[LB25 LB91 LB173 LB196]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, January 21, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB25, LB91, LB173, and LB196. Senators present: Tim Gay, Chairperson; Dave Pankonin, Vice Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: None. []

SENATOR GAY: We'll get started. Welcome to the Health and Human Services Committee. A few things to start off, do some introductions. Senator Mike Gloor from Grand Island; Senator Kathy Campbell from Lincoln; Senator Dave Pankonin from Louisville is our Vice Chair; Jeff Santema is our legal counsel; and Senator Tim Gay from Papillion. Senator Stuthman is not here at present but will be joining us in a few minutes. Senator Howard from Omaha; and Senator Wallman, Norm Wallman from Cortland; and Erin Mack is our committee clerk. So welcome. Get started, I want to do a few housekeeping agenda items. As far as all this testimony is being transcribed. We do have sheets that you can pick up back there. Please sign and then put...Erin has a box there, you can put that in so she can get your name down correctly. So that's important that you fill that out completely. And when you come up to testify please state your name and spell it out as well, in case she can't read your handwriting. Also, new this year is we're video streaming right now for everybody, just so you know. And that's going out statewide or worldwide, I suppose. So that's going on now and that's a new procedure that we have. And I think that will be a good thing. We have done a little bit of a change here. If you've been to the Health and Human Services Committee prior, we have installed a light system. And the reason for that is because sometimes these get very late in the day. And the person at five o'clock who hasn't still testified probably is not getting as good of attention as somebody at 1:30. So I think in fairness what we did is we're going to try to use that. And you've got five minutes. If you're introducing a bill you get as much time as you need to introduce that bill fully. But if you're testifying in support, or against, or neutral, we're going to leave it five minutes, okay? So when the light is on green you're good to go; yellow, you've got one minute left; and red, you know, wrap it up. We're not going to haul you out of the seat, but you can wrap it up at that time. So that will be a new system and we're going to see how that works. And I think out of fairness, we all agreed as a committee that that's probably the fairest way to do things. So I would remind you if you have any cell phones, pagers, whatever you have be respectful and turn those down or put them on quiet at this time. So with that, Senator Friend, you're here for LB25. We'll open it up. Welcome. [LB25]

SENATOR FRIEND: Thank you, Chairman Gay and members of the Health and Human Services Committee. For the record, my name is Mike Friend, M-i-k-e F-r-i-e-n-d. I represent the 10th Legislative District, that's northwest Omaha. I'm here to introduce LB25 on behalf of the Children's Respite Care Center. One of the locations is actually in

my district. I've been out there a couple of times, I think some of you on the committee probably have as well. LB25 creates a new category of healthcare facility for licensure, a children's day health service and provides for an avenue of reimbursement from Medicaid clients served by a children's day health service. The need for LB25 comes about because of the unique nature of services provided by the Children's Respite Care Center, a very specialized Omaha-based nonprofit provider which serves children with complex and special medical and psychological needs. The facility...and its services simply do not fit well into the present statutorily defined categories of healthcare facility. And LB25 defines a children's day health service as one providing specialized care and an array of social, medical, rehabilitation, or other support services for a period of less than 24 consecutive hours in a community-based group program to four or more persons under 21 years of age who require such services due to medical dependence, birth trauma, congenital anomalies, development disorders, or functional impairments. Just as the Children's Respite Care Center does not fit neatly into any of those present categories of licensed healthcare facilities, neither does it really comport effectively with reimbursements under our state's Medicaid program. Rather the service is supported through a matrix of payment options, such as home- and community-based waivers, practitioner services, and other sources of funding such as Title XX day care services. Being licensed as a healthcare facility will make it possible for the Medicaid program to reimburse the Children's Respite Care and other like facilities as rehabilitation services as it has done in states such as Florida and Delaware. A natural question regarding LB25, if enacted, is how many services in Nebraska might qualify as a children's day health service? Presently, the thought process is that there may be one other such service in the state. That service is also located in Omaha. The argument is that a children's day health service provider is so specialized that it's really extremely unlikely that any of them would ever be established outside of Nebraska's metropolitan centers. And very few of them probably, really it's so unique, probably very few at that, if it even occurs. Without the legislation or a clear avenue to require adequate and consistent reimbursement from the Medicaid clients whom it serves, there's a real question, a real legitimate question as to whether this important and needed service can continue to exist. Now I'll be brief. I've been to this facility. And the reason I agreed...I've actually not always carried legislation for constituents. I can. I can drop anything for a constituent. I mean, you all know how that feels. I've been here and this is really unique. On their Web site they point this out. Skilled pediatric nurses everywhere and children, I'm not tugging at the heartstrings here, that virtually breaks your heart, and cared for in a manner that I've never seen before, I mean it's fascinating. The care that's provided, and this is what's unique I think, apnea, asthma, bronchial pulmonary dysplasia, I don't know what that is. Doesn't sound very fun, does it? Catheterizations, central line care, cystic fibrosis, cerebral palsy, developmental delays, diabetes, Down syndrome, feeding disorders, IV medications, nasogastric and gastronomy tube feedings, oxygen assistance, parity of care, pre- and post-transplant care, and prematurity. This is not your normal day care, right, I don't think. Now all that being said, I understand that there are concerns, funding concerns. I mean we all know that. We would like this discussion

to continue. We'd like it to continue outside, if you so choose, outside of the Health and Human Services Committee, you know, for consideration by the full Legislature. Now that being said, if the concern is raised to the level that it needs to be enhanced or changed in this committee, obviously, that will occur. Be happy to be part of any of that discussion, if you'd like me to be. All that being said, I'll be happy to answer any questions that I can possibly answer. But I know that there are some folks behind me that would like to discuss the legislation as well. So thank you. [LB25]

SENATOR GAY: Thank you, Senator Friend. Are there any questions from the committee for Senator Friend? Senator Gloor. [LB25]

SENATOR GLOOR: Senator Friend, I'm guessing that there will be representatives of the center here... [LB25]

SENATOR FRIEND: I believe so. [LB25]

SENATOR GLOOR: ...who will provide testimony. So I can ask... [LB25]

SENATOR FRIEND: I believe they're prepared to testify. Yes, Senator. [LB25]

SENATOR GLOOR: Okay. I'll hold my questions. Thank you. [LB25]

SENATOR GAY: All right, thank you. Are you going to stay around and close, do you think? [LB25]

SENATOR FRIEND: I'll stay around and may waive, but in case there are, you know, concerns I'd be happy to come back later if necessary. [LB25]

SENATOR GAY: All right, all right. Thank you. [LB25]

SENATOR FRIEND: Thank you. [LB25]

SENATOR GAY: All right, we'll take the proponents. Come on forward and state your name for us. [LB25]

TERRI FITZGERALD: (Exhibit 1) Hi. Terri Fitzgerald, T-e-r-r-i F-i-t-z-g-e-r-a-l-d. Good afternoon, Senator Gay and members of the committee. As I said, my name is Terri Fitzgerald. I'm cofounder and CEO of Children's Respite Care Center, a nonprofit organization. And we have two locations in Omaha. One is at 133rd and L Street, and that serves the south sector of the metro area. And the second one is on 88th, just north of Blondo, and that serves the north sector of the metro area. Since 1990, CRCC has been providing quality community-based services to special needs children in a reasonable and cost-effective manner. The past 19 years we've dedicated ourselves to

focusing on our strengths and to meeting the families that we serve. Our mission is to provide an array of specialized services and family support to medically fragile, developmentally delayed, and behavioral challenged children birth to 21. Our goal is to maximize their quality of life, functional dependence, and the health and wellbeing of the children that we serve. The specialized services that we provide include skilled nursing care, on-site physical, occupational, and speech therapy, a behavioral health program, a summer day camp, an after school life skills program for our young adult clients, and overnight weekend respite. Currently, we're licensed under childcare and under respite care. I just want to take a minute maybe to describe our operations and why this licensing is necessary. On a daily basis, we serve approximately 110 children, over 200 during the summer months. And we also serve children in the child protective and the foster care systems. The medical involvements that we deal with at CRCC include children with neurologic, respiratory, cardiac, orthopedic, and gastrointestinal disorders. Children are monitored, assessed and provided the necessary medical treatments. And those nursing services help slow that revolving door to repeat hospitalizations and also in dealing with acute situations. Senator Friend gave a good idea of the conditions that we include, a lot of rare syndromes that even we need to research. But families can use CRCC on a full-time basis to maintain meaningful employment, on a part-time basis, or intermittently for traditional respite care for families that need a break, a temporary break from caregiver duties. Although we do have respite in our name, it really is only one part of what we do. Respite means relief and relief can mean different things to different families. Our primary service is providing full and regular day services to special needs children. We always have been and we continue to be a unique service agency for individuals with very few alternatives in the community. And because of that uniqueness, there has never been a licensing category that accurately reflects our service model. LB25 would provide that. And the models of care for which the bill would address have been established in Delaware and Florida, they're called PPECs, Prescribed Pediatric Extended Care Centers. And I have been in touch with them and they do receive Medicaid funding under this license. An essential key to quality programming is the ability to hire, train, and retain qualified personnel. With approximately 60 percent of our children being Medicaid eligible, the present reimbursement rate creates a cash flow disparity which results in a negative, noncompetitive wage base for the 17 nurses and the 104 other people we employ. There have been very limited wage increases for any of our employees for several years. And without the ability to be competitive, CRCC and the children will begin to feel the effects. And I just believe compromising the quality of care for these individuals cannot be allowed. As of last fiscal year, we have an 18 percent shortfall in our operating costs. And I don't think I have to tell anyone in this room the challenges that lay ahead and how donations to nonprofits will be affected. It's vital, with the high percentage of Medicaid clients that we serve, that our costs for these services be reimbursed. LB25 recognizes not only the importance of the services we provide but also the cost savings to the state of Nebraska. Now is the time to take the next step and approve this licensing category with associated fair cost reimbursement so we can

continue our important work. Thank you for your time. And I'd be happy to answer any questions, if I can. [LB25]

SENATOR GAY: All right. Thank you. Any questions from the committee? Senator Gloor. [LB25]

SENATOR GLOOR: I want to make sure I understand. The scope of services you currently provide, some of those must be reimbursed by some payers. [LB25]

TERRI FITZGERALD: We have a variety of payers--Medicaid, the community-based waivers, Title XX. [LB25]

SENATOR GLOOR: Are there private insurers paying anything? [LB25]

TERRI FITZGERALD: Very little, sometimes for the small infants for a short period of time. And then we do have a very small percentage of private pay. [LB25]

SENATOR GLOOR: You mentioned that you were cofounder. [LB25]

TERRI FITZGERALD: Um-hum. [LB25]

SENATOR GLOOR: I mean, are there...I'm trying to get my hand around...I'm glad to hear you're a nonprofit, very admirable. But I'm trying to get my arms around who you really are and what your mission or ministry is as an organization. Since you've been around for a number of years, you must have quite a following. [LB25]

TERRI FITZGERALD: We're very specialized. And so when we started in 1990 there weren't a lot of...well, there still isn't any out there, but people didn't understand what we were. We're unique. We're not a hospital, we're not a school, we're more than a day care center. And it was created, basically, because there was a need that was unmet. My sister and I are the two that started CRCC, so we're really not associated with any organization. Do we have a following? I think we have developed over 19 years, we've proven ourselves, and we do have some very loyal supporters. [LB25]

SENATOR GLOOR: You must have a medical director for respite. [LB25]

TERRI FITZGERALD: We do. Well, we have a medical adviser at this point. [LB25]

SENATOR GLOOR: Okay. Is that a pediatrician? [LB25]

TERRI FITZGERALD: It is, it is. [LB25]

SENATOR GLOOR: Okay. [LB25]

SENATOR GAY: Senator Pankonin. [LB25]

SENATOR PANKONIN: Thank you, Chairman Gay. Ms. Fitzgerald, I'm also...and some of these questions, I know, you're familiar with your organization. And we're just, as Senator Gloor has said, to make sure we know kind of what we're doing. So this legislation would enable you, I mean when you talk about cost savings for the state of Nebraska. But yet as I understand it you would get a higher pay out of Medicaid dollars, correct,... [LB25]

TERRI FITZGERALD: Um-hum. [LB25]

SENATOR PANKONIN: ...with this legislation. Is that true? [LB25]

TERRI FITZGERALD: Yeah, our costs aren't being met right now, so... [LB25]

SENATOR PANKONIN: Okay. So how would that save the state of Nebraska? [LB25]

TERRI FITZGERALD: Well, our service model truly is a cost-effective alternative to other existing options. If you took all of the children we serve and forced them into some of these other costly options, I think you'd see an increase in costs... [LB25]

SENATOR PANKONIN: Okay. [LB25]

TERRI FITZGERALD: ...both care and related social costs. [LB25]

SENATOR PANKONIN: Kind of as a follow up to Senator Gloor's, when you started the business, when you said there was a need, and I'm still...so it's kind of a hybrid. So what...tell me a little more. I mean, how do you get people referred to you or how...do doctors send children to you? How does it work? [LB25]

TERRI FITZGERALD: Yes. Our referral source is mainly...it started because the parents came to us and said, could you help us, you know, my child has this and I need to go back to work and there's no place. So I started doing the research and found that indeed there weren't any. So hospitals, doctors, social services, those are probably, and word of mouth. I think the parents...if they find a place and they trust the care, they're going to tell other parents. So that's kind of how we've... [LB25]

SENATOR PANKONIN: So was your background in day care then? [LB25]

TERRI FITZGERALD: No. Actually, I started as an educator of small children. [LB25]

SENATOR PANKONIN: Okay. [LB25]

TERRI FITZGERALD: And then had...and then went back and got a business degree. And my partner/sister was a nurse. So we balanced each other out there. [LB25]

SENATOR PANKONIN: Okay, thank you. [LB25]

TERRI FITZGERALD: Sure. [LB25]

SENATOR GAY: Senator Campbell. [LB25]

SENATOR CAMPBELL: Thank you, Chairman Gay. Could you explain, I'm going to follow up a little bit on the Senators' question. What are the more expensive services that the children are now in that would save the state? Some examples, I think. [LB25]

TERRI FITZGERALD: Okay. Private duty nursing or in-home nursing, whether it's visits or full-time, residential facilities. Those are two main ones that we looked at. [LB25]

SENATOR CAMPBELL: Thank you. [LB25]

TERRI FITZGERALD: Sure. [LB25]

SENATOR GAY: Senator Howard. [LB25]

SENATOR HOWARD: Thank you, Chairman Gay. This may be helpful. I've been over to your facility and I really appreciate what you do. It really is a very high-class operation. And I'm real familiar with the children that you work with. And I appreciate that you take Title XX. and I know that doesn't adequately reimburse you. One of the things that I think is so important about your program is you have a higher staff ratio per child. [LB25]

TERRI FITZGERALD: Correct. [LB25]

SENATOR HOWARD: Which when you look at the Title XX payment rate, that's based on the average little child and their needs and the staffing needs. So just that alone would certainly make your program more costly to parents. And I'm familiar that it's really, really hard to find caregivers for special needs children, caregivers that you can depend on and you could trust that were really going to invest and help that child come along. So I appreciate what you're doing and I think it's a great program. [LB25]

TERRI FITZGERALD: Thank you. [LB25]

SENATOR GAY: Yeah, Senator Campbell. [LB25]

SENATOR CAMPBELL: Thank you. Do you have a waiting list at your facilities? [LB25]

TERRI FITZGERALD: In some age groups we do. [LB25]

SENATOR CAMPBELL: Okay. So it depends on the age group, not on the service. [LB25]

TERRI FITZGERALD: And the time. You know, some of our kids are there until maybe they grow out of their disability. Some are chronic, lifelong and they're not...so certain times the different areas, age group areas fill up. [LB25]

SENATOR CAMPBELL: Okay, thank you. [LB25]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you. [LB25]

TERRI FITZGERALD: Thanks. [LB25]

SENATOR GAY: And just for the record also, Senator Stuthman has joined the committee. All right, other proponents. [LB25]

BOB SEIFFERT: (Exhibit 2) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Bob Seiffert, that's spelled S-e-i-f-f-e-r-t. I am the CEO of a small limited liability company called MatrixPointe. And I've been doing that since October of 2004, but I did have a prior life of nearly 31 years with the Department of Health and Human Services. Of course, the name changed along the way several times, but it's now the Department of Health and Human Services. For nearly 20 of those years I was the administrator of the Medicaid program for this state. I appear today in support of this piece of legislation. I've already talked about what the licensure would do and the medical conditions and so on, it's in my testimony. So I'll skip by that. So I want to start with some background information, some of the way back into the early 1990's when we were approached by the Children's Respite Care Center. And I was the administrator of the Medicaid program. Myself being in charge and the key administrators of that time felt like this was going to be a real good organization. We needed the services there. And as you'll see in my testimony, parents had called and so on. We were having difficulty arranging for services within the home. So we basically blessed this and said this was a good thing to do. But now we run into the obstacle with Medicaid being a federal program, operating under Title XIX and Title XXI of the Social Security Act. Medicaid does not pay for day care. It's not a day care program. Yet here we have a day care with some respite care caring for more than 100 children with sophisticated medical disabilities. So what we had to do at the time is try to work around this issue, pay for some of the services as practitioner services, some of the children did qualify for what we call home- and community-based waiver programs, and then other children were paid for under the Title XX block grant program. So we pieced it

altogether and provided some funding for the operation. But it was never really what it needed. No one wanted to go and create a new license. A lot of work in creating a license, of course, the statutory issue, rules and regulations have to be developed and so on. But today I got to support this because I really believe that it does require a license. You've heard Senator Friend, and you've heard from Terri of the sophisticated nature of the children being cared for. Now the bill goes on and requires Health and Human Services to adopt rules and regulations providing for payment under Medicaid to any of these entities for the necessary and reasonable cost. Doesn't say all the costs, it says necessary and reasonable costs. So I'm supporting that provision. I think that needs to happen. I think a cost report needs to be provided for by the Children's Respite Care Center and any other entity detailing their costs. And in the regulatory process the department can determine what's necessary and reasonable. I don't think you're going to find anything within the...the way they're constituted today that's not within that definition. But as Terri mentioned, they got an 18 percent shortfall. They are getting that from donated money at the present time. Over 50 percent of the children are Medicaid. And this we get to a very distinguishable difference between this entity, the nursing home, some of the other specialized entities in the state. When you start approaching 40, 50 or 60 percent of the people that you serve are Medicaid, simple math is going to tell you that, unless your are near to their actual costs of operation, they're not going to be in business very long. Now the center has done a remarkable job in Omaha over the years at raising money through the donation process. That can't be counted on as continuing, especially in the economic times that we're looking at. So you go back to the need for licensure and you look at the situation and the shortfall. You see this licensure then as the avenue Medicaid can now pay for them as a rehabilitation service, if they are licensed. That medical license is the key. So I'll wrap it up here. I see that the yellow has come on, and just say this, that there are thousands of Medicaid providers in the state. All of them do not receive their costs, that is a fact. Many of the practitioners do not receive their costs, nursing homes, intermediate care facilities for the mentally retarded and so on do, but it becomes a necessity when you get to those high levels of Medicaid. So I urge you to move this on. And I'd be happy to answer any questions you may have. [LB25]

SENATOR GAY: All right, thanks, Bob. Any questions from the committee? Senator Pankonin. [LB25]

SENATOR PANKONIN: Thank you, Chairman Gay. Mr. Seiffert, am I pronouncing that right? [LB25]

BOB SEIFFERT: Seiffert. [LB25]

SENATOR PANKONIN: Seiffert, excuse me. [LB25]

BOB SEIFFERT: A German name. [LB25]

SENATOR PANKONIN: All right. Mr. Seiffert, I'm just curious. MatrixPointe, what is that business involved with? [LB25]

BOB SEIFFERT: Well, we're a small company. We have a president whose name is Steve Curtis, lives in the Omaha area, a former director in the Health and Human Services System, and myself, and we have some contract people. We are in the business of doing consulting work primarily in the field of Medicaid and Medicare. And we do represent the Children's Respite Care Center or work with them. [LB25]

SENATOR PANKONIN: Okay. So you do have a paid relationship as a consultant with them. [LB25]

BOB SEIFFERT: That is correct. [LB25]

SENATOR PANKONIN: Just a...in the point of disclosure. Okay. So, obviously, you're familiar with both sides of this process and some of the things we look at. And so it is your opinion that if we don't have this licensure issue, we could have higher costs to the state because these children will need more expensive services. [LB25]

BOB SEIFFERT: There's absolutely no question in my mind that if there is a financial failure of the Children's Respite Care Center, at either of the locations, that the cost to the state and federal government is going to increase, not decrease. We did prepare an analysis of this. We submitted it to the department about a year and a half ago. And I think maybe some of the senators have...certainly we have the copy electronically on file, can get it to you. We place the increased cost at over $3 million, combined state and federal. Why would that happen? Primarily because of what Terri said. You have economies of scale that are created when you have a center. And a nurse can attend to several children revolving through the hallways and so on, much like an assisted living or nursing facility. Take 110 children, on an average daily basis, and put them in their individual homes and you have to bring those services to those homes, especially the high cost nursing, and there's nursing shortages. There's no guarantee that the families can locate a home health agency to get those children served on a daily basis. And you're going to hear from a couple of families about how sophisticated the care is for those children. That's where the cost comes in. Then on top of that, you end up with social costs because the families can't work. The families want to work, they want to work. They want to have a place to take that child where that child is safe for the day so that they can live as normal a lifestyle as possible and work. I hope I've answered your question. [LB25]

SENATOR PANKONIN: Thank you. [LB25]

SENATOR GAY: All right. Any other questions? Senator Wallman. [LB25]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, thank you for being here. And in regards to this licensure issue, would you recommend we pick Florida's, or Delaware's license agreements or do you have a plan of your own? [LB25]

BOB SEIFFERT: What I would recommend, if it be the wisdom of the committee and the Legislature to pass this, that I would use the Florida model. This is the Florida Medicaid handbook for the providers in the state of Florida. Pulled it down off of the Internet. I don't think we need to reinvent the wheel. There is something out there that can be used. The state would have to submit what's called a plan amendment to the Kansas City Regional Office. Florida works out of the Atlanta Regional Office. They can call each other and do that. But again, the point I'm making is don't reinvent the wheel, there's something there already that can be used. [LB25]

SENATOR WALLMAN: And to pick up on that, do you have benchmarks then, different degrees of care. You know what I mean? High needs child versus a...you difference your cost there? [LB25]

BOB SEIFFERT: Well, getting into cost accounting, yes. In fact, there probably are differences in the cost as you go child by child because they have different medical conditions. An example, the state of Nebraska uses a case mixed type of model to pay the nursing facilities because there are differences. I really don't recommend that the department, now that's a department decision what they would want to do with that, if this goes forward and is developed regulatorily because I think when you talk about the operation, the building, having a medical advisor and nurses trying to split that up, I think you try to get it down to a per day, a half day and a full day type of per diem and do it that way. But that's the department's business. [LB25]

SENATOR WALLMAN: Okay, thank you. [LB25]

SENATOR GAY: Okay. Any other questions? Mr. Seiffert, you talked about that study you did. If you want to e-mail it to our office, I'll distribute it to the rest of the members... [LB25]

BOB SEIFFERT: Sure. [LB25]

SENATOR GAY: ...so you don't have to... [LB25]

BOB SEIFFERT: Sure thing. Jeff, maybe you could give me what...wherever you want it to... [LB25]

SENATOR GAY: Unless we have it. I know several of us have probably already seen it, but for convenience... [LB25]

BOB SEIFFERT: We'll get it to you. We have it electronically and it has got a number of spreadsheets, so...but I'll send it electronically. [LB25]

SENATOR GAY: Okay, thank you. [LB25]

BOB SEIFFERT: You bet. [LB25]

SENATOR GAY: Other proponents. [LB25]

DANIELLE OHLMAN: (Exhibit 3) My name is Danielle Ohlman, D-a-n-i-e-l-l-e O-h-l-m-a-n. Good afternoon, senators. My name is Danielle Ohlman and I am here to speak to you in favor of LB25. I would like to begin by asking you to think of all of the childcare facilities you know of, whether they be independently owned, an after-school program or a chain, there are hundreds. Now I'd like to narrow these down a bit and ask you, how many of those childcare facilities have staff that know how to tube feed a child? How many have staff that can clean a tracheotomy tube in a child's throat or replace a gastronomy button in a child's stomach when he or she has pulled it out accidentally? How many of these childcare centers will change the diaper of a 7-year-old boy who, as a result of a brain injury, has not succeeded in toilet training? What about a 16-year-old girl in a wheelchair who is unable to toilet train? Most of us would not even think of those questions when we are considering day services for our children. Most of us wouldn't have to. But I am here today to tell you that these children exist. Yes, they do exist and yes, they have parents like me who have to think about these questions. Our children cannot go to just any day care. I would be surprised if any childcare center would accept children with these kinds of needs. They must go somewhere where they can receive skilled medical care for their many different conditions. And that saving grace for so many families has been Children's Respite Care Center. My son, Logan, is 7 years old and has been attending CRCC since 2001. At two weeks of age, Logan was diagnosed with enteroviral meningitis sepsis. He suffered profound hypoxic ischemic encephalopathy. As a result, Logan suffers from seizure disorder, significant developmental delay, and behavioral issues. He has a gastronomy tube in his stomach, he suffers from reflux, aspiration, hypothyroidism, and is also incontient. What CRCC does is provide a place where people like me can send their children and be assured of their safety and most importantly their health. Where would we send our kids if we couldn't send them there? How many of us could not handle the 24-hour-a-day, 7-days-a-week job of caring for our kids because that is what we would have to do if we couldn't locate specialized childcare for them. How many of us would cave under the frustration of being confined to our homes, unable to be a productive member of anything? If I did not have CRCC I would be forced to stay home with my son. I would not have a job which is also my outlet. The time away makes me a better parent and better able to handle Logan's conditions. I would most likely be on additional forms of assistance. That would not be good for me and it definitely would not

be good for the state of Nebraska. Because of CRCC I am a functioning member of this economy. I am able to provide health insurance for my children, a roof over their heads, and food on the table. The services provided by CRCC make parents of special needs children like Logan employable, and there are many. I couldn't even begin to imagine how many families have been helped by CRCC over the last 19 years but I see many. I see them daily, the parents of these children who have been touched by these devastating conditions and illnesses, functioning not only as caregivers but as people in the workforce, making a difference in the workplace and at home. CRCC allows us to do this. We all know someone who has been touched by children like my son Logan. They are beautiful children who by their own spirits survive in a world everyday that is not always kind to them. CRCC instills in these children a feeling of value, a sense of worth. It is a place where these children can see other children like themselves each day. It is a place where I trust that my child will receive the care he needs and the love he deserves. Logan has grown so much since he started seven years ago as a four month old. He is surrounded by loving yet skilled people who can attend to his issues on a daily basis. Terri and the staff of CRCC made me a promise that first day when I dropped Logan off at the center. They promised me that Logan would be fine and that my life, having been turned upside down since Logan's birth, would return to a normal and fulfilling life, just a different one. And they have kept their word every day for seven years. Logan has blossomed as a result of the specialized medical and rehabilitative care he has received at CRCC and I have blossomed right along next to him. I would ask you, ladies and gentlemen, I implore you, please bring this bill, one that is so vital to so many families, to the floor of the Legislature for consideration. Thank you. [LB25]

SENATOR GAY: Thank you, Ms. Ohlman. Thank you for coming here today as well. [LB25]

DANIELLE OHLMAN: Thank you. [LB25]

SENATOR GAY: Let's see if there's any...see if there's any questions for you. Do we have any questions from the committee? Senator Gloor. [LB25]

SENATOR GLOOR: Thank you for coming, Ms. Ohlman. Are you part of a support group? Is there a support group for you, your family, your child? [LB25]

DANIELLE OHLMAN: I'm not a member of any official support group. I consider the parents at the Respite Center a support group in itself, but not anything organized, you know. [LB25]

SENATOR GLOOR: Okay, thank you. [LB25]

DANIELLE OHLMAN: Um-hum. [LB25]

SENATOR GAY: Senator Stuthman. [LB25]

SENATOR STUTHMAN: Thank you, Senator Gay. Danielle, thank you for coming and testifying. [LB25]

DANIELLE OHLMAN: Yes, thank you. [LB25]

SENATOR STUTHMAN: Are there other children that are in the same situation in this day care center also? [LB25]

DANIELLE OHLMAN: Yes. I have been very fortunate that Logan is actually as good as he is. He does have a lot of issues. At the same time, he can walk and he can communicate to some extent. But there are children in his room that are in wheelchairs and nonverbal. There are kids in the room that have behavioral issues that are, you know, that act out a little bit more or are a little bit aggressive. They span the spectrum. There are children that are much worse off than Logan, yet there are children that do have, you know, maybe a little bit lesser issues or maybe are more ambulatory or more verbal than others. They all have different issues. [LB25]

SENATOR STUTHMAN: And it sounds to me like you're very content with the services that you are getting there. [LB25]

DANIELLE OHLMAN: I have always been a proponent for them and have always...I love what they do. I mean, I was 27 when Logan was born and I had never even been touched by a special needs child or a handicapped child. I mean, I saw them in the mall but that was it. When I had Logan I...my life, I thought, was over. I really...I did not want to quit my job. I thought, okay, what's going to happen to my house? What am I going to do about my other children? And they, basically, put all those fears to rest for me. I got to keep my job. I've been there nine years now. And I know that when I leave him there, there's nothing that is going to happen to him that wouldn't happen at home, I mean. And it gives me that time to get away from him because he can get...he gets to be too much sometimes. So it provides me all sorts of relief in more than one way. [LB25]

SENATOR STUTHMAN: What is in the future for your son Logan? [LB25]

DANIELLE OHLMAN: I don't know. I don't know. The doctors told me he would never walk, he would never talk and he'd be blind. But he can see and he talks to me and he runs. So his prognosis, he's already beat his prognosis as it is. I really...the only thing I really want for Logan is for him to be happy. And he's done that. What his prognosis is from here on out, I have no idea. But I don't look any farther than tomorrow, I really don't. [LB25]

SENATOR STUTHMAN: Okay. Thank you very much. [LB25]

DANIELLE OHLMAN: You're welcome. [LB25]

SENATOR GAY: Okay. Senator Howard. [LB25]

SENATOR HOWARD: Thank you, Chairman Gay. I just have to say that he sounds like quite the little guy. (Laugh) [LB25]

DANIELLE OHLMAN: He is awesome, he's wonderful. [LB25]

SENATOR HOWARD: Well, thanks for being such a good mom and coming down and sharing that with us. That's really great of you to do that. Thank you. [LB25]

DANIELLE OHLMAN: Thank you very much. [LB25]

SENATOR GAY: Anyone else? I have one question for you. [LB25]

DANIELLE OHLMAN: Sure. [LB25]

SENATOR GAY: And there are other parents, I think, going to testify. [LB25]

DANIELLE OHLMAN: Um-hum. [LB25]

SENATOR GAY: Is special needs children or are there other children here as well? Or is it just strictly special needs? But if you had three or four kids, let's say, and one special needs, are they all invited there or is it just strictly... [LB25]

DANIELLE OHLMAN: Children or siblings of clients, which would be Logan, Logan is a client. Siblings of clients are allowed. And I think that is only because the hardship for people having to transport special needs children is enough already. To have to add to that another trip to a different day care, maybe across town, it's enough. We have quite a bit to deal with already. They allow siblings, I believe, up to age 5 or up to school age to attend the center along with the child who has the need. [LB25]

SENATOR GAY: Okay, thank you. [LB25]

DANIELLE OHLMAN: Um-hum. [LB25]

SENATOR GAY: All right, thank you very much. [LB25]

DANIELLE OHLMAN: You're welcome. [LB25]

SENATOR GAY: Other proponents. [LB25]

ALISON BAQUERO-CRUZ: (Exhibit 4) Hello. My name is Alison, A-l-i-s-o-n Baquero-Cruz, B-a-q-u-e-r-o hyphen C-r-u-z. And I am here today in support of LB25. I have two children. Jaime is four and a half and Gabriel is one, and they both attend Children's Respite Care Center. Jaime has cerebral palsy and Gabriel is of typical development. Children's Respite Care Center allows me to have both of my children in the same setting, which allows me to go to work without worry. Jaime started at a home day care as an infant and I really liked the lady watching him. She was nice and genuinely cared about Jaime. I, however, knew she was overwhelmed having typical children to watch and Jaime, and as a result he spent a lot of time in the highchair unable to work on his gross motor skills. Her house was not handicap accessible, so there was nowhere for Jaime to go and he could not use his wheelchair. In September of 2007 Jaime had a devastating seizure that began in this home day care where he had been left alone in a room for over an hour before he was found seizing. It was at that time I made the decision to move Jaime to CRCC full-time and it was the best decision that I've ever made. Jaime has transitioned great. He went to an environment where he could use his wheelchair and now he's become the pro that he is today. For the first time he was in a setting where he had peers who were developing at his pace which made him feel comfortable. And he also had peers that he could look up to which has motivated him. His cognitive abilities have really shown improvement from the class lessons he receives. Just a year and a half ago Jaime wouldn't pay attention to a book and now he patiently listens and smiles like he knows what is going to happen next. He is really listening and learning instead of just looking at pictures and flipping the page. CRCC allows me to work which has helped my husband and me achieve our dream of getting a handicapped accessible house for Jaime. CRCC also allows Jaime to receive all of his therapy needs at the center without me missing tons of work because he gets his therapies right there at the center. I can now go to work and not worry about my son's health. And I don't have to worry about seizures because I know the staff is equipped to handle the situation until I can arrive. If Children's Respite Care Center closed it would be devastating. It would deeply impact my family and I would no longer be able to work, which would be a huge financial burden to my husband. My son's health needs are too great for a typical day care that isn't equipped with medical professionals who know how to administer his medications, his breathing treatments and his tube feedings. CRCC is not only a great place for my children but it's also been a great place for me. I am still early in my journey of raising a special needs child. And it is often an isolating feeling full of confusion and wonder what I am doing. The staff at CRCC is always there when I have a question on how to handle a situation or if I just need to talk. So many families depend on CRCC to care for their children so they can make an income. If CRCC weren't around there would be a lot of families out of work due to lack of appropriate day services. I urge you to bring this bill to the floor for consideration. It is not only important to my family but all the families who attend CRCC, especially the children. Thank you. [LB25]

SENATOR GAY: All right. Thank you. Let's see if there's any questions for you. [LB25]

ALISON BAQUERO-CRUZ: Okay. [LB25]

SENATOR GAY: Questions from the committee? Getting off easy. (Laughter) All right. [LB25]

ALISON BAQUERO-CRUZ: Thank you. [LB25]

SENATOR GAY: Thank you for coming, appreciate it. Other proponents who would like to speak. Any others? All right. Are there any opponents that would like to speak on this issue? [LB25]

VIVIANNE CHAUMONT: (Exhibit 5) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Vivianne Chaumont, V-i-v-i-a-n-n-e C-h-a-u-m-o-n-t. I'm the director of the Division of Medicaid and Long-Term Care at the Department of Health and Human Services. I'm here to testify in opposition to LB25. LB25 as written proposes to create Children's Day Health Services as both a new licensure category and a new Medicaid optional services. The department opposes this proposal for a variety of reasons. LB25 attempts to add a new optional Medicaid service. This is a service that's not recognized by the federal government as an optional service. Adoption of the bill will create a benefit that will not be eligible for federal matching funds. It is therefore not an appropriate benefit to list under Nebraska's Medicaid statute. In statute this would need to be a stand-alone program that is funded entirely with General Funds. The department already reimburses approved providers, including CRCC, for the Medicaid-reimbursable components of what this bill defines as children's day health services. Medicaid already reimburses for home health services and private duty nursing services. Both of these services are approved optional services and receive federal match. Additionally, under the home and community-based services waiver for the aged and disabled, Medicaid reimburses providers for care and services necessary to meet the physical disability-related needs of these children. Therefore, the Medicaid...Nebraska Medicaid program already covers the services envisioned by this bill through already existing services in a way that is recognized by the federal government and which qualifies for federal matching funds. Another concern with this bill is the broadness of the description of the eligible population. The population eligible under this bill is potentially broader than that currently being served. This constitutes a Medicaid expansion contrary to the principles of Medicaid Reform which envision maintaining the sustainability of the existing program in tough economic times, rather than enlarging benefits and populations. Lastly, there's the issue of reimbursement. The bill proposes to cover the proposed services by reimbursing all necessary and reasonable costs of providing these services. For the components of children's day health services that are currently reimbursable, Medicaid reimburses providers on a fee schedule. Changing from a fee schedule to reimbursement using a cost methodology

will increase the costs of the services that are already being reimbursed. With very few exceptions, which are basically for services in institutional settings, such as nursing facilities and critical access hospitals, the Medicaid program does not reimburse providers based on their costs. Physicians would love to be reimbursed based on their cost. It should be noted that insurance companies reimburse on a fee schedule, not on a cost methodology. There is no good public policy reason to treat providers of this service like institutional providers with cost-based reimbursement. A cost methodology would result in increased staffing costs to the Division of Medicaid and Long-Term Care. Additional staff would be needed to develop a reimbursement methodology, establish rates, identify a cost reporting system, implement auditing functions, promulgate regulations, submit state plan amendments to the Centers for Medicare and Medicaid, all this for a service that's not a federally identified Medicaid service and will result in denial. LB25 would also require the department to create a new licensure category for children's day health services under the Health Care Facility Licensure Act. This would include the adoption and promulgation of licensure regulations, education and outreach to existing programs that will be required to be licensed, as well as inspections and complaint investigations of licensed programs. Additional resources would be needed in the Division of Public Health to carry out the requirements of this bill, which could not be absorbed by existing staff. LB25 seeks to establish a new licensure category, which would involve additional costs for regulation and oversight of any licensed providers described previously. In summary, this bill establishes a new Medicaid service. This service is not currently recognized by federal statute or regulations and would be ineligible for federal Medicaid match. Medicaid already covers the service components of children's day health services at CRCC that are eligible to be reimbursed. Therefore, the department opposes the bill. I'd be happy to answer any questions. [LB25]

SENATOR GAY: Thank you, Ms. Chaumont. Any questions from the committee? Senator Stuthman. [LB25]

SENATOR STUTHMAN: Thank you, Senator Gay. Welcome to the committee. [LB25]

VIVIANNE CHAUMONT: Thanks, Senator. [LB25]

SENATOR STUTHMAN: You've heard the testimony from the proponents of this bill. And I had figured that you would probably be in opposition. But is there anyway, is there anyway... [LB25]

VIVIANNE CHAUMONT: I like to be consistent. (Laugh) [LB25]

SENATOR STUTHMAN: Is there anyway that we could give these families or these children any type of support or financial, is there anything? [LB25]

VIVIANNE CHAUMONT: Absolutely, Senator. We're already doing that. They testified

that they get Medicaid reimbursement. We reimburse through private duty nursing, we reimburse through home health, and we reimburse through the home and community services waiver. You know, much of their funding comes from the Medicaid program already. We do not reimburse them on a cost-based methodology. We don't reimburse many providers on a cost-based methodology. [LB25]

SENATOR STUTHMAN: Yes, I realize, you know, on the cost-base, because, you know, some providers the cost is a lot greater than other providers. And... [LB25]

VIVIANNE CHAUMONT: That's correct. [LB25]

SENATOR STUTHMAN: ...and you can't do it on that. But is there...I know we're helping them already. But there seems like there is no other method, you know, to try to help them other than what we are doing right now. [LB25]

VIVIANNE CHAUMONT: I don't believe there is. I mean, we pay for home health. If we did a rate increase for home health and private duty nursing, for instance, which are the components that they get, that would mean doing...you can't just pick on, you know, on one particular provider and give them a rate increase. [LB25]

SENATOR STUTHMAN: So we're kind of between the hard stone and the rock. [LB25]

VIVIANNE CHAUMONT: Well, we believe that we are reimbursing them adequately. [LB25]

SENATOR STUTHMAN: And your reimbursement is consistent. [LB25]

VIVIANNE CHAUMONT: Yes. [LB25]

SENATOR STUTHMAN: Okay, thank you. [LB25]

SENATOR GAY: Senator Pankonin. [LB25]

SENATOR PANKONIN: Thank you, Chairman Gay. And, Ms. Chaumont, we obviously, for those in the audience, Vivianne comes and testifies in these sort of settings and we're used to it. And also knowing that this isn't a personal deal. She's trying to do her job as her predecessor did as well. But along those lines, this is one of the dilemmas of this work is, is it a fair statement to say if this center wasn't here that those children could cost the state and federal government more without the...that they would require more extensive personal services that this study may show would cost you $3.4 million more. Is that a...I know you haven't seen the work and whatever, but... [LB25]

VIVIANNE CHAUMONT: I have seen the work, Senator. And we saw the work, one of

the first people that actually came to visit me when I became the Medicaid director was CRCC. I saw their study of the money that they were saving. We do not agree with their study. We think it's highly inflated. Is it possible that some of the children could cost more in a different setting? There are hundreds of children being served in their homes through the same exact programs. You know, you can have these services performed at home or you can have these services performed at the center. It is possible that some children would cost more and it's possible that some children would cost less. I do not believe that this would...that if there was...if this center wasn't there that there would be a large increase to the Medicaid budget. [LB25]

SENATOR PANKONIN: Okay, thank you for your testimony. [LB25]

SENATOR GAY: Senator Howard. [LB25]

SENATOR HOWARD: Thank you, Chairman Gay. You know, in all the years that I worked in Health and Human Services I saw many children come through the system whose parents had given them up because they couldn't meet their needs. And I would feel that this would be a far more costly endeavor if we had these children in the foster care system. I would imagine, and I speak from having done this for many years, that the foster care payment alone would be in excess of $1,000 a month. [LB25]

VIVIANNE CHAUMONT: I think it's not reasonable to assume that the children at the center would be given up to the foster care system. I think that that's not a correct assumption. There are many, many other ways that the children could be served in their home and the parents could continue to work without passing this bill. There are hundreds of kids out in the community getting these same services whose parents are working, who are not putting their kids in foster care, who are getting the services they need and going to work and doing the exact same thing that these parents that testified are doing. [LB25]

SENATOR HOWARD: Well, thank goodness these parents have the support to do that. But I think you're aware that there are many children in the system whose parents could not parent them and could not meet their needs and have had to relinquish them. [LB25]

VIVIANNE CHAUMONT: Well, and that's why Medicaid pays for this. The large proportion of their budget is Medicaid. Paying for these services, according to the study that they gave me, they are...a large proportion of their budget is Medicaid. So Medicaid is there to pay for just exactly what you are talking about. [LB25]

SENATOR HOWARD: And I think you'd agree with me that we do not want children entering the foster care system. [LB25]

VIVIANNE CHAUMONT: Well, that's a no-brainer, Senator. [LB25]

SENATOR HOWARD: Well, I'm glad you agree. [LB25]

SENATOR GAY: All right. Any other questions from...Senator Gloor. [LB25]

SENATOR GLOOR: Thank you, Mr. Chairman. It's nice to put a face with the signature on a letter, (laughter) which is, I think, a fast relationship, at least in my life. I'm curious about how you see you would conduct surveys. Whether this would be seen as a survey that would be conducted as a rehab facility, as a hybrid long-term care, as a hybrid acute care. How would you see a survey done on an institution like this? [LB25]

VIVIANNE CHAUMONT: The Division of Public Health is the one that does surveys. So I think it would be some kind of...I mean, that's something that they would have to figure out. I'm sorry I don't have any expertise. But according to the bill this isn't a day care center, it isn't a rehab, it isn't a nursing facility, it's a hybrid. So they would need to come up with whatever standards they felt were necessary to do the appropriate survey. [LB25]

SENATOR GLOOR: Thank you. [LB25]

SENATOR GAY: Okay. Any other questions? Your estimate of cost, I have a question for you. Your estimate...on the fiscal note there is no note, really. And these are... [LB25]

VIVIANNE CHAUMONT: Our estimate of cost as to Medicaid costs are that there are none because it's not going to be a service that's "approvable" by CMS. [LB25]

SENATOR GAY: But you had mentioned, had we proceeded to do this, though, that there were other costs involved. Do you know what estimate that would be? [LB25]

VIVIANNE CHAUMONT: I think we put those as...in the department's fiscal note... [LB25]

SENATOR GAY: The full-time employee. [LB25]

VIVIANNE CHAUMONT: ...for extra people in the Division of Public Health to do the surveying. And then, I believe, we put a half a person in the Division of Medicaid to do the work. [LB25]

SENATOR GAY: And you put that where? [LB25]

VIVIANNE CHAUMONT: In the department's fiscal note. [LB25]

SENATOR GAY: Which...well, we don't have that. Yeah. So... [LB25]

VIVIANNE CHAUMONT: I think you might have the legislative... [LB25]

SENATOR GAY: We have the legislative fiscal note, but I don't see it. [LB25]

VIVIANNE CHAUMONT: ...fiscal note. Yeah. [LB25]

SENATOR GAY: But maybe...could you get that to us. [LB25]

VIVIANNE CHAUMONT: Yes, I'd be happy to do that. The fiscal note also says that it is impossible to calculate what...that would be on the administrative side, it's impossible to calculate what the increase would be on the aid side because we don't know what the costs of these people are. And we would be talking about reimbursing them on a cost-basis. [LB25]

SENATOR GAY: Okay. All right. Any other questions? I don't see any. [LB25]

VIVIANNE CHAUMONT: Thank you. [LB25]

SENATOR GAY: Thank you. Any other opponents who would like to speak on this issue? Anybody would like to...in the neutral capacity speak on this issue? All right. Senator Friend, would you like to close? [LB25]

SENATOR FRIEND: I suppose I would. Thank you, Chairman Gay. And I will be brief. I know you find that hard to believe, always, but I will. If you remove raw emotion, it's hard to do. I mean, we've all been in those seats and this seat. If you just simply step back and remove raw emotion for a minute and you talk about raw fiscal ideals or philosophy, then I think we're in the ballpark. And I think the discussion can continue. When I was 20 years old, I was a registered Democrat and Ronald Reagan convinced me of certain things, and I've been a Republican every since. And I think it's safe to say that my fiscal conservatism transcends sometimes the bounds of the Legislature. With that being said, I don't bring bills like this feeling like I'm going to expand Medicaid or Medicare. I have a 38-year-old sister that lives with a feeding tube, and she lives out in Valley in a nursing home. Home healthcare, and I know this because we had it coming in, is extremely expensive. We use our creativity to promote ideas. They use their creativity to promote ideas and to actually functionally do things that are outside the norm. And you ask Medicaid to join the club. Medicaid doesn't have any creativity. And the people that manage it don't either, no offense to any of them. That's not their job. The creativity has to come from policymakers, the creativity has to come from the people who actually live it, and the creativity can occur, it just takes a little bit of, to me, intestinal fortitude. Finally, a healthcare facility like this, I think, goes a long way to addressing an idea that we all have, and that is how many times have you visited a

place and said, this is the government dumping money down a hole and we're never going to get it back. You dump any government money down this direction, you get it back. What happens if one of these parents decides that, hey look, you know, I'm going to go ahead and take a different direction. I'm going to stay home with my child. This is a great thing too. You think the state is not going to have to absorb other costs? It's real simple. If there's creativity and there's an idea here and you get into Executive Sessions and talk about it, you might be able to come up with something. Maybe as it sits right now it's not doable. I would just ask for a little bit of, you know, thought process when it comes to that, when we discuss it, when you discuss it, you know, further in Executive Session. So I'd just leave it at that. Thank you. [LB25]

SENATOR GAY: Okay. I think we can promise you that we'll look into it. All right. With that, we'll close the public hearing on LB25. Thank you, Senator Friend. [LB25]

SENATOR FRIEND: Thank you. [LB25]

SENATOR GAY: Thank you all for testifying. As we're getting ready for LB91, Senator Howard's bill, I...just a few things I wanted to bring up. Senators, will be in and out throughout the day because we have other...we have to give testimony. We have other bills in other committees and just other commitments. So if you see a senator coming and going, take no offense. They're working on another project as well. And the rest of us will continue on. But anyway, I just wanted to get that out for the public. All right, Senator Howard, ready for... [LB91]

SENATOR HOWARD: Good afternoon, Senator Gay and members of the Health and Human Services Committee. For the record, I am Senator Gwen Howard and I represent District 9. Today I bring LB91 for your consideration. LB91 would enable children currently in guardianships to be placed in permanent adoption with their current guardians. This bill would (1) allow a state subsidized adoption when there has been a subsidized guardianship, an existing guardianship...guardian is adopting; and (2) allow the assistance provided under the subsidized guardian...subsidized adoption to mirror the subsidized guardianship assistance. In simple terms, if you've taken a guardianship of a child, but for a reason you now make the decision you'd like to do a permanent adoption, this bill would allow that to happen. Under existing statute a child that is a ward of the state can be placed in a subsidized guardianship. If, however, the guardians later wish to adopt the child, they would surrender any assistance being provided to them for the care of the child under the subsidized guardianship. While this bill doesn't affect a large number of children and families, it can make a big difference for the children it does impact. Most of the families who assume guardianship of these children are trying to do the right thing. They may often require subsidy support to assist with the costs of significant behavioral or health concerns. Because guardians, to lose these subsidies, if they should choose to adopt the child under the current statute it prohibits the family from adopting, not because the families don't want a permanent relationship

with the child, but simply because they cannot afford to assume the expenses. This bill would allow some guardians to adopt the child providing the following criteria are met: (1) adoption ends the court's involvement; (2) all family members are assured of a higher degree of permanency because the guardian assumes full parental rights and responsibilities and the child becomes a legal member of the family; and (3) neither parent nor child faces the danger of a birth parent or another person petitioning for custody or visitation rights. Following my testimony here, a representative from the Department of Health and Human will provide you with additional information regarding the technicality of this proposed change. Now I just want to take a moment to explain to you where this bill originated. Speaker Flood had a constituent in his district, a grandmother who had taken a guardianship of three of her grandchildren. And these children had been state wards. And the guardianship was completed with the subsidy, the payment subsidy and also the Medicaid. She wanted to, this was down the road, wanted to do an adoption of these children and contacted me. And we looked at this and we talked to the department and the problem was that the family would lose the payment, and even more importantly they'd lose the Medicaid coverage and one of the children was special needs. So I called her back and I said, you know, I just don't see that we can do this; I don't see that there is a way to figure this out. And, you know, talked to the department, we tried to look at any possibility. But once the child was in a guardianship and no longer a ward, they couldn't move onto the next step of adoption. And things have changed on the federal level. And the department came in and said, we think we can do this now. Which I was really heartened. Talk about creativity with the bureaucracy. I mean, it is possible, it is (laugh) possible for things to move to a level that really does address the need of the human. So... [LB91]

SENATOR GAY: All right. Thank you, Senator Howard. Any questions from the committee? Senator Gloor. [LB91]

SENATOR GLOOR: Thank you, Mr. Chairman. Senator Howard, you are...I'm new to this body, obviously, but you... [LB91]

SENATOR HOWARD: Welcome. [LB91]

SENATOR GLOOR: ...you are...and thank you very much. You are, by reputation, a very intelligent woman. So I've got to ask you this question. [LB91]

SENATOR HOWARD: Oh well, thank you. I...I lay claim to the child welfare area, water rights not so much. (Laugh) [LB91]

SENATOR GLOOR: Well, I'm going to put that a little bit to the test. I'm trying to figure out, when I read through this the other night, why is it that the state had this regulation in place? Because it had to be to protect the child, I would think. And I'm trying to decide what is it that I'm missing here that might be a level...that was seen to be a protection of

the child that... [LB91]

SENATOR HOWARD: When you say "regulation", what do you mean by that? [LB91]

SENATOR GLOOR: Well, currently wouldn't continue...you're right, I should not use the term "regulation," that we would not continue those payments to the guardian who now is going to seek adoption. [LB91]

SENATOR HOWARD: Okay. [LB91]

SENATOR GLOOR: It seemed to me that that was a barrier put there to prohibit this from happening. And exploitation, I mean, I'm trying to decide why it's in place. [LB91]

SENATOR HOWARD: No, no, no, actually no. A couple of things to keep in mind. Guardianship is done with state wards. Now my background is Health and Human Services, and I did foster care and CPS work, and adoptions. I tried to help people move to the permanency of adoption with a child. But there are situations where a guardianship is a viable option. One example is if a child is...I had a case where a child was 17 years old. He was going to age out of the system, but he was looking at going to college. If the foster parents would have done an adoption their income would have entered into any eligibility that, you know, consideration and that would have been very hard on the family. And so we did do a guardianship. The second one was a child with very, very high medical needs. She had had a lot of transplants and would have simply exhausted the insurance for the adoptive parents. So there are situations. This case, like I said, was a grandmother who had taken a guardianship of these little children, and bless her heart, wanted to move, later down the road, wanted to move into doing an adoption. Which is a much more permanent and stable relationship with the children. For one thing, if something would happen to either grandparent, the children would be eligible for Social Security payments. That's just something that people don't ordinarily consider with an adoption. But the reason that we couldn't move from a guardianship that had been completed to an adoption state was because the department was no longer involved. The department had made the deal, if you will, that this was the arrangement. It was a guardianship, there was a set dollar amount that was a subsidy, and there were medical payments, Medicaid payments. And the department considered themselves no longer involved because the child wasn't a ward any longer. So there was no mechanism to go back and say, oh, we will redo this now; we will now look at an adoption. It was a bureaucratic kind of system. And I'm sure that Todd will be able to...he's here, will be able to explain that as well, possibly better. But it was a piece of the system that didn't allow that, quite simply. And as a matter of fact, I called the grandmother up and I said, you know, I'm really sorry, I'm with you, I wish we could do this for you, but you can't afford to lose the Medicaid coverage. And that's what it boils down to. So I am excited that the federal government has changed this, that the department is looking at working on this. I don't...the difficulty, the thing that we have to

be careful about was I don't want this to be viewed as something where you could do a guardianship and at some other time then move to adoption. Guardianship is not the preferred method of permanency for children. Does that help, I hope. (Laugh) [LB91]

SENATOR GLOOR: Yeah, it does. [LB91]

SENATOR HOWARD: Okay. (Laugh) And Todd may be able to come up with some more explanation as well. [LB91]

SENATOR GLOOR: Thank you. [LB91]

SENATOR HOWARD: Oh, absolutely. [LB91]

SENATOR GAY: Any other questions of Senator Howard? I don't see any. [LB91]

SENATOR HOWARD: All right. [LB91]

SENATOR GAY: Thank you, Senator Howard. [LB91]

SENATOR HOWARD: Thank you. [LB91]

SENATOR GAY: Other proponents? [LB91]

TODD LANDRY: (Exhibit 1) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Todd Landry, L-a-n-d-r-y. I'm the director of the Division of Children and Family Services. I'm here today to testify in support of LB91 and like to thank Senator Howard for introducing the bill. As you have heard, this bill will allow the Department of Health and Human Services to provide a state-funded adoption subsidy to a guardian who currently receives a state-funded guardianship subsidy but is now in a position to adopt the child. Now current state statutes allow the department to provide both state-funded adoption subsidies and state-funded guardianship subsidies. Eligibility for either one requires that the child must have been a ward of the department immediately prior to the adoption decree or order of guardianship. Therefore, a guardian who is receiving a subsidy cannot then subsequently adopt the child in the future without sacrificing that subsidy as statute is currently written. Now this subsidy, as you have already heard, usually includes some type of maintenance payment based on the needs of the child and Medicaid coverage and occasionally childcare assistance. Now guardianship is, as Senator Howard indicated, a viable appropriate, permanency alternative for some children. But it is different from adoption in several important ways. Adoption makes the child a permanent member of the family. In a guardianship the court maintains jurisdiction. Therefore, in the future in a guardianship situation a court could dissolve the guardianship based on a request by the parent, they could order visits between the

parent and the child, even when the guardian believes such visits may be detrimental to the child. In addition, a child in a guardianship does not have the right of inheritance that accrues to an adopted child in most cases. Now there are many reasons, and you may be wondering why someone who's in a guardianship would want to switch to an adoption. And there are several reasons why that might become the choice, even after a guardianship has been created. A child who is unwilling to consent to the adoption at the time of the guardianship may change his or her mind and accept the guardian as his or her parent and find it an important part to become a permanent member of that family. A parent, a biological parent who previously was unwilling to relinquish their parental rights may accept the fact that the guardian is the primary parent and decide to relinquish those rights in the future, or the guardian themselves who may have been uncertain about assuming full responsibility for the child might decide it's important to provide the child with the emotional and legal security of an adoption. Now when those changes occur, some guardians are in fact able to forfeit the guardianship subsidy and finalize the adoption. But for many, they cannot afford that choice. And for those who can't, this bill offers the alternative of adoption as an ongoing but at no additional cost to the state. In essence, it would allow the closure of the guardianship subsidy and the subsequent opening of the same assistance in the same amount in the form of an adoption subsidy. As you have also heard, the bill would also parallel federal law. On October 7 of this past year, President Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act. This law now provides for federally subsidized guardianships under some circumstances, and would allow movement from those same subsidized guardianships to federal subsidized adoptions. So this, in fact, would also mirror federal law if we made this change. In summary, this change does provide, I believe, an important permanency alternative for children and the people who are parenting them. We believe it's good for the family, certainly good for the kids, and it's good state policy as well. So I thank you and thank Senator Howard again for introducing the bill. Be happy to address some of those questions that you may have had, if I can. [LB91]

SENATOR GAY: All right. Let's see if we got any questions for you. Senator Gloor. [LB91]

SENATOR GLOOR: So let me take another shot at this. Might the intent, once upon a time, been a means test? If you're going to adopt a child you have to have the wherewithal as a family of being able to care for this child without assistance, to be able to provide the health insurance and so on and so forth. I'm trying to get a handle again on the assistance component of it. [LB91]

TODD LANDRY: Yeah. Right. I don't think that was the case. As I've gone back and I, of course, was not with the department at those points in time. But as I understand it, we have put in statute some...many years, several years ago, adoption subsidies for parents adopting children from state care. Later, guardianship was added as a

permanency alternative, and guardianship was then added to statute. And it paralleled the adoption statute. What it didn't do is anticipate for a relatively small number of families their desire to switch later from guardianship to adoption. It impacts a small number of families. But as you heard from Senator Howard, for those families it is important, and for those kids it's important. So in some respects we are eliminating an unintended, I believe, barrier to adoption that was put in place simply by the way the statutes were originally created. That's my understanding of how we got in this position. [LB91]

SENATOR GLOOR: That helps a lot, thank you, Mr. Landry. Thank you. [LB91]

SENATOR GAY: All right. Any other questions for Mr. Landry? I don't see any. [LB91]

TODD LANDRY: Thank you. [LB91]

SENATOR GAY: Thank you. Any other proponents? Okay. Any opponents here? I don't see any. Anybody in the neutral capacity that would like to speak on LB91? All right, no takers. Senator Howard, would you like to close? [LB91]

SENATOR HOWARD: You bet. It looks like Vivianne has left. (Laughter) I really appreciate this opportunity to bring you this bill. And I'll have to say I really appreciate this opportunity to work with Todd Landry. This is kind of a red letter day for us. We sometimes find ourselves on the other side of the fence. Point of clarification, Nebraska is one of the few states that does do subsidized guardianships. I give us a lot of credit for that. I think that's helped a lot of children find permanency. One thing that we haven't mentioned that you need to know was our guardianships are primarily state funds, 4(b) funds. So an added bonus to all of us is when a family is able to move from a guardianship to an adoption is...we'll save money. So this is a simple change that can make a big difference for children and families. And I respectfully ask for your support. Thank you. [LB91]

SENATOR GAY: All right. Thank you, Senator Howard. Any follow up last questions for Senator Howard? Nope. Thank you, Senator Howard. All right. With that, we'll close public testimony on LB91. We will open on LB173, provide for relabeling and redispensing of prescription drugs at certain correctional facilities. [LB91 LB173]

LISA JOHNS: (Exhibit 1) Good afternoon, Senator Gay and members of the Health and Human Services Committee. For the record, my name is Lisa Johns, that's J-o-h-n-s. And I am the legislative aide for Senator Gay, who represents the 14th Legislative District. And I will open on LB173. This bill would permit correctional facilities and jails to contract with pharmacies to allow for the return, relabeling, and redispensing of unused prescription drugs that had been prescribed to inmates. There are currently six other states that do have a prison drug recycling program. The concept behind LB173 is the

same as that that was brought to this committee last year in LB758, which was introduced by Senator Carol Hudkins. The committee attempted to address issues that were brought to light at last year's public hearing. And the bill came to the floor as part of a committee amendment, however, it never did come to a vote. LB173 is essentially the cleaned up version of last year's legislation. The idea behind the bill is to cut costs to taxpayers by allowing correctional facilities to return unused prescription drugs as opposed to destroying large amounts of medications. The bill has safeguards in place by requiring that the drugs be properly stored and in control of the facility at all times. And it also only allows return of a drug if it is in its original unopened labeled container with the tamper-evident seal intact. LB173 also provides immunity from liability as long as reasonable care is executed. During last year's hearing there was concern expressed that there are currently no standards at all in place with respect to how correctional facilities handle prescription drugs. Section 4 of LB173 does address this point by requiring the Jail Standards Board, in consultation with the Board of Pharmacy, to adopt rules and regs that would include standards on proper handling and storage. This bill is not a mandate, but merely provides the opportunity for pharmacies in correctional facilities to work together and to save taxpayers dollars. And I do have some testimony following me that could give you more detail of what kind of, amount, and medications we're talking about. Any questions? [LB173]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. Proponents. [LB173]

KENT GRIFFITH: (Exhibit 2) Mr. Chairperson and members of the committee, my name is Kent Griffith, that's G-r-i-f-f-i-t-h. I represent the Lancaster County Department of Corrections and I appreciate the opportunity to testify in favor of LB173 this afternoon. The Lancaster County Department of Corrections houses approximately 400 inmates in its two correctional facilities in Lincoln. Additionally, we house 50 to 55 in other counties. We admit about 10,700 a people a year, and many of these individuals are released within a short period of time. Our average length of stay is about 12 days. So I just want to point out that we have a very transient population, it's constantly turning over. Many of the people we deal with have significant medical, mental health, and substance abuse problems. Our expenditure for all inmate medications in FY 2008 was $412,000. Of this amount, we destroyed approximately $32,000 worth of prescription drugs during the year. In the majority of cases these drugs were destroyed because inmates were released prior to receiving their complete prescriptions. Due to the nature of the criminal justice system, we often do not know how long a person is going to be incarcerated. Depending on the individual circumstances they may post a bond, receive a sentence or pay their fines and be released. Our medical staff do make an effort to order prescription drugs in amounts that coincide with the person's incarceration time, but this isn't something that can be predicted with any degree of accuracy. Drugs that are not dispensed to inmates must be destroyed as we currently do not have another option. In December of 2007, our pharmacy provider destroyed 1,817 pills, this is representative

of an average monthly amount that we would do. The provisions of LB173 will allow us to negotiate with our pharmacy supplier and return these drugs to them for relabeling and redispensing to our clientele when appropriate. We believe this process could be done safely and effectively. We currently receive medications that are stored in tamper proof punch cards that include the name of the drug, dose, expiration date, and the recipient of the medication. They are labeled by the pharmacy and provide little room for error as a pill that is not dispensed remains in the card. These pills could easily be returned to our pharmacy to be relabeled for other inmates use. Now I understand there may be some opposition to this bill by the Nebraska Pharmacy Association. And I just want you to know that we'd be willing to work with them to help allay their concerns about this. And I also want to thank Senator Gay for his introduction of LB173. And I do appreciate your attention to this issue. And I'd be glad to answer any questions you may have. [LB173]

SENATOR GAY: All right. Thank you, Mr. Griffith. Senator Pankonin. [LB173]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Griffith, thanks for coming today. And a question that you may know, maybe not, but I'm going to ask it. Do you know of other jurisdictions, whether regionally or around the country, or other states obviously maybe that this is allowed? [LB173]

KENT GRIFFITH: I am not well-versed on what the other states may be doing at this time on this issue. [LB173]

SENATOR PANKONIN: Okay, thank you. [LB173]

SENATOR GAY: Senator Wallman. [LB173]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, thank you for being here. In regards to these prescription drugs, some...what...are they psychotropic or do you know, why don't they follow the inmate out of jail? [LB173]

KENT GRIFFITH: Well, that's a good question. And I've asked that question myself. There are several issues, one being it's my understanding is that the amount of information we'd have to provide, we'd have to make sure the inmate had the right amount of information when they left. Sometimes we don't know where they're going and we just don't generally give them their medication to leave. Now if they're being transported to another facility and may need it for several days of transport, we will do that. But we don't give them the medication when they walk out the door. [LB173]

SENATOR WALLMAN: Okay, thank you. [LB173]

SENATOR GAY: Senator Gloor. [LB173]

SENATOR GLOOR: Thank you, Mr. Chairman. Mr. Griffith, I'm guessing that your purchasing is done under a contract. Is it a negotiated contract of some kind? [LB173]

KENT GRIFFITH: That is correct. [LB173]

SENATOR GLOOR: Has that changed over the years in any way, shape or form? [LB173]

KENT GRIFFITH: The nature of the contract? [LB173]

SENATOR GLOOR: The contract, I mean, are you pretty much with the same supplier you've been with on a contractual basis? [LB173]

KENT GRIFFITH: We've been with the same supplier for at least the last five years, maybe a little longer. [LB173]

SENATOR GLOOR: That's a good period of time. Have you explored an exchange system at all as part of the contract? In other words, rather than having to go through some of the recordkeeping and storage, that the supplier would, in fact, allow you to do an exchange; take those medications back, give you credit for them against the future purchases. [LB173]

KENT GRIFFITH: I don't understand...I don't believe they can do that under the current law. [LB173]

SENATOR GLOOR: Okay. [LB173]

KENT GRIFFITH: That's my understanding. [LB173]

SENATOR GLOOR: I'm not so sure about that, but... [LB173]

KENT GRIFFITH: Okay. [LB173]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB173]

KENT GRIFFITH: All right, thank you. [LB173]

SENATOR GAY: Other proponents? [LB173]

JON EDWARDS: Good afternoon, senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I am with Nebraska Association of County Officials. And we are here today to testify in support of LB173. I think the details of the bill have been fairly well

covered. I think this is an opportunity to maybe provide some savings to counties, to jails, political subdivisions when dealing with issues like this. Certainly, in these times and budget issues anywhere we can try to find creative ways to create more income or to create less of a burden we certainly want to try to do that. And we think that this is a creative way to try to help in that area. I think that the bill is...it's drawn up broadly enough to allow for the parties to come together and try to alleviate the concerns that are there regarding how the process might work going forward. So we just feel like there's a framework in place that provides the opportunity for some savings, which ultimately could hopefully provide a little bit of tax relief, which is key to everything that we do here. So with that, I'll entertain any questions there might be. [LB173]

SENATOR GAY: Any questions for Mr. Edwards? Senator Howard. [LB173]

SENATOR HOWARD: Thanks, Chairman Gay. I'm just curious. I don't know, there must be a reason why you can't return these to the pharmacies. If they're in blister packs, they're unopened, they're tamper proof but the pharmacies will not accept them back, is... [LB173]

JON EDWARDS: Yeah. And, Senator Howard, I can't speak to the specifics of the rules and regulations or whatever the procedures are there in terms of how they have to treat the drugs and how that works. I just don't have that information. And there might be somebody here that can help you with that, with the details of that. But I just couldn't answer that for you specifically. [LB173]

SENATOR HOWARD: I appreciate that. Thank you. [LB173]

SENATOR GAY: Senator Gloor. [LB173]

SENATOR GLOOR: By way of doing the best I can in answering that, there may be problems with resale. But there aren't problems with crediting you back. I mean, they may take those medications back, destroy them, and then credit you back for that as part of whatever contractual arrangement they have. And the reason that you might consider it, I mean, there's a cost in there someplace that somebody has to pay for. But when it comes to the paperwork, the hassle, the storage sometimes it's worth considering doing that in your overall cost of doing it. In general, I think this is a great idea. But there may be another way to skin that cat that would be even less onerous for the larger communities with facilities, not with the smaller ones. [LB173]

SENATOR HOWARD: Thank you. [LB173]

JON EDWARDS: And if I might add, Senator, I think you mentioned the contractual part, side of this. And certainly that's a key provision within the bill itself. As was mentioned on the introduction, this is by no means mandated. It's certainly just an opportunity. It's a

permissive bill that allows these facilities the opportunity to try to engage a pharmacy or pharmacist in some sort of contractual agreement to do this. But, you know, if they can't come to terms and there is no agreement, we're just right back where we were originally, so... [LB173]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you, Mr. Edwards. [LB173]

JON EDWARDS: Okay, thanks. [LB173]

SENATOR GAY: (Exhibit 3) Any other proponents who would like to speak on LB173? I don't see any. Just for the record, though, we have received a written correspondence from the Douglas County Board of Commissioners. It's a resolution supporting LB173. So that will be submitted into the record. Opponents. Come on forward. [LB173]

JONI COVER: Good afternoon, Chairman Gay, members of the committee. My name is Joni Cover, it's J-o-n-i C-o-v-e-r, and I am the executive vice president of the Nebraska Pharmacists Association. I'm pleased to appear before you today, although I'm sorry, Senator Gay, (laugh) that I'm opposing your bill. The Nebraska Pharmacists Association has historically opposed bills that require us to redispense and relabel medications. Having said that, we totally understand the issues that the counties are facing as far as the cost for these medications. We understand that. And actually, Senator Gay, thank you for bringing this forward because we came in and opposed the bill last year. And it did make it to the floor and was derailed during floor debate. But since that time we've had a little bit of opportunity to go back and kind of check and see what the procedures are as far as the counties across the state. I will tell you that we have, what, 93 counties in our state. I bet you we have 93 different ways of doing business in our correctional facilities. Some of our counties have a great system where they have a very close relationship with their pharmacy. They call the pharmacy. They say, hey, so and so was just incarcerated, we need this many days' medication. The pharmacist sends those over. I will tell you that it's probably a little more challenging for our larger correctional institutions because they have more inmates. One of the things we haven't been able to get our arms around is just the number of medications being wasted or destroyed. We're not sure whether that is medications that's coming in with the inmates, if it's medications that could actually be returned, if there's controlled substances there then we're not allowed to take those back per federal law. So we have some questions about that. We also believe that there's maybe some better ways to control the costs up front. I do know that Douglas County, for example, uses an out-of-state pharmacy that mails in the drugs to Douglas County. And I have been told that those medications come in 30-day supplies. I do know that there are stock medications kept there, which I'm not sure how that is allowed. And I'm wondering if maybe we need to have a discussion because, while this seems like a good idea, you're asking the pharmacies to basically keep a separate stock of the medications, and then what do we do with them if nobody

represcribes those medications? Do we just destroy them or how does that work? I mean, we have some logistical issues at stake here. I'm concerned that we've got at least two state facilities being funded by taxpayer dollars that are using out-of-state pharmacies. That's my plug for my membership right there. You should be using instate businesses. But having said that, I would like to, I guess, address our wish list, if you will, with this bill. I think that there's definitely a workable solution here. And I would be willing to sit down with all the parties and talk about this because the nuances of pharmacy are very interesting. And having not been a pharmacist myself but representing the Pharmacists Association it's sometimes hard to get your mind around those technicalities. Senator Gloor brought up the issue of returning. We do have a returns provision for long-term care. But there's very specific provisions on how that works. And we also have in our statutes a 7-day minimum. That's as much as you can dispense at a time. I do believe that the state pen has a pharmacy within the state correctional facility. And they dispense one day at a time. Now for some of those, some of the other correctional facilities that may be a logistical nightmare. So I think there's ways to figure this out. I would also like to talk about that we need to...we're concerned about just using the broad definition of correctional facility. I bring this up because I believe in one of the definitions it includes group homes. And in the Pharmacy Practice Act we have a separate set of rules for group homes. So which definition and which set of provisions would apply to group homes? We kind of need to narrow that down. Again, I'm kind of curious, if you think about the kind of medications that you have probably at home in your medicine chest, you probably find that you have a few that you need to throw away. And you take that amount times however many inmates are at a facility, that looks like a lot of medications. We're certainly not suggesting that waste is happening unnecessarily. But we do believe that there's a solution that we can come to maybe outside of this legislation or at least put into statutory language what should be and shouldn't be done for returns. So again, we would be willing to work with you to kind of figure this out because we don't want to cost the taxpayers extra money. But we do believe in safety. So thank you for the opportunity to comment. [LB173]

SENATOR GAY: Thank you, Ms. Cover. Any questions? Senator Pankonin. [LB173]

SENATOR PANKONIN: Thank you, Senator Gay. Ms. Cover, thanks for coming and explaining and also your willingness for your organization to work with these local governments. And I think it was illustrative to understand that there's probably not 93 facilities, because some of these small communities don't have jails. But there is... [LB173]

JONI COVER: Well, I grew up around Grant County and there is, I guess, you could call it a jail in the basement of the courthouse. [LB173]

SENATOR PANKONIN: You think it's...well,... [LB173]

JONI COVER: I don't know if that's considered a facility or not. (Laugh) [LB173]

SENATOR PANKONIN: Well, let me ask you this. [LB173]

JONI COVER: Okay. [LB173]

SENATOR PANKONIN: Are you going to bet that all 93 have facilities? [LB173]

JONI COVER: No. (Laughter) [LB173]

SENATOR PANKONIN: All right, okay, well, that was... [LB173]

JONI COVER: I'm just...I don't want to slight one of the counties, how's that. (Laugh) [LB173]

SENATOR PANKONIN: Okay, well, that was your testimony. That was your testimony. There's probably 50. And I think it is...and I think that's probably a true statement, that there's different practices done in different areas and depending on the relationship with the local pharmacy versus Douglas County, who uses an outstate, I think that's all applicable. And, I guess, I appreciate your organization's willingness to work with maybe some of these larger jurisdictions to come up with either, like you say, rules and regs or procedures that can work or, if it is statute, has enough flexibility to take into account the practices that are done in greater Nebraska as well as the larger municipalities. Because I think there's a couple things here. We even know that there's issues from an environmental standpoint with destroying drugs. So it would be nice to have them utilized. I thought Senator Wallman had a legitimate question as well, I wondered that myself about sending them home with inmates. But I think there is potential problems of liability or resale or through controlled substances that could be tough issues. But I do hope that we can come to a conclusion. And unfortunately we didn't get this done before we got into session. But, hopefully, we can do it while we're...this is kind of a placeholder, so that we can maybe make progress on this. [LB173]

JONI COVER: Well, and I think it depends on the county and the facility too. Because I do know that there are some counties that do send the medications home with the inmates. [LB173]

SENATOR PANKONIN: So it varies. [LB173]

JONI COVER: It varies. [LB173]

SENATOR PANKONIN: Right. [LB173]

JONI COVER: And again, I'm assuming that the pharmacies have to label the

medications properly, just like if you went to the pharmacy and got your medications that same kind of label would have to be on there. So that labeling requirement, I believe, would be on the medicines so it could be sent home. But again, that might a countywide decision. And I...there's not a lot of guidance on how that is to work. itineraries [LB173]

SENATOR PANKONIN: Well,... [LB173]

JONI COVER: And I also know that...I've had some pharmacists tell me that it's an issue between facilities. So if I have an inmate here that I want to transfer to another county, not always is that acceptable... [LB173]

SENATOR PANKONIN: Consistent. [LB173]

JONI COVER: ...acceptable to transfer. And so, you know, that seems kind of silly that another pharmacy would have to redispense the same kind of medication. So I believe there are some things we need to discuss. But I'm just not sure that this legislation will get to the root of the problem. So... [LB173]

SENATOR PANKONIN: But at least it will start the discussion that maybe we can bring to conclusion. [LB173]

JONI COVER: That's exactly right. That's exactly right. [LB173]

SENATOR PANKONIN: Thank you for your testimony. [LB173]

JONI COVER: You're welcome. [LB173]

SENATOR GAY: Thank you. Are there any other questions for Ms. Cover? I don't see any. I would also like to thank you. I think you've been very helpful in the discussion and continuing to find solutions on this. So... [LB173]

JONI COVER: Thank you. [LB173]

SENATOR GAY: ...I appreciate it. That's okay, you can be against and... [LB173]

JONI COVER: Well, whenever the crew wants to meet, (laugh) just let me know. (Laugh) [LB173]

SENATOR GAY: They will. [LB173]

JONI COVER: Thank you very much. [LB173]

SENATOR GAY: All right, thank you. Any other opponents? Anybody in the neutral capacity who would like to speak on this issue? All right, then we'll waive closing on this bill. With that, we'll close LB173 and proceed to LB196. This is change loan agreement provisions under the Rural Health Systems and Professional Incentive Act. [LB173 LB196]

LISA JOHNS: (Exhibit 1) Good afternoon, Senator Gay, members of the Health Committee. My name is Lisa Johns, L-i-s-a J-o-h-n-s. I am the legislative aide for Senator Tim Gay of the 14th Legislative District, here to introduce LB196. LB196 is a very simple bill that offers some clarification with respect to contracts that are entered into under the Nebraska Rural Health Systems and Professional Incentive Act. The act requires the Nebraska Rural Health Advisory Commission to establish a student loan program as well as a loan repayment program. Historically, the commission has selected the recipients of these incentive contracts. However, there is no question as to whether or not these contracts fall under the requirements of legislation that was adopted in 2003 that created a specific process for service contracts. It has been determined that there needs to be legislation to clarify this and exempt these specific incentive contracts from the section of statute that dictates the execution of service contracts. I believe somebody is here from the Rural Health Advisory Commission that can offer more detail as to why this legislation is necessary and important to continue with the rural loan repayment programs. And I believe somebody from the Department of Health and Human Services is here as well. Any questions? [LB196]

SENATOR GAY: Okay. Hold on, let's see, any questions for Ms...okay. Thank you. Proponents. [LB196]

JOANN SCHAEFER: (Exhibit 2) Good afternoon, Senator Gay, members of the Health and Human Services Committee. My name is Joann Schaefer, M.D. That's S-c-h-a-e-f-e-r, and I'm the chief medical officer and the director of the Division of Public Health in the Department of Health and Human Services. I would like to thank Senator Gay for introducing this bill on behalf of the Rural Health Advisory Commission. I am here today to testify in support of LB196. Under the Rural Health Systems and Professional Incentive Act, one of the duties of the Rural Health Advisory Commission is to select recipients of financial incentives available under that act. LB196 exempts these rural incentive agreements from service contract statutes in Sections 73-501 to 73-509. As these sections explain the purpose of them is to establish a standardized, open, and fair process for the selection of contractual services and that the process shall promote and standardize a method for selection for state contracts for services. The Department of Health and Human Services agrees that the rural incentive program agreement should not be treated as service contracts for the following reasons: (1) the rural incentive program is a loan forgiveness program designed to incent certain healthcare professionals to practice in state-designated shortage areas and are considered state aid; (2) the rural incentive program recipients are not independent contractors; (3) the

rural incentive program awards are made by the Rural Health Advisory Commission, as per statute, and not by the department and are not through a competitive bid process; (4) the student loan repayment agreements may not be completed for up to 11 to 14 years or longer if the recipient defaults on the practice obligation that is linked to it. So service contracts are generally short-term contracts with an independent contractor for a specific service. And these...it doesn't meet that criteria. The Department of Health and Human Services supports this. And I would be happy to answer any questions. [LB196]

SENATOR GAY: Thank you, Dr. Schaefer. Any questions from the committee for Dr. Schaefer? Senator Wallman. [LB196]

SENATOR WALLMAN: Thank you, Chairman. Yes, Dr. Schaefer, are we having good luck with people fulfilling their contracts in this here? [LB196]

JOANN SCHAEFER: Yes, we are, we are. It's a rare incident that people aren't fulfilling the contracts. [LB196]

SENATOR WALLMAN: Okay. [LB196]

JOANN SCHAEFER: So it happens, things come up, lives change, people commit to things that they think they're going to be able to fulfill. But in general, it's an excellent program and we sorely need it. [LB196]

SENATOR WALLMAN: I agree. Thank you. [LB196]

JOANN SCHAEFER: You're welcome. [LB196]

SENATOR GAY: Dr. Schaefer, I have a question for you. Are there things, we have some time here, but are there things that we could be doing possibly to improve some of these programs? Because it is an issue, ongoing issue of shortages and some of those things. Are there other opportunities, possibly, not this year because we can no longer introduce bills, how your department, we could help you in anyway? [LB196]

JOANN SCHAEFER: We would be very grateful to work on that with you, if there are any other ways that we could incentivise that are fiscally responsible, that we could pull this off. We have shortage areas in nearly every healthcare profession and shortages in the professionals as a whole. So even as we designate shortage areas they are so vast, they are rural, they are metro. This is impacting the country. So, yes, we'd like to work with you on other things that we can do to make the program better. [LB196]

SENATOR GAY: Yeah, well...Senator Howard. [LB196]

SENATOR HOWARD: Well, I didn't mean to interrupt you. You done? [LB196]

SENATOR GAY: No, go ahead. [LB196]

SENATOR HOWARD: Well, I was just wondering if this included mental health physicians, psychiatrists, that sort of thing? [LB196]

JOANN SCHAEFER: You know I'll have to check on that. [LB196]

SENATOR HOWARD: Okay. [LB196]

JOANN SCHAEFER: I'm not exactly sure which categories of mental health providers are covered under it and which are not. I'm pretty sure they're all covered, but let me double check before I say something incorrect. [LB196]

SENATOR HOWARD: Okay, that would be great. Because that really rang a bell when you were saying the shortages. And I thought of the Lasting Hope facility, which is always suffering from the shortage of psychiatrists. [LB196]

JOANN SCHAEFER: Absolutely. They're really high on the list right now in the country. It's starting to impact. And we have a huge group of healthcare professionals that are getting ready to retire and that's an issue. And then we have a huge group of health professionals that are just coming through the system that have been trained in different respects, and they put a much higher value than historically has been put on lifestyle. And that is really impacting us. Now who's to say whether that's good or bad. With the number of disciplinary actions I have on healthcare professionals because of alcohol and drug abuse, I would wonder if maybe this younger group that has placed a balance on their...or a priority on keeping their life balanced is not a good idea. However, it's impacting people who want to go to a small town. I, myself, considered a small town and then took a look at the schedule and what that would mean as being a mom. And it scared me to death. So you can understand why young professionals are looking at it saying, well, I don't know if I can be on-call, you know, 49, 50 weeks out of the year nearly every day. So it's a challenge for us. And it's a challenge in every capacity of healthcare professional. [LB196]

SENATOR GAY: That would be. Thank you. One more, I guess, question, comment. We do have Senator Howard, Senator Gloor and Senator Stuthman working on public health issues, you know, quite frequently. And I'm sure they'd be more than happy to help you out with these kind of issues ongoing, which we already are. (Laugh) But anyway, I think it's... [LB196]

SENATOR HOWARD: Happy to do it. [LB196]

SENATOR GAY: Yeah. But that's...glad to have you here. [LB196]

JOANN SCHAEFER: Great, thank you. [LB196]

SENATOR GAY: All right. Thank you. Any other proponents? [LB196]

ROGER WELLS: Good afternoon, Senator Gay. My name is Roger Wells, R-o-g-e-r W-e-l-l-s. I'm a physician assistant in St. Paul, Nebraska, and the chairperson of the Rural Health Advisory Commission. I'm here today on behalf of the commission to advise the Legislature concerning the rural health incentive program agreements and to testify in support of LB196, which clarifies and exempts the rural health incentive program agreements from the statutory service contract provisions. I would also like to thank Senator Gay for introduction of LB196 on behalf of the commission. The Rural Health Advisory Commission proposed this piece of legislation to Senator Gay because there have been some discussions administratively whether or not the incentive program agreements should be considered contract and/or included in the procedures established for service contract approval and payments. The Rural Health Systems and Professions Incentive Act, Sections 71-56 (sic) through 50 and...through 71-5650 through 71-5670, created the Rural Health Advisory Commission, a student loan program for medical, dental, and graduate level mental health students and loan repayment program for certain licensed health professionals. Recipients of the rural health incentive program must practice in a state-designated shortage area and are selected by the commission. For your information, the commission also designates the shortage areas for all the specialties under the Rural Health Incentives Act. The commission believes the Rural Incentive Act agreements are not surface contracts as defined in Section 73-502, which states "the contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study or report rather than furnish an end item of supply goods, equipment, or material." In fact, the purpose of this section 73-501 to 73-509 are to establish standardized open and fair process for selection of contractual services and to create an accurate reporting of expended funds for contractual services, end quote. The rural incentive programs are not services but are incentives paid to certain healthcare professionals and students to provide...similar to business incentives. Through these rural incentive programs we're trying to address rural and underserved shortage areas in healthcare needs in Nebraska. Student loans are exempt from income taxation, but if these agreements are determined to be service contracts these student loans may be treated as independent "contractures" and may lose the status of a student loan and a taxation exemption. Student loan payments are currently taxed for income tax purposes, not as independent contractors, but as other income. Loan repayment recipients are not employed by the state of Nebraska for purposes of the Rural Incentive Act, and these healthcare providers are generally employed by hospitals, clinics or other communities they may serve. The commission members are not lawyers. Our understanding of the statute is based upon our interpretation and thus our reason for being here today. The intent of the Rural Health Advisory Commission in

requesting and supporting this bill is for clarification of future administrations. The rural incentive programs have been very successful tools in the recruitment, retention of healthcare professionals to those shortage areas and underserved areas in Nebraska. We believe this clarification makes it clear for everyone involved that the process and the intent of the incentive program agreements and just assist the programs service providers and citizens. I've been in service for 21 years in rural Nebraska. I've enjoyed it. And I'd be happy to answer any of your questions. [LB196]

SENATOR GAY: Thank you, Mr. Wells. Senator Pankonin. [LB196]

SENATOR PANKONIN: Thank you, Senator Gay. Mr. Wells, you've testified before. I've been on here for...this is starting my third year. And we appreciate your involvement in your community, for you taking the time to come down here, and also for your involvement in the commission and the work you've done. And I think it is something that obviously clarifies the situation. The department is for it. Your organization is for it, correct? [LB196]

ROGER WELLS: Yes, sir. [LB196]

SENATOR PANKONIN: So I think this is one of these issues that we ought to be able to get done. But I want to thank you again for your work and taking the time to come down here. So we appreciate it. [LB196]

ROGER WELLS: Well, thank you very much. [LB196]

SENATOR GAY: All right. Any other questions for Mr. Wells? [LB196]

ROGER WELLS: May I answer one question, please? [LB196]

SENATOR GAY: Sure. [LB196]

ROGER WELLS: I'd like to address Senator Howard's question. We do accept loan repayment and requests for psychiatrists, psychologists, and LMHPs. [LB196]

SENATOR HOWARD: Thank you, thank you. [LB196]

SENATOR GAY: Great, thanks for bringing that...I saw his head shaking back there. (Laugh) So thanks for clarifying that. [LB196]

ROGER WELLS: All right. [LB196]

SENATOR GAY: (Exhibits 1 and 3) Okay. Any other proponents who would like to speak on this issue? I don't see any. For the record, though, we do have a letter of

support from the Nebraska Hospital Association and also a letter of support from the Nebraska Dental Association. So put that into the record. Any opponents? Anybody who would like to speak in a neutral capacity? All right. Then we will waive closing and call it a day. Thank you, all. [LB196]

Disposition of Bills:

LB25 - Placed on General File with amendments.
LB91 - Placed on General File.
LB173 - Placed on General File.
LB196 - Placed on General File.

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Chairperson Committee Clerk