out of a hat, throw the dart board whatever, and that's what you're going to get? [LB588]

KEVIN CONWAY: No, I do not pick numbers out of a hat. [LB588]

SENATOR WHITE: Then if they are not really tied to what the marketplace is bearing, what are they tied to? [LB588]

KEVIN CONWAY: They are looked at...historical data. I looked at 12... [LB588]

SENATOR WHITE: From who? [LB588]

KEVIN CONWAY: ...from the hospitals. The Hospital Association runs a system called the Nebraska Hospital Information System. We collect all payers, all claims data from Nebraska hospitals. A hundred percent of Nebraska hospitals participate. I collect claims data for aggregation and analysis purposes. Using that claims data, I looked at

workers' compensation claims for a 12-month period ending June of '06. My... [LB588]

SENATOR WHITE: But you didn't compare them to other data, for example negotiated fee payers data or federal Medicare, Medicaid data, correct? [LB588]

KEVIN CONWAY: The first part of your questions is I collect bill charges...I collect claims. I collect samples of claims, so what I have is the billed charge. I have no information on the claim, what the payer's going to pay. [LB588]

SENATOR WHITE: So you don't have any reimbursement...that's just what they charge, which we've already heard testimony about that. But you're not saying what they actually expect to get paid here. [LB588]

KEVIN CONWAY: Correct. I have no knowledge of what they actually expect to get paid. [LB588]

SENATOR WHITE: So, basically we got numbers that are tied to blue sky. [LB588]

KEVIN CONWAY: They are tied to average charges. [LB588]

SENATOR WHITE: Charges, but those charges are a wink and a nod, because nobody really expects to get paid the whole amount. [LB588]

KEVIN CONWAY: Charges...healthcare financing is a very complex thing that I'm still trying to grasp the whole nuances of that. Hospitals, I think, routinely send out a bill charge knowing they are not going to get paid full bill charges. [LB588]

SENATOR WHITE: Not all hospitals have the same cost structure wouldn't you agree? [LB588]

KEVIN CONWAY: I would agree. [LB588]

SENATOR WHITE: But this is a one-size-fits-all, because then it's procrustean bed. We'll stretch you to fit or we'll chop you off no matter what you've negotiated or what your own hospital situation is. [LB588]

KEVIN CONWAY: Within hospitals or across hospitals, you'll see charge variance. So they will make some on some cases and lose some on other cases. So if a hospital has a tendency to be centered they'll be okay. If a hospital has a tendency to be a lower charge spectrum they may be better. If a hospital has a tendency to be on the higher end of the spectrum, they end up losing more or not getting as much reimbursement as they historically had been getting. [LB588]

SENATOR WHITE: Don't you think it would be better that each hospital...we got the best deal they negotiate with a private payer? They are going to negotiate so they can make a fair profit under their cost structure and we're not overpaying hospitals. [LB588]

KEVIN CONWAY: The lowest negotiated managed care rate I see as an administrative bottleneck, we have heard that in Missouri it's not working because the lowest negotiated rate is a case-by-case analysis. So for a particular case that may have a four-day stay with $40,000 or a six-day stay with $35,000 or a seven-day stay worth $80,000. That lowest rate may be different for each one of those cases. [LB588]

SENATOR WHITE: How much profit would be in each of these and by profit I mean paid over cost per individual hospital so you can't say can you? [LB588]

KEVIN CONWAY: No, I do not have the individual cost. [LB588]

SENATOR WHITE: Thank you. [LB588]

KEVIN CONWAY: In my estimation using a modeling, those DRGs would reimburse hospitals in the future at 72 percent of billed charges. [LB588]

SENATOR CORNETT: Senator Lathrop had a question. [LB588]

KEVIN CONWAY: Okay. [LB588]

SENATOR LATHROP: I just want a clarification. You passed out this schedule with some DRGs on it, right? [LB588]

KEVIN CONWAY: Yes. [LB588]

SENATOR LATHROP: And I just want to understand the columns. The DRG that's just a code for the procedure. The middle column has the procedure itself and if we take 210, that's a hip and femur, some type of care to the hip and femur. We get into some abbreviations I can't interpret here, but then we have the fee amount, what's that column represent? [LB588]

KEVIN CONWAY: That's what a hospital would be paid on just a standard case if their charges were over, in this case it's $26,699. [LB588]

SENATOR LATHROP: Is that something you're proposing? That's different than what they're getting paid right now? [LB588]

KEVIN CONWAY: Right now we're getting paid 20 percent of the bill charges. [LB588]

SENATOR WHITE: And this would be on average 72 percent you said? [LB588]

KEVIN CONWAY: Seventy-two percent. [LB588]

SENATOR LATHROP: That's what I'm trying to get to on that...you have the outlier threshold, what's that column represent? [LB588]

KEVIN CONWAY: There are cases, even though a claim may group to DRG 210, hip and femur procedures, they are not always the same. There are different intensities, different types of care that go within that same DRG. And there are sometimes cases that are very complex and very acute in nature and so if it gets to that point the charges as a proxy of how complex the case is...it's that threshold. There's additional dollars for charges above that threshold. [LB588]

SENATOR LATHROP: So is the fee amount, does that represent...is that a proposal to us for... [LB588]

KEVIN CONWAY: That is actually a proposal. [LB588]

SENATOR LATHROP: So you are suggesting that instead of doing either what the bill proposes which is the lowest rate negotiated by a health insurance carrier or to do a Medicare Plus, you're proposing the DRG program and this is an example of how it would work? [LB588]

KEVIN CONWAY: Correct. [LB588]

SENATOR LATHROP: And let's take the first one. That's $26,699 would be the fee for the treatment that's found at DRG 210. [LB588]

KEVIN CONWAY: Correct. [LB588]

SENATOR LATHROP: What is that right now? What's the prevailing off-the-rack rate? [LB588]

KEVIN CONWAY: The average in my data system is 20 percent higher than that. I don't remember off the top...if you take that $26,699 divided by .8 that's what the average charge is for that... [LB588]

SENATOR LATHROP: That's what the average...what they bill somebody with no insurance? [LB588]

KEVIN CONWAY: What the cost...what they would bill everybody. [LB588]

SENATOR LATHROP: Okay. Then if you are proposing a DRG that's 20 percent lower than what you're billing, isn't that what work comp's doing right now? [LB588]

KEVIN CONWAY: What you are doing is you are losing your reference point in mathematical terms. You're taking the sum of the averages versus the average of the average and mathematically it doesn't work out the same, sorry. I'd love to bring a projector and show you on a chart what it looks like, but for those cases that are lower than 26 there's no discount for...the case that was $30,000, there's a $4,000 discount. For the case that was $50,000, there's a $24,000 discount. [LB588]

SENATOR LATHROP: So you're going to accept a fixed amount for that procedure regardless how complicated it gets, if we were to adopt your schedule? [LB588]

KEVIN CONWAY: Correct. Until it reaches that threshold and then there's a marginal reimbursement on the dollars above that threshold. [LB588]

SENATOR LATHROP: If we were to adopt this where's the savings to work comp insurers that we hope they'll pass along to small businesses? [LB588]

KEVIN CONWAY: The savings is in controlling future growth. At this point it's about what they're paying now, I mean, I'm estimating 76...what they are paying now with the orthopedic implant, the impact is... [LB588]

SENATOR LATHROP: That's kind of what I... [LB588]

KEVIN CONWAY: Yeah...okay. [LB588]

SENATOR LATHROP: This DRG is about what they're paying right now and you're suggesting that it's a good deal, it's what we ought to do because we'll save money into the future. [LB588]

KEVIN CONWAY: It controls future growth. [LB588]

SENATOR LATHROP: Okay. That's all I have. [LB588]

KEVIN CONWAY: All right. Thank you, Senator. [LB588]

SENATOR CORNETT: Seeing no further questions, thank you very much. [LB588]

KEVIN CONWAY: All right. Thank you. [LB588]

SENATOR CORNETT: Are there any further in neutral capacity? [LB588]

KORBY GILBERTSON: Good afternoon, Chairwoman Cornett, members of the committee, for the record my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of NCCI, the National Council on Compensation Insurance in a neutral capacity on LB588. We had made several requests for NCCI to compile some data regarding what different states are doing insofar as the fee schedule. Unfortunately, the information that is generally compiled for different states, NCCI does not compile specifically hospital data, so in order to get any data that is hospital-related you have to kind of back-end it through other ways. So to show you anything like that would just be a guess and based on my experience over the last three years there are different parties that have disputed that information. So we thought it best not to show that because we did not want to have any parties feel that that was unfair. However, what I can tell you is that when you look at what happens across the country insofar as fee schedules, every state is different based on their entire workers' compensation system. You can look at Nebraska, which obviously does bill charges minus a percent or you can go to a state that is very, very difficult to look at like Illinois which does 90 percent of the eightieth percentile of healthcare charges. And then they further take that out into 29 geo zips throughout the state, so you actually end up with 29 separate fee schedules for hospital services. So then you can look at what other states do. There are a number of states that have adopted Medicare Plus schedules. And I notice that in earlier testifiers some people included Texas in that group. NCCI does not include Texas in that group because there is a combination of different fee schedules included. The states that they would include as Medicare Plus fee schedules include California, Hawaii, Maryland, New York, North Dakota, Rhode Island, South Carolina, and Tennessee. And to answer a question that Senator Lathrop had asked earlier, the rates for those states range anywhere from 109 percent of Medicare to 165 percent of Medicare was the highest one we could find in the country. And with that I'd be happy to answer any questions. [LB588]

SENATOR CORNETT: Seeing none, thank you, Korby. [LB588]

KORBY GILBERTSON: Thank you. [LB588]

SENATOR CORNETT: (Exhibit 8) Any further testifiers in a neutral capacity? Seeing none, before I close the hearing on LB588 I'm going to read a letter in support from the Department of Administrative Services, Laura Peterson and Carlos Castillo. That closes the hearing on LB588. Senator McGill, to begin on LB222. [LB588]

SENATOR McGILL: Senator Rogert, and fellow members of the Business and Labor Committee, for the record my name is Amanda McGill, that's M-c-G-i-l-l. I represent the 26th District and I'm here to introduce LB222. Current law allows Nebraska's Workers' Compensation Court to award compensation based on loss of earning capacity or as a scheduled injury. Sometimes injuries can occur which do not fall squarely within that framework. Occasionally, a worker's on-the-job injury involves permanent scarring or

disfigurement and sometimes it is severe. Sometimes a worker sustains an on-the-job injury, is scarred or disfigured but does not lose time from work or loses very minimal time. In either case, current law does not allow the injury to be compensable. And in either case it's difficult to argue that the injury is not serious. This is especially true with facial disfigurement. LB222 would change that in an equitable manner. It would give the court the discretion to award a loss of earning capacity in an appropriate case involving permanent scarring or disfigurement. The award would be limited to no more than 300 weeks. It is important to note that the bill does not require that permanent scarring or disfigurement be compensable. Rather, the law gives the court the discretion to make such an award in an appropriate case. I ask the committee to advance the bill of General File and I'd be happy to answer questions, but we have some folks coming up, too, that can answer. [LB222]

SENATOR ROGERT: Questions? Thank you, Senator. [LB222]

SENATOR McGILL: Thank you. [LB222]

SENATOR ROGERT: Testimony in proposition. First proponent. [LB222]

TODD BENNETT: (Exhibit 9) Good afternoon. My name is Todd Bennett and I'm here on behalf of the Nebraska Association of Trial Attorneys as well as a dear friend of mine, Kimberly Shirk and I've asked the man to pass out a written letter by Ms. Shirk. She wanted to be here but because of her obligation with her sons she could not attend. Many of you met her and listened to her four years ago. She also testified last year in support of this bill. The whole point of this bill is that right now there is no section in the statute that would pay for permanent scarring or disfigurement especially to the face or your image or how it affects your employability with that. This isn't a loophole, it's just a matter of being a void in the law. If you were 100 percent functionally able to bend, stoop, lift, and so forth, you are not allowed to be compensated permanently for disfigurement and scarring. In this particular case I have pointed out that Ms. Shirk was 26 when her accident happened and her career was done at that point; she was a TV anchor person. She was electrocuted and in her letter she sets forth those burns and scarring that she went through and by the looks of the picture that I have attached as page two, I think you get the picture of what she went through, in this particular case, as she stayed, her function was absolutely 100 percent fine. The fact that she couldn't grow hair, the fact that she had plastic surgery on her eye, her face, her cheeks, and her body she was...under this current law would not be able to be compensated. The effects of that are obvious. But what I would like to point out is the fiscal report that was attached to the bill that was introduced, that some of those numbers that were used, the only word that comes to my mind is laughable. There's 357 cases that they identified that could be compensated dealing with a surgery, whether it's as a by-product of the surgery, a laceration or so forth. Out of those 357 cases they assume one is making $17 an hour and would be compensated 100 percent disability for each one of those

cases and we all know who practices in the workers' compensation, that's not going to happen. It also assume that that person, even if they were going to be awarded a 50 percent disability, that would cut the cost in half as what they propose. The cost that they set forth in that fiscal note is not even representative of the cases that you will see reported on the web site that are in fact real life and what is occurring up to this point. But what I would like to do is encourage you to read Ms. Shirk's letter. She states her case and frankly her support of this bill, more concisely and specifically than anybody in this room or anybody in this state that could probably do that. This is a bill that would allow the discretion for a trial court to award disability, much like they do necks and backs. It is a simple process under the section dealing with the loss of employability if they have employment options that they have lost access to, they will be compensated accordingly. It's just like a neck or back. There's no true 100 percent mathematical formula to reach that percentage of disability; this is going to be no different. I realize there is going to be several people in opposition to this. This is not a matter of cost. The costs set forth in the fiscal note are not representative of the true picture of what's happening out there. This is a human factor. And as you will see by Ms. Shirk, the human cost definitely outweighs the cost of not allowing someone to be compensated in this manner. If you have any specific questions I'd be happy to answer them. [LB222]

SENATOR ROGERT: Any questions? Senator Lathrop? [LB222]

SENATOR LATHROP: Todd, can I talk to you a little bit about what happens right now? If a person sustains a back injury and they can't lift anymore and that's what they did for a living, then what work comp does is it allows them to be compensated for their loss of earning capacity, is that right? [LB222]

TODD BENNETT: Correct. [LB222]

SENATOR LATHROP: And you're bringing this bill because a scar is not recognized as something that affects somebody's earning capacity, correct? [LB222]

TODD BENNETT: Correct. [LB222]

SENATOR LATHROP: So work comp in the case of a scar isn't going to pay anybody for permanent partial disability benefits for having this scar as a consequence of a work-related injury. [LB222]

TODD BENNETT: Correct. [LB222]

SENATOR LATHROP: They'll...work comp is paying for all of the care related to the treatment, is that true? [LB222]

TODD BENNETT: Correct, yes. [LB222]

SENATOR LATHROP: And does work comp pay for the plastic surgery to improve that scar to the best it can be improved? [LB222]

TODD BENNETT: Ironically, I've had cases where they've fought not to, just because it would not...I mean their function's fine but for cosmetic procedures there's obviously that Section 48-120, there's fights about cosmetic surgery. But where it will improve function, yes, they will pay for it. [LB222]

SENATOR LATHROP: Ultimately, do you get that paid for? [LB222]

TODD BENNETT: Yes. [LB222]

SENATOR LATHROP: Okay. And so in some cases you're still...even if this becomes law, aren't you still going to have some people whose earning capacity isn't affected by a scar? [LB222]

TODD BENNETT: Correct. Absolutely. [LB222]

SENATOR LATHROP: I don't want to pick on the working guy but if your job is to work on a backhoe all day long and you end up with a scar on your face, you're probably not going to make a recovery under this. [LB222]

TODD BENNETT: You are probably not going to make a recovery unless you're working with your shirt off. [LB222]

SENATOR LATHROP: Okay. All right. So the people that we're talking about would be, in your case, an anchor, maybe a model, somebody working retail... [LB222]

TODD BENNETT: Correct. [LB222]

SENATOR LATHROP: ...who wouldn't be able to, maybe they wouldn't want to hire them at Dillards because they have a prominent scar on their face. [LB222]

TODD BENNETT: Correct. [LB222]

SENATOR LATHROP: That would be the universe of people. Can you think of anybody else that would be covered by this? [LB222]

TODD BENNETT: Just because of a recent case someone in the medical field had a staph infection and significant permanent scarring of the face, hands, body. Behind the scenes I think everybody understood they wouldn't hire that person just because of the fear factor. So actually in the medical field I could see it actually being compensated in

that field. [LB222]

SENATOR LATHROP: Are vocational rehabilitations capable of determining one's loss of earning capacity for a scar? Is that... [LB222]

TODD BENNETT: In the loss of employability with what employment opportunities are out there that they have lost, absolutely. [LB222]

SENATOR LATHROP: All right. That's all I have. Thank you. [LB222]

TODD BENNETT: Um-hum, thank you. [LB222]

SENATOR ROGERT: Next proponent? [LB222]

STEVE HOWARD: Good afternoon, I'm Steve Howard, H-o-w-a-r-d. I'm an attorney, counsel for the Nebraska State AFL-CIO. I come before you in support of LB222. I generally join in Mr. Bennett's comments and observations. I want to sort of take a run at this from a different perspective and that's more the historical perspective and that is to remind this committee of what workers' compensation is and how it came to be. It was almost 100 years ago that employers were being sued by their employees because of negligence. And workers' compensation schemes across the states went into effect and in effect took away that individual's right to sue his or her employer if the employer was negligent. And it was replaced with a statutory system that provides certain benefits and it gives some things and it takes some things away. My point is that on the basis of just fundamental fairness, if an employer is negligent in causing that scarring to the individual if they are not providing safety equipment or they don't respond quickly enough or they have an unsafe environment or they are not doing their inspections or something, it'll get your bills paid. The employee would have his or her bills paid and would have potentially the time off work while they were recovering. But that exclusive remedy, that statute that says you can't sue your employer because they were negligent does nothing to replace the individual's loss and the damages that come from scarring. And you know, I've represented people that had bad scars and they go try to find other work. With all of the discrimination laws that are on the books on the federal level there's still a very subtle undercurrent that makes it very clear that these folks aren't going to be hired. If it affects their earning power they ought to be compensated for it. And I do not believe that this bill, LB222 would change circumstances where someone has a carpal tunnel surgery and they've got the marks on their wrists or they have an anterior-posterior inner body fusion so they have scars on their body, that's not what I understand it to be designed to do. It is to be that circumstance where someone has truly been disfigured and that impacts their earning power and it's just fundamentally fair. So the AFL-CIO of the state of Nebraska appears in support and would be happy to answer any questions, if there are any. [LB222]

SENATOR CORNETT: I see none, thank you very much for your testimony. [LB222]

STEVE HOWARD: Thank you. [LB222]

SENATOR CORNETT: Next proponent? Opponents? [LB222]

DALLAS JONES: (Exhibit 10) Dallas Jones, J-o-n-e-s. I am appearing today on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, the National Federation of Independent Businesses, and the Nebraska State Chamber of Commerce Industry. Obviously, I am here opposing LB222. And it principally does come down to an issue of cost and I've been taken to task by Senator Chambers for saying what I'm going to say before. But this system is not just a system where we look at it in little tiny pieces, it's all relative to other costs. So from the business interests that I represent today obvious we look at costs and the question is, how do we pay for benefit increases? And this is one to the extent that those interests see the overall system going down. Obviously, it's easier to pay for benefit increases to employees. We are willing to look at different versions of this type of proposal, but this one I will submit is very expensive. This one...I have attached a chart that we prepared back in, I believe, it was 2003 when the first version of this bill came up where we tried to do the research. And I apologize for not updating that, but I believe that we are pretty doggone close to at least characterizing the way most of the states are so that we would have a sense, would this provision put Nebraska more generous, less generous or about as generous as most of the states. And the take that I had on it then and still have today is this would put us as one of the most generous states when it comes to compensating scarring and disfigurements. What we would prefer to see the committee do would be to take another stab at this and tie the compensation, if you see appropriate, for scarring and disfigurement, to function and impairment which is indeed the approach that we take in workers' compensation. And in anticipation of a question that several of you may have, let me say the following, I don't know of Mr. Bennett's case. I was not one of the lawyers involved in that. But I don't understand, just listening to what I've heard and haven't read his client's letter, I don't understand how she could have not been compensated for the disfigurement and the scarring that she had. If she was a person whose appearance in particular mattered and it's my understanding if I got it right, that it did, that clearly would be a factor that a judge could and indeed should consider in determining what her loss of earning capacity was. Because it doesn't take much to conclude that a person whose physical impairment is important in their job or occupation is going to have a more difficult time, I would guess, finding some type of replacement employment once they have significant scars and disfigurement. I don't know why that happened, I don't know that that's a very good example of why you should do this. I would submit that that type of a case is a case where our system is already compensating those individuals with those types of injuries either through the additional functional impairment that it will cause if it affects their ability to be out in the light, to be exposed to chemicals, to heat, to cold, and so on. It does impact their ability to function and that is what our statute

goes to, our statute talks about function. If you have a scar that affects your elbow or your shoulder because of a surgery and the doctor says that affects how you are able to use that extremity, that will make the number go up that you use in application of the schedule. If you have a back injury or you pick it, nonscheduled injury that has scarring or disfigurement that affects your ability all by itself, not because of the underlying injury but that scar affects your ability to function, that will go into the compensation. Now the committee may conclude that it doesn't count enough and I sense that's where it's going and if it is, what I encourage you to do is as I said before, try to make it objective, number one, where we're not tied to the discretion of a judge where it's anywhere from 0 to 300 weeks. And nobody has any idea because there is no standard what that scar means. It may well be that Steve Dowd's (phonetic) client has two little holes on the wrist, but how do we know a particular judge is going to say that's worth one week or no weeks or 300 weeks? We don't. And what I see coming without any standard where it's solely discretionary there will be many battles over that. And I think what the outline shows is that most states take an approach where if you wish to do this they try to cap it, they try to make it more objective. They try to have a schedule, if you will, that seems to deal with this problem as opposed to just having open discretion where not any two judges will look at it in the same fashion and we buy ourselves lots of disputes and that doesn't necessarily fix the problem. A couple of technical things I would encourage you to look at. I don't know how the two different provisions work together and I mean that sincerely. I don't know if you get the schedule plus you get 100, the schedule plus 300 or if you get the 300 and 100 or if they are mutually exclusive. I don't know and certainly I know some folks here have looked at that and I would encourage you because I don't think it's very clear and we're going to have to figure that out in the court system and now is a better time to do that. With that I will close my comments and take questions. [LB222]

SENATOR CORNETT: Thank you, Dallas. Yes, Senator Rogert. [LB222]

SENATOR ROGERT: Dallas, on this chart that you gave us, can you pick a couple of states that you would characterize us that we're pretty close to right now? And then also a couple of states where we would be characterized, if this bill were to pass, so I can at least do some even comparisons in this chart. [LB222]

DALLAS JONES: That's a very good question. I am not going to be able to do that today, Senator. I will look at it and I will tell you that I don't think any state, as I think back on this, I don't think there are, well there may be a handful of states which just don't talk about it. That's my recollection which is...I would characterize Nebraska as a state, we don't talk about it in the statute. [LB222]

SENATOR ROGERT: Kind of like you have California here and there's not much there. [LB222]

DALLAS JONES: I have not gone back through and reviewed that in detail. [LB222]

SENATOR ROGERT: Okay. [LB222]

DALLAS JONES: Excellent question. I will be happy to submit that to you and I'll do that shortly. I want to make sure I understand. You want a few states that might, in my opinion, would be close to our system now and a few states that would be close to what's proposed in LB222? [LB222]

SENATOR ROGERT: Yes. Correct. [LB222]

DALLAS JONES: Okay. [LB222]

SENATOR ROGERT: And another...have you looked at the fiscal note on this bill? [LB222]

DALLAS JONES: I believe it's $8.1 or $8.7 million? [LB222]

SENATOR ROGERT: Do you believe that to be true? [LB222]

DALLAS JONES: You know, when I was listening to Todd's testimony, I did not look underneath those numbers to look at the cases...they were...I took it at face value and I'm happy to answer that question however it comes out. [LB222]

SENATOR ROGERT: If you could take a look at that... [LB222]

DALLAS JONES: If in fact there are only a handful of cases and they're looking at worst case scenario in every one, I could concede that would not be an appropriate manner in which to estimate the fiscal liability of the state. But I've not looked at those numbers and I will do so. [LB222]

SENATOR ROGERT: Thank you. [LB222]

SENATOR CORNETT: Yes, Senator Lathrop. [LB222]

SENATOR LATHROP: I do have a few questions. Dallas, I want to clarify some of your testimony. You said that presently having a scar in itself, in terms of one's appearance, that's not compensable under our system, would you agree with that? [LB222]

DALLAS JONES: Unless it affects your earning capacity, correct. [LB222]

SENATOR LATHROP: Well, that's what I'm try to get from you. Because it sounded...I'm not aware of the fact that you can get loss of earning capacity for a scar if

it's not affecting function. Are you telling me that you can? [LB222]

DALLAS JONES: I believe you can, Senator. Yes, if you have, for example, if you are a newscaster or you work at Dillards and your job is in the cosmetics department where you make up your face to sell to other people... [LB222]

SENATOR LATHROP: Exactly. [LB222]

DALLAS JONES: I don't think there's any question. I would guess, now I have not tried that case before a judge, but my expectation would be virtually every judge would look at that and concede that if that impacts, and it does in those cases, that person's capacity to earn, that counts. [LB222]

SENATOR LATHROP: I got to tell you when I read this bill I looked at it and I thought, there really isn't a standard in there. But if the standard is at one's loss of earning capacity then is it doing anything more than what you are telling the law already is? [LB222]

DALLAS JONES: I suppose not, but last year we worked on some language when this bill was up again and we tried to make that a little clearer where we said...we tried to say, and thou shalt consider it in the loss of earning capacity if in fact it does impact it. So that there isn't any doubt that if...so we removed the factual argument whether it impacts or not. In other words there would be a directive from the Legislature that says if this in fact does impact your loss of earning capacity in whatever fashion, under the facts of the case, then the judge shall consider it. [LB222]

SENATOR LATHROP: You would agree with me that it certainly does in particular employments. [LB222]

DALLAS JONES: Yes. [LB222]

SENATOR LATHROP: That having a scar on your face would affect your ability to be a newscaster, it would affect your ability to be a model, maybe work in the restaurant industry as a server or work in...at the makeup counter at Dillards? [LB222]

DALLAS JONES: Yes. [LB222]

SENATOR LATHROP: Okay. And so as long as the standard is that you shall be compensated for scars to the extent of your loss of earning capacity caused by the scarring, you are okay with that because you think that's already the rule? [LB222]

DALLAS JONES: I think that's where we are, yes, yes. [LB222]

SENATOR LATHROP: That's all I got. [LB222]

SENATOR CORNETT: Senator White. [LB222]

SENATOR WHITE: Just so we're clear and I appreciate your testimony today. If I'm a laborer, I'm a cement finisher and I'm approaching 30 and my back's about done and it's about time to look for another job and I get heavily scarred so that I can't sell cars for example. Would it be your position that I can get a loss of earning capacity because certain nonphysical jobs that require appearance are now foreclosed to me, even though I wasn't engaged in that occupation at the time of the injury? [LB222]

DALLAS JONES: Absolutely. Loss of earning capacity addresses regularly jobs that the employee has never done before... [LB222]

SENATOR WHITE: You can foreclose... [LB222]

DALLAS JONES: ...but because they can't do it in the future it counts. [LB222]

SENATOR WHITE: Thank you. [LB222]

SENATOR LATHROP: Gosh, I'm wondering what your opposition is? Maybe just to the way it's worded in here, because maybe all we're doing is putting a belt on our pants that already have suspenders there. [LB222]

DALLAS JONES: I guess I would say let's put the belt on the pants so we know which notch it goes to. We...right now there is no standard, it's wide open... [LB222]

SENATOR LATHROP: But if we make the standard loss of earning capacity you are okay with that you think that's already what we're doing. [LB222]

DALLAS JONES: I think that's already where we are, I've testified to that in years past. [LB222]

SENATOR LATHROP: Okay. We should be able to make you happy, I think. [LB222]

SENATOR WHITE: Would you work with us on language? [LB222]

DALLAS JONES: Sure. As a matter of fact we had some that stemmed from a previous bill where we tried to do that and I'll try to shoot that over to you. [LB222]

SENATOR CORNETT: Dallas, why don't you provide that to legal counsel and we'll work on an amendment. [LB222]

DALLAS JONES: Yes, I will. Okay. [LB222]

SENATOR LATHROP: Good. Thank you. [LB222]

SENATOR CORNETT: Any further questions? [LB222]

SENATOR LATHROP: You are not going to change any of it, are you? (Laughter) [LB222]

DALLAS JONES: Steve. [LB222]

SENATOR LATHROP: Dallas, I just don't know why, how we are agreeing? (Laughter) [LB222]

SENATOR WHITE: Sweet reason has prevailed. (Laughter) [LB222]

SENATOR LATHROP: All right, I appreciate your testimony. [LB222]

DALLAS JONES: Thank you. [LB222]

SENATOR CORNETT: Further opponents? Can I see a show of hands of how many people are here to oppose the bill? Okay, we are just running late and I'm trying to get an idea. [LB222]

JUSTIN BRADY: Senator Cornett, and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm appearing before you today as the registered lobbyist on behalf of the Nebraska Healthcare Association, Lincoln Public Schools, and the Property Casualty Insurance Association of America. And I will try to keep it short and not echo the comments Dallas has made and just...all these clients of mine, they approached us as being people that are paying for workers' comp and they look at anything that looks to increase the cost. They approach reluctantly or with a close eye looking at what it will do to their own pocketbook. And so with that, I'd try to answer any questions. [LB222]

SENATOR CORNETT: Seeing none, thank you, Justin. [LB222]

JAN McKENZIE: Senator Cornett, members of the Business and Labor Committee, for the record my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I'm here in opposition to LB222 representing one member, basically, of my federation in particular who is a work comp writer. The opposition that we present is one that you would hear if you were in Banking, Commerce, and Insurance quite often, in that our concern both as employers in the state and as insurance companies based here, and as writers of insurance, that every time we expand or add what is required to be covered, we make it

more and more difficult for people to afford the coverage and to be covered. And so it's hard to come in when we are the writers and say that it's not appropriate because we'll write whatever policymakers tell us we have to write. However, every time we add we have to be sensitive to the fact that we will now add to our uninsured or underinsured and so that is our concern about the legislation. [LB222]

SENATOR CORNETT: Any questions? Yes, Senator Rogert. [LB222]

SENATOR ROGERT: Ms. McKenzie, I hate to put you on the spot. Would you mind naming the one? [LB222]

JAN McKENZIE: Oh, sure. First Comp. [LB222]

SENATOR ROGERT: Thank you. [LB222]

SENATOR CORNETT: Any further questions? Seeing no further questions, thank you, Jan. [LB222]

JAN McKENZIE: Thank you. [LB222]

SENATOR CORNETT: Next testifier? Oh, okay. Neutral testimony? Any...before I go to neutral. Any other opposition? All right. [LB222]

KORBY GILBERTSON: (Exhibit 11) Good afternoon Chairwoman Cornett, members of the committee, for the record my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the National Council of Compensation Insurance which is the rating and statistical organization for the state of Nebraska and 32 other states in the United States. This is one of the bills that the committee had requested to get some data on about the potential costs of it. Based on the current claim data for the state of Nebraska, it is estimated that anywhere from 12 to 20 percent of current claims could be eligible as a result of the way that this bill is drafted, and the costs could range anywhere from $4 million to $28 million. So to answer your question, Senator Lathrop, I think Senator White actually, made a point that I thought was a good one. The problem is if you have a bricklayer who gets a scar on their face, could they then say, hey, I wanted to be a Hollywood actor, but I can't be one now? So I should be able to recover under this. Now I realize I'm giving you a farfetched example, but the way that the bill is drafted doesn't necessarily bar that type of recovery and so that's why the range is so great. So with that I'd be happy to try to answer any questions. [LB222]

SENATOR LATHROP: Did you bring any proposed language with you to prevent... [LB222]

KORBY GILBERTSON: NCCI is just a rating organization, they do not take any positions on legislation. They just purely provide, they do the rating for the state of Nebraska and statistical evaluations. I would be happy to...I know that other clients have worked on language in the bills from here before, and we would be happy to continue doing so on that stuff. But NCCI as a rating organization does not take positions on bills. [LB222]

SENATOR LATHROP: Yeah, but your hypothetical, it's like saying somebody that gets a back injury can't make a bunch of money in Hollywood because they can't lift weights and get in shape to be in a certain kind of a movie. It's a little out there, isn't it? [LB222]

KORBY GILBERTSON: No. And I agree and that's why I said I agree this example is very farfetched, but unfortunately that is one of the potential issues that lies...I think why the range is so big. Because under the bill, the way it's drafted when they were doing the evaluation of it, it is...you have to do worst case scenario. You have to say, here's worst case scenario, here is where we think it might be. [LB222]

SENATOR LATHROP: So to get to the range that you've just given us, Korby, we are accounting for the person who is going to come into the vocational rehabilitationist and say, I can no longer be a Hollywood actor or actress. [LB222]

KORBY GILBERTSON: Exactly. And that's why I said that's why the range is... [LB222]

SENATOR LATHROP: Okay, we should be able to cover that, I would think. [LB222]

KORBY GILBERTSON: I would think so. (Laughter) [LB222]

SENATOR CORNETT: Any further questions? Seeing none, thank you, Korby. [LB222]

KORBY GILBERTSON: And thank you. [LB222]

SENATOR CORNETT: Any other testifiers in a neutral capacity? Seeing none, Senator McGill, to close. Waives closing. That closes the hearing on LB222 and that opens the hearing on LB77, Senator Nantkes. [LB77]

SENATOR NANTKES: Good afternoon. Senator Cornett, members of the committee, my name is Senator Danielle Nantkes, N-a-n-t-k-e-s, representing the "Fighting 46th" Legislative District. I'm here today to introduce LB77. Under current law, if a worker sustains an injury to a specific part of the body, Section 48-121, Nebraska Revised Statutes specifies a specific number of weeks of compensation the worker is entitled to receive as a result of the injury. For example, a worker would be entitled to receive two-thirds of his weekly compensation for ten weeks for the loss of a toe. For the loss of an ear she would receive two-thirds of her wages for 25 weeks. In some cases involving

loss of use of multiple parts of the body, the schedule does not provide an adequate method of determining compensation. For example, an unskilled worker who incurs the loss of use of both hands would receive two-thirds of his wages for 125 weeks for each hand. However, for all practical purposes that worker whose only skill is manual labor is totally disabled. This bill would allow the court to take into consideration the effect of loss of use of multiple members and, in an appropriate case, compensate the worker for the loss of earning capacity. There will be others to follow behind me today who practice workers' compensation law and who are probably more qualified than I to answer specific questions in this regard. I'd be happy to answer any general questions about the purposes of this bill. Otherwise, with that, I'll close my introduction. Thank you. [LB77]

SENATOR CORNETT: And will you be staying for closing? [LB77]

SENATOR NANTKES: I'll reserve the right. [LB77]

SENATOR CORNETT: That's fine. Thank you, Senator Nantkes. [LB77]

SENATOR NANTKES: Okay, thank you. [LB77]

SENATOR CORNETT: First proponent? How many proponents to the bill do we have? Two? [LB77]

LEE LOUDON: Good afternoon, Senator Cornett, and other members of the committee, my name is Lee Loudon, spelled L-o-u-d-o-n. I'm appearing today on behalf of the Nebraska Association of Trial Attorneys in support of LB77. LB77 deals with permanent disability for work-related injuries. Permanent disability benefits are really of two kinds under the workers' compensation system in Nebraska based upon loss of earning power for injuries to the body as a whole and based upon a schedule for injuries to arms, legs, feet, hands, those are called scheduled members. Now the current law provides that when there is the permanent and total loss of use of two scheduled members in one accident, if the loss of earning power is total, that is if in all practical purposes the person is unemployable, she can be compensated, potentially, for the rest of her life for that permanent disability. But if the loss of earning power is less than total then she cannot be compensated for her loss of earning power unless it's total. What LB77 seeks to do is to change that so that, if there is permanent disability to two scheduled members in one accident, the court would have the discretion, the judge would have the discretion to determine how that impacts the injured worker's loss of earning power and is not restricted to an arbitrary schedule. The schedule of benefits for an arm or leg or foot or hand injury has been characterized by the Supreme Court as an arbitrary schedule. And what LB77 attempts to do is to take away the arbitrariness and to compensate the injured worker based, not upon the arbitrary schedule, upon that person's loss of earning power. LB77, in my opinion, would be a much more rational

basis to award benefits for a loss of two members in one accident that's less than a total loss. I'd answer any questions from the committee. [LB77]

SENATOR CORNETT: Senator Lathrop. [LB77]

LEE LOUDON: Sure. [LB77]

SENATOR LATHROP: Lee, can you tell me at what point would this change to the work comp statute, turn a two member disabilities into a loss of earning capacity type claim? [LB77]

LEE LOUDON: Well, Senator Lathrop, as it is now if the loss of two members results in permanent and total disability now, the court can award 100 percent loss of earning power benefits based upon that, but does not have the power and discretion now to do that when it's less than 100 percent loss of earning power. Now, as the statute reads, if the loss of earning power from the loss of two members is less than total, then the injured worker is compensated based upon that schedule of benefits, in Section 48-121, the arbitrariness that I talked about. [LB77]

SENATOR LATHROP: My question though is the general rule is that if you break an extremity or you injure an extremity you're paid according to the cookbook which is the arbitrary member disability that you are talking about. You are asking with this bill or proposing, that people be paid a loss of earning capacity. And my question is, at what point do we leave the arbitrary schedule for somebody with two broken arms or two broken legs and go to a loss of earning capacity? [LB77]

LEE LOUDON: Sure. [LB77]

SENATOR LATHROP: Is there a standard for the court to follow? Is it 30 percent loss of earning capacity, or what is it? [LB77]

LEE LOUDON: There's already a standard in terms if an individual has permanent restrictions now to two scheduled members that were injured in one accident. You can apply to the compensation court to have a vocational rehabilitation counselor appointed by the court to determine that person's loss of earning power. As it stands now if the loss of earning power is probably in the range of 90 to 100 percent then you'd be asking the court to award benefits based upon the permanent and total disability. But if it's something less than that then I think many judges would say that the injured worker is not entitled to the permanent total disability benefits but rather kick it back to the arbitrary schedule that they have and not compensate at all based upon loss of earning power. [LB77]

SENATOR LATHROP: I'm not sure that's an answer to my question. Maybe it's because

I have a misunderstanding about what work comp does. If you break both your legs, you fall from a roof, you've broken all the bones below the knees and you can't work again, even though it's two members you're under the rule that prevails right now. You'll still get total disability benefits won't you? If you can't work? [LB77]

LEE LOUDON: Yes. [LB77]

SENATOR LATHROP: So there is a two-member rule but it only applies to total disability. [LB77]

LEE LOUDEN: Exactly. [LB77]

SENATOR LATHROP: And now you're asking us let's figure out if we have two members hurt, let's go with instead of using just what the schedule provides for each of those members, we want to look at the loss of earnings ability. [LB77]

LEE LOUDON: Exactly, yeah. [LB77]

SENATOR LATHROP: At what point do we abandon the schedule and look at it as a loss of earnings capacity claim? [LB77]

LEE LOUDEN: I'm sorry I didn't understand your question before, Senator Lathrop. I think the wording of the statute, it goes to the court's discretion. That is it would be up to the judge to determine whether the person's loss of earnings power has been impaired by this loss of the two members. And if not, then you kick it back to the schedule. [LB77]

SENATOR LATHROP: Do you think this would be better if we set a benchmark for the court? [LB77]

LEE LOUDEN: I don't think so. I think it would be difficult to do that, to come up with a specific percentage. I think leaving it in the court's discretion allows the compensation court judges to do what they do every day, determining loss of earning power and permanent disability. I think that that language is correct. [LB77]

SENATOR LATHROP: Okay. Thanks. [LB77]

SENATOR CORNETT: Any further questions? Seeing none. [LB77]

LEE LOUDON: Thank you. [LB77]

SENATOR CORNETT: Next proponent? [LB77]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d, on behalf of the Nebraska State

AFL-CIO which comes before you in support of LB77. Just to pick up on some things that my colleague, Mr. Loudon, talked about. Body as a whole, that means your head, trunk, chest, neck, back, torso. If you get that kind of injury the court can look at the whole body of your vocational profile meaning your age, your background training, work education, experience, that which you can lift, and bend, and push, and pull, and carry, and kneel, and crawl, and do all the things on the job. That's body as a whole. Scheduled member is beyond the torso: arms, legs, fingers, toes, eyes, ears, knees, shoulders. Those are based upon numbers that the Legislature has passed for a certain number of weeks for each body part. If it's at or below the shoulder and above the elbow joint, 225 weeks. So if you lose your arm entirely you get 225 weeks. If you lose 10 percent of it, that's what you get. And where does that come from? Where does that percentage come from? Well I brought today, the, I didn't bring copies, but I brought the American Medical Association Guidelines to Permanent Impairment, 5th Edition Revised which is this big, thick book with charts and graphs and tables and has all this information that you plug in. And it's been developed over time and that's where these percentages come from in terms of the scheduled members. But the problem with that book is, as sophisticated as it is, it doesn't take into account the individual circumstances. If there are multiple scheduled member injuries that create a significant loss of earning power or no loss of earning power, the book can't take it into account. Body as a whole, you get a vocational expert that can look at the whole person as opposed to what the scheduled member does. And I think this bill is fundamentally fair because it ties the benefits that that individual worker that he or she is entitled to more closely to the affect that it has on that person's ability to earn money. It isn't arbitrary. And forgive me if I use a personal example, but if I leave and fall on the ice and blow out a knee and have a rotator cuff problem and it's probably not going to affect Steve Howard's earning power. I can still probably do my work. But my dad, who drove a truck all is life, it might be close to 100 percent loss of earning power. That 100 percent, that total disability is a rare occurrence in the Nebraska Workers' Compensation Court. Much, much more often the court would encounter someone that has lost some of their ability to work. This loss of earnings concept is just fair. What it looks at is this: if the day you go to work that morning the pie of jobs that you have is so big and inside this pie, that's all the work that could do, not just where you are working at now but all the other potential jobs out there. And then you get hurt and the pie is smaller, your benefits are tied to that percentage decrease. And that's what makes this bill fair. So I would encourage the committee to pass this bill. A real common example of this is, unfortunately, bilateral carpal tunnel syndrome where the folks that work in the meat packing industry or work in an industrialized setting and have to do constant and forceful grasping and turning and gripping, they wear out their hands. You might get a 5 percent to each hand after surgery. Well five percent times one for each hand is 10 percent at 175, that's 17.5 weeks. It may have no bearing at all on that person's earning power. So I would encourage the committee to adopt LB77 and would answer any questions that you might have. [LB77]

SENATOR CORNETT: Senator Lathrop. [LB77]

SENATOR LATHROP: Steve, do you have a thought on what the threshold should be for when it goes from two members to a loss of earning capacity case? [LB77]

STEVE HOWARD: Well, I thought about that when you were asking Mr. Loudon. The statute says when it does not accurately assess it. [LB77]

SENATOR LATHROP: Assess an employee's injury. [LB77]

STEVE HOWARD: It says assess an employee's injury. Perhaps that word injury, maybe it means disability or impairment which is what the green book talks about. But I think it's...the court is free to say, all right what are you going to get for these scheduled members? And is that a reasonable reflection of what it has on the loss of earning power because those benefits are going to be gone. As I read it the court can look at this in terms of loss of earnings as opposed to scheduled members. So if it's not a reasonable level of compensation given the reduction in that person's pie, then the court can go to it. But I wouldn't encourage a number, a cutoff. [LB77]

SENATOR LATHROP: Yeah, but you're kind of leaving it to the judges and I'm wondering, you can probably think in your own mind who the most employer-friendly judge is and the most employee-friendly judge is and there's nothing to stop them from having two completely different results, is there? [LB77]

STEVE HOWARD: No, and that's true with every case, on compensability that's true it seems like. When it does not accurately assess an employee's injury, to me that means that if it is far enough out of what is reasonable to reimburse or to replace wages, that the court in its discretion can convert it to the loss of earnings [LB77]

SENATOR LATHROP: Okay. [LB77]

STEVE HOWARD: But I don't know that a cutoff...20 percent or something...I don't know that I'd encourage that. [LB77]

SENATOR LATHROP: All right. That's all I have. [LB77]

SENATOR CORNETT: Senator White. [LB77]

SENATOR WHITE: Wouldn't loss of earning capacity be better than injury? [LB77]

STEVE HOWARD: Better than scheduled member? [LB77]

SENATOR WHITE: Well no, it says injury now... [LB77]

STEVE HOWARD: Oh, I'm sorry, the words... [LB77]

SENATOR WHITE: ...but what you keep talking about is the quote, injury under the book may be slight, 5 percent to each hand, but it causes a disproportionate loss of earning capacity. [LB77]

STEVE HOWARD: Correct. [LB77]

SENATOR WHITE: So wouldn't the language be more appropriate to say, loss of earning capacity? [LB77]

STEVE HOWARD: Yes and maybe the word assess, as well, compensate for an employee's loss of earning capacity. [LB77]

SENATOR WHITE: Loss of earning capacity. [LB77]

STEVE HOWARD: Correct, Senator, yes. [LB77]

SENATOR WHITE: Is that more accurate then? [LB77]

STEVE HOWARD: I think it is, because the injury is the injury. I mean it is... [LB77]

SENATOR WHITE: But some injuries, relatively minor, cause disproportionate loss of earning capacity. [LB77]

STEVE HOWARD: That's correct. In law school the classic example is the concert pianist that loses a finger...that's not the most realistic, it's...clerical work, factory work...yes. [LB77]

SENATOR CORNETT: If you would like to work with legal counsel on an amendment, we'll look at including that in the bill at Senator White's suggestion. [LB77]

STEVE HOWARD: Very good. Thank you. I would. [LB77]

SENATOR CORNETT: Any further questions? Seeing none, any further proponents? We will now move to opponents. Seeing no opponents, neutral testimony? [LB77]

KORBY GILBERTSON: (Exhibit 12) Good afternoon, Chairwoman Cornett, members of the committee, for the record my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the National Council on Compensation Insurance in a neutral capacity on LB77 because I know all of you can read and you don't want to spend a lot more time here; I know time is short.

The cost increase on this bill, just to give you the bottom line, is up to around $3 million for the total cost. There is an actuarial evaluation of the bill and I'll let you look at that. If you have any questions, I'd be happy to try to answer them and pass them on. [LB77]

SENATOR CORNETT: Seeing no questions, thank you, Korby. [LB77]

KORBY GILBERTSON: Sure. [LB77]

SENATOR CORNETT: Senator Nantkes, to close? Senator Nantkes waives closing. That closes the hearing on LB77 and opens the hearing on LB462. [LB77 LB462]

JESSICA WATSON: Good afternoon, Senator Cornett, members of the Business and Labor Committee, for the record my name is Jessica Watson, J-e-s-s-i-c-a W-a-t-s-o-n. I'm the legislative aid to State Senator Annette Dubas who represents the 34th Legislative District. She cannot be here this afternoon and I am very glad to be here to introduce LB462. This bill provides that a worker who is receiving disability payments while undergoing vocational rehabilitation, would not have those disability payments counted towards his or her 300-week limit. This furthers the goal of trying to get an injured worker who can no longer work in his or her former occupation retrained so he or she can fully participate in a new occupation. Let me give you an example. A claimant injures her back. She is required to undergo three separate back surgeries. Over four years, 208 weeks are spent from the date of injury to the date of her maximum medical improvement. After her condition reaches maximum medical improvement she cannot return to her former employment, so she needs vocational rehabilitation. It is determined that two years, or 104 weeks will be needed for her to obtain an associate's degree to make her able to compete in a competitive labor market. After she graduates with said degree she finds out that she still has sustained a 40 percent loss in her earning capacity. After recovery and schooling she has used up a total of 312 weeks of benefits and therefore she is not entitled to receive any benefits for the actual disability or the 40 percent loss of earning power she sustained as a result of the accident and injury. She is statutorily limited to a total of 300 weeks. There will be others that follow me, if this didn't make sense, who practice workers' compensation law and are qualified to answer specific questions about the application of the bill. And yes, that's it. Hopefully I don't have to entertain any questions? [LB462]

SENATOR CORNETT: Any questions? Seeing none, thank you. [LB462]

JESSICA WATSON: Okay, thanks, Senator Cornett. [LB462]

SENATOR CORNETT: Will you be remaining for closing? [LB462]

JESSICA WATSON: I waive closing, thank you. [LB462]

SENATOR CORNETT: Thank you very much. First proponent? How many proponents to the bill do we have? Opponents? [LB462]

LEE LOUDON: Good afternoon, members of the committee. My name is Lee Louden, L-o-u-d-o-n and I'm here to support LB462 on behalf of the Nebraska Association of Trial Attorneys. LB462 deals with really, benefits. When someone sustains the body as a whole injury, as I mentioned earlier in my comments in reference to LB77, it's important to make a distinction between the permanent benefits available under Nebraska law for an injury to the body as a whole and to a scheduled member. LB462 deals with the benefits for an injury to the body as a whole. For injuries to the body as a whole, an injured worker is entitled to a total of 300 weeks of benefits when total disability is followed by permanent disability. And the example raised by Ms. Watson in her opening remarks, is one that I have encountered several times in my practice, that is that an individual ends up not being compensated for the permanent disability following vocational rehabilitation. Nebraska Workers' Compensation Law provides that during periods of vocational rehabilitation the claimant is entitled to temporary total disability benefits. And so if it takes as much as 300 weeks or longer to complete vocational rehabilitation and recuperation from the injury, it's possible that there's nothing left for the permanent disability that the injured worker is left with. I wanted just for a moment to compare this to the situation with respect to permanent disability benefits based upon a scheduled member. For an injury to a scheduled member under the statute there is not a reduction from the permanent disability benefits for the weeks that the injured worker is participating in vocational rehabilitation or receiving temporary total disability. So with a scheduled member case a person can receive temporary total disability during recuperation and vocational rehabilitation. And then after that get the full measure of her permanent disability benefits regardless of how many weeks she has already received temporary total disability, but that's not true for an injury to the body as a whole. In that instance as I mentioned, the 300 weeks are discounted by the number of weeks a person has already received temporary total disability. So a person can end up with zero permanent disability benefits after going through vocational rehabilitation, and is deprived of the benefit to compensate them for that permanent disability. May I answer any questions from the committee? [LB462]

SENATOR CORNETT: Senator Lathrop. [LB462]

SENATOR LATHROP: Just a couple to make a point perhaps? Most vocational rehabilitation plans are just a couple of weeks long, aren't they? When they are allowed? [LB462]

LEE LOUDON: Well, I'm not sure... [LB462]

SENATOR LATHROP: I mean they can range from a four-year degree, but generally speaking they're job placement, help with a few job skills, and they are short-term?

[LB462]

LEE LOUDON: Yeah, that's a good question. There's a statute, 48-162.01 that provides for a priority scheme under vocational rehabilitation. And the first priority is return to work with the same employer and it goes down the list, five priorities, and the last is a period of formal retraining like going to school to get a four-year degree. That's the last priority. Probably 95 percent of my clients are Spanish-speaking and when they go through vocational rehabilitation rarely is it just a few week or even 12 week program, Senator Lathrop. Usually it is at least 6 months to 12 months to learn English and then help to find a job after that. So I'm sure other attorneys have experience with shorter terms of vocational rehabilitation, but mine are usually pretty long. [LB462]

SENATOR LATHROP: Thank you. [LB462]

LEE LOUDON: Thank you. [LB462]

SENATOR CORNETT: Seeing no further questions, thank you. Next proponent? [LB462]

STEVE HOWARD: Steve Howard, H-o-w-a-r-d for the Nebraska AFL-CIO. I join in Mr. Loudon's comments, but I also thought I might just take a minute and kind of remind the committee what happens in voc rehab and what it involves. Voc rehab, as Senator Lathrop pointed out, at it's..it's greatest benefit is probably a four-year program where the fund is paying for tuition, books, mileage, and the employer is responsible for paying weekly benefits. On the other end of the spectrum is usually like a 30- to 60-day job-placement plan. But voc rehab and I've heard it in committee meetings in years gone by, is less than 3 percent of all injured workers and I'm quoting someone else, or 3 percent of all claims. And it's tough. It's kind of tough on the injured worker to go through this because they are getting two-thirds of their wages, if they are lucky, if they don't have to pay a lawyer a cut of that, and two-thirds and maybe they max out at the statutory maximum. They can't hold another job, they can't have a part-time job, and the big thing may be you've got someone that's been out of the classroom for 20 or 30 years and now they're back with younger students and pens and pencils and sitting at a desk and things. And I guess my point is anything that can be done to encourage workers to take advantage of the vocational rehabilitation rights that are there, is probably good for everybody. It's good for the state as a whole because you restore earning power and increase the tax base, at least to some extent. But it's not tough. And so many times, you know, when we counsel an employee...membership that used to be an iron worker or an electrician or a steam fitter, civil employee or someone like that, and you explain it to them, they say, well, I don't know, maybe I'm not going to be that much better off by going to school. You are cutting into my 300 weeks anyway, maybe I'll just try to get the case settled and move on and try to go to school on my own and it just doesn't work that way. So we encourage voc rehab where the employer cannot

accommodate the physical restrictions and it's just my way of saying it's tough enough anyway. If you give that little carrot, that incentive, voc rehab is a good thing. We support this bill. I don't have anything else. [LB462]

SENATOR CORNETT: Seeing no questions, thank you. [LB462]

STEVE HOWARD: Thank you very much. [LB462]

SENATOR CORNETT: Opponents? [LB462]

SENATOR LATHROP: Did you say proponent? [LB462]

SENATOR CORNETT: Oh, okay, sorry, I thought we only had two proponents. I asked earlier. Are there any other proponents? Opponents? [LB462]

DAN FRIDRICH: Thank you. My name is Dan Fridrich, F-r-i-d-r-i-c-h and I am speaking on behalf of the Nebraskans for Workers' Compensation Equity and Fairness, Werner Enterprises, Inc., oh brother, State Chamber of Commerce, and the National Federation of Independent Business. (Laughter). [LB462]

SENATOR WHITE: It's been a long day... [LB462]

SENATOR CORNETT: That's all right. For a moment I was afraid you couldn't...(laughter) [LB462]

SENATOR LATHROP: I think you've covered them all (laughter). [LB462]

DAN FRIDRICH: Yeah. I had to make a few last-minute additions to who I was speaking on behalf. In any event I'm obviously here to speak in opposition to LB462. The comments that I have are of course, the basic reason that anyone really objects to a bill such is this is because it will increase costs. It's not a bill that's going to make your eyes pop out and go, wow, it's a multimillion dollar bill, but it is going to increase costs to the extent that it increases benefits for injured workers. And one of the other things I would point out about it is, is it increases costs in an area where there doesn't necessarily need to be an increase. Voc rehab is a good thing. I mean, to an extent that an injured worker gets a second shot at finding a job either in an area where he already can work or an area where he's never worked before and did two years of retraining. That's a good thing and employers are paying for that already and they are going to pay for it more. Let me give you I think a better example of what happens with voc rehab than the one hypothetical that was posed in the introducer's statement which was, you have an injured worker that has three back surgeries and uses all of his or her TTD just recuperating from the injury and then he or she doesn't have any PPD benefits left because she's used them all up. That happens but I think a more common example of

what happens with voc rehab is you have an injured worker that goes through voc rehabilitation, gets a two-year degree and his loss of earning power has been reduced say from a 60 percent to a 40 percent, and the employer doesn't get to recoup that reduction because that injured worker's loss of earning capacity has already been assessed by the court at the 60 percent. And unless you can prove a change in his or her physical condition, not her educational position but her physical condition, you can't recoup that 20 percent reduction and I think that's a more common example of what you see happen. Another more common example is you have people who start a two-year degree and they don't finish. And the employer has spent a year and a half, maybe a year, paying TTD benefits and the employee got the benefit of that, got the benefit of the year to the extent it benefits him. But the employer doesn't really get anything if you make the change that's proposed in LB462. The benefit to the employer in that situation is, yeah, they spent a year's worth of TTD but it does come off the PPD that they are going to have to pay to the injured worker. And I think those two scenarios are more likely than the example that we heard in the introducer's statement. And for those reasons I think that LB462 is not something that needs to be passed because the benefit is already there for the injured worker and the employer needs to have some stake in the system and they have it right now with the way it is. I'd be open to any questions. [LB462]

SENATOR CORNETT: Seeing none. [LB462]

DAN FRIDRICH: Thank you. [LB462]

SENATOR CORNETT: Next opponent? [LB462]

JUSTIN BRADY: Senator Cornett, and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm appearing before you today as the registered lobbyist for the Nebraska Healthcare Association, the Lincoln Public Schools, and Property Casualty Insurers Association of America, in opposition to LB462 and it's to echo a lot of the brief comments I made in a couple of bills before. Any time there is changes to benefits that increase the cost, these organizations look at it very closely and say, what will this do to our pocketbook? So that's...I'll try to answer any questions? [LB462]

SENATOR LATHROP: That's pretty straightforward. [LB462]

SENATOR CORNETT: Seeing no questions, thank you, Justin. [LB462]

JUSTIN BRADY: Thank you. [LB462]

SENATOR CORNETT: Any further opponents? [LB462]

KATHY SIEFKEN: Senator Cornett, and members of the committee, I've tried not to add

on to a long day as it is, but we do need to go on record. I'm sitting here listening to LB222 and LB77 and this bill and frankly, the premiums that our members have been paying since 2002 have continued to increase. And while we understand that getting employees back on the job is one of the most important things that we need to do, you can only afford so much. And we do want to get workers back but when you keep adding on to the things that people can be compensated for, for workers' comp, you need to just consider what it's going to do to the businesses out there that have to pay those premiums. So with that, I'd be happy to answer any questions. [LB462]

SENATOR CORNETT: I'm sorry, did you state your name for the record? [LB462]

KATHY SIEFKEN: Oh, I maybe didn't. Kathy Siefken, sorry. I represent... [LB462]

SENATOR CORNETT: I know who you are but we just... [LB462]

KATHY SIEFKEN: Sorry. Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. [LB462]

SENATOR CORNETT: Kathy, just one quick question, has nothing per se to do with these three bills and the whole workers' comp scenario that we've been looking at. We've had testimony that premium rates have dropped in the last year for workers' comp for the last year. [LB462]

KATHY SIEFKEN: Yes. [LB462]

SENATOR CORNETT: Have you seen that? You just said that they had been going up? But... [LB462]

KATHY SIEFKEN: Yes, that is correct. Since 2002 they've been going up. We saw this year in 2007, a minor drop, but we are still not back to pre-2002 rates. [LB462]

SENATOR CORNETT: Okay. With inflation though would you ever expect to be back to 2002 rates? [LB462]

KATHY SIEFKEN: We'd like to get close, I mean, we're so far out of whack right now... [LB462]

SENATOR CORNETT: Okay. Out of whack right now. I understand. [LB462]

KATHY SIEFKEN: ...and you know, when you are one of the highest in the nation, there's something wrong with the balance and maybe if you bring things back into balance a little bit, it would be one thing, but you can only afford what you can afford. That's my point. [LB462]

SENATOR CORNETT: Okay, thank you, Kathy. Any further questions? [LB462]

SENATOR LATHROP: I do. Do have statistics on where Nebraska is in relationship to other states in the country for a work comp premium? I mean if you take a... [LB462]

KATHY SIEFKEN: People that testified earlier said we were like in the...like, seventh in the nation. I'm not sure about... [LB462]

SENATOR LATHROP: I didn't hear that. I heard that about taxes, but I haven't heard it about work comp and I'm just wondering...I'm not trying to be a wiseguy, I'm trying to figure out where Nebraska is in relationship, because I thought a work comp insurance was relative to other states, affordable. [LB462]

SENATOR CORNETT: I did too. [LB462]

KATHY SIEFKEN: Um-hum. According to our members that cross over into Iowa, Nebraska's way out of whack. [LB462]

SENATOR WHITE: I thought we were doing very well in terms of controlling costs for pay to individual workers as severity of injuries, but we are out of line heavily on hospital costs. That's... [LB462]

KATHY SIEFKEN: Which drives the overall premium up. Exactly. [LB462]

SENATOR WHITE: But in terms of what we're giving to the injured worker I don't think we are at all high it's my understanding. [LB462]

KATHY SIEFKEN: That's not what I'm...let me clarify. That's not what I'm saying. What I'm saying is the overall premium that our members are paying, the workers' comp premium that they are paying from year-to-year, is so much higher in Nebraska. I'm not saying that we're giving more benefits to our workers, that's not... [LB462]

SENATOR WHITE: The cost is just higher. [LB462]

KATHY SIEFKEN: It's the cost is higher, yes. [LB462]

SENATOR WHITE: Thank you for your correction. [LB462]

SENATOR CORNETT: Thank you, Kathy. Any further questions? Senator Wallman. [LB462]

SENATOR WALLMAN: I'll bet it's mainly hospital costs right? [LB462]

KATHY SIEFKEN: I don't know that. All I know is that my members are telling me that the premiums are very, very high. [LB462]

SENATOR WALLMAN: A physical therapist in Texas is a good friend of mine and their hospital costs are a lot cheaper in San Antonio than they are in Omaha. Now, you know, and that's what drives our workmens' comp up, I think. And we too don't...I'm a farmer. I don't like to pay insurance, but I know where insurance is going. [LB462]

KATHY SIEFKEN: Um-hum, um-hum. [LB462]

SENATOR CORNETT: Thank you, Senator Wallman. Any further questions? Thank you, Kathy. [LB462]

KATHY SIEFKEN: Thanks. [LB462]

SENATOR CORNETT: Any further opponents? Neutral testimony? [LB462]

KORBY GILBERTSON: (Exhibit 13) Good afternoon, for the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the National Council on Compensation Insurance in a neutral capacity to provide some statistical evaluation of LB462. Once again the committee had requested some information regarding overall costs of the proposed legislation, increases that estimate from between $5,000 and $10,000 per claim that would qualify, so anywhere from between $1 million to $4 million in increased costs to the system overall. I'd be happy to answer any questions. [LB462]

SENATOR CORNETT: Seeing none, Korby, thank you much. [LB462]

KORBY GILBERTSON: Thank you and good night. [LB462]

SENATOR CORNETT: (Exhibit 14) Any further neutral testimony? Before we close the hearing I'd like to read a letter that is being passed around now in support of LB462 from the Nebraska Planning Council on Developmental Disabilities. That closes the hearing on LB462. Thank you very much and if you could please exit the hearing room? Thank you. [LB462]

Disposition of Bills:

LB77 - Held in committee.
LB222 - Held in committee.
LB462 - Indefinitely postponed.
LB588 - Advanced to General File, as amended.

Chairperson

Committee Clerk