[LB828 LB902 LB903 LB904 LB922]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 28, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB922, LB828, LB902, LB903, and LB904. 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: All right, we'll get started here. We'll do a little housekeeping duties while we're waiting for Senator Pankonin and Campbell to come. But welcome to Health and Human Services Committee. If you have a phone, could you please silence your phone? Appreciate it. We've got five bills to hear today so we make pretty good time here actually. We run a timing system so if it's your first time here the introducer of the bill gets as long as they want to explain the bill. After that, proponents and opponents get five minutes to talk, and if there are any questions that, from the senators to the testifier, that doesn't count against the five minutes. So that can take as long as we need to answer our questions. We go proponents, opponents, and then anyone neutral on a subject. So we will go from there. We do have testifier sheets. There are a few on the table but they're on the sides of the room. It speeds things up tremendously if you fill those out before you come up to testify. You can give them to the clerk and she will take care of those. When you come up, please state your name and spell it out because these are transcribed about in the middle of the summer so they need to remember what was going on. So we try to put everything on record best we can. I don't know if anyone has, if other senators have bills they're going to be introducing today, but if they get up and go during the process, they're probably going to introduce a bill in another committee because we're still in the hearing stages of bill introduction. So with that, I'm Senator Tim Gay, the Chairman of the committee, and we'll introduce ourselves starting to my right.

MICHELLE CHAFFEE: I'm Michelle Chaffee, legal counsel.

SENATOR GLOOR: I'm Senator Mike Gloor, District 35, Grand Island.

SENATOR STUTHMAN: Senator Arnie Stuthman, District 22, from Columbus area.

SENATOR HOWARD: I'm Senator Gwen Howard, District 9 in Omaha.

SENATOR WALLMAN: Senator Wallman, District 30.

DENISE LEONARD: I'm Denise Leonard. I'm the committee clerk.

SENATOR GAY: Thank you. And our pages are here to assist you in any way. They do

a great job. If you have handouts or anything you want to hand out, they'll take care of that and take care of you. Senator Kathy Campbell is joining us and Senator Dave Pankonin will be joining us a little later. So with that, Senator Coash, LB922. Go ahead. [LB922]

SENATOR COASH: Thank you, Chairman Gay, members of the Health and Human Services Committee. For the record, I am Colby Coash, C-o-a-s-h, and I represent Legislative District 27. Today I'm here to introduce LB922. LB922 is a simple bill. It moves the certification of medication aide licenses from a two-year certification to a four-year certification. I brought this bill because providers of services who use med aides, who provide services to the elderly and people with disabilities, are struggling. They struggle to provide quality service within the cost restraints that we as a Legislature has set upon them. As a body, we have been unable to address provider rates at a pace that keeps up with providers' increasing costs of doing business. In an effort to assist providers in containing their costs without sacrificing quality or safety of vulnerable Nebraskans, I bring LB922. I would not bring this bill if I thought safety would be comprised by extending the certification license. Presently, certified medication aides are required to be retested and certified every two years, which I believe is in excess of what is needed. LB922, by extending the period of validity from two to four years, would constitute a meaningful savings while continuing to protect client-patient safety. This important savings would come not from the certification fee, which is modest, but from the time a med aide must be taken away from their duties and responsibilities in order to be recertified, and the labor costs of training that can become...is increasingly burdensome to the providers. In a small way, I believe this bill gives a straightforward, simple mechanism for providers to contain their costs. Testifiers behind me will illustrate how this effect of a shorter certification tenure and increasing fees to administer it. Thank you. I'll be happy to answer any questions. [LB922]

SENATOR GAY: Thank you, Senator Coash. Are there any questions? I don't see any right now. Are you going to be around though? [LB922]

SENATOR COASH: Yep. I'll stick around for closing. Thank you. [LB922]

SENATOR GAY: All right. Thank you. How many proponents are there that will be speaking? Okay. Are there any opponents going to be speaking? Okay. Senator Dave Pankonin has joined us as well. [LB922]

ALAN ZAVODNY: (Exhibit 1) Senator Gay, members of the committee, thank you for this opportunity today. For the record, my name is Alan Zavodny, A-l-a-n Z-a-v-o-d-n-y. I'm the chief executive officer for NorthStar Services and I'm also president of the Nebraska Association of Service Providers. I should also note that I was on the original work group that worked on the issues that ended up creating the blueprint for the Medication Aide Act. I'd like to also note that our medication aides work under nurses

that consistently review and evaluate the competency of medication aides. They are, after all, working under their licenses. I come today to ask that you advance LB922 out of committee and support it on the floor. Late last year, and even before, when it became evident that our state revenues were clearly lower and that current governmental expenditures were not sustainable, agencies that provide supports for people with developmental disabilities responded to a call to find ways to help on the expense side. This legislation is the result of those discussions. It is important to remember that even while the Legislature kept a 1 percent increase to providers, our costs are fast increasing and we remain 6-7 percent below the state of Nebraska's own funding methodology which supposedly reflects reasonable costs to provide our services. I mention that because our cost to have med aides licensed has gone from $5 for three years to the current $18 for two years. I'm sure that this cost is justified to adhere to the directive that fees should cover the costs to the state to administer the Medication Aide Act. I feel obligated to share that while serving on the committee we were told that fees would be kept nominal. The costs passed on to providers have increased 360 percent and the number of years that a license was good has been reduced. The cost is passed to providers as yet another unfunded mandate. It represents a shift from the bottom line of regulation and licensure to providers. We also would encourage you to see that fees are not just doubled to cover the four-year time period. Thirty-six dollars for a license would defeat the purpose. Last fiscal year, we paid $3,254 in licensing fees. This year, from the beginning of our fiscal year to today, we have spent $2,214. We have roughly 460 medication aides and 200 are up for relicensure this year. We currently also experience approximately 40 percent turnover. Simple math indicates that as things are currently, we would have 460 people needing to be recertified every two years in addition to the 180 people that each year are certified as a result of turnover. For argument's sake, that would project to 414 people at $18 or $7,452 annually. And that isn't even cost...add in the additional costs we have for the nurses that we've had to hire to help us with this program and the staff time it takes to get them trained to be med aides. So that jumps that up significantly. In closing, this legislation would be a good start to helping providers cut costs. [LB922]

SENATOR GAY: Thank you. Senator Stuthman. [LB922]

SENATOR STUTHMAN: Thank you, Senator Gay. Alan, nice to see you here again. [LB922]

ALAN ZAVODNY: Nice to see you. [LB922]

SENATOR STUTHMAN: We were just talking about you last night and hadn't seen you this year, so. [LB922]

ALAN ZAVODNY: You hang out at better places than I do. (Laughter) [LB922]

SENATOR STUTHMAN: As you remember, you know, I introduced the bill to change it from the three years to the two years and it was passed. And I felt very good about that to get it on a two-year rotation and it was $5 for three years at that time, you know. Who is the one that sets the fees for that, that it's gone to the $18? I was not aware that it was going to go to that price at this time. [LB922]

ALAN ZAVODNY: I think that's done within the department itself. I don't know if it's a board or how they set their fees, but the department sets the requirements and then they also set how much it's going to be we pay to do it, and so. [LB922]

SENATOR STUTHMAN: So, in other words, the $18 that's currently for two years right now, if we go to the four years it should probably stay for the $18? Because it's just having them licensed every four years, so the workload should be the same. [LB922]

ALAN ZAVODNY: That would be my understanding, but that question is probably better asked of regulation and licensure, so. [LB922]

SENATOR STUTHMAN: Okay. [LB922]

ALAN ZAVODNY: I don't want them any madder at me than they will be after today, so. [LB922]

SENATOR STUTHMAN: But, yeah, this is a concern that I have, you know, if we went from three years to two years and it was passed and accepted, why didn't we go from three years to four years originally? [LB922]

ALAN ZAVODNY: I don't know if you remember, but I called you shortly after your last idea, and we always got along fine and we got along fine after that, but I didn't like it much. And I think your point is well taken. It comes down to money at some point or another, and it always seems to. But you can play with the number of years to some extent. It comes down to how much does the darn thing cost, and that's what we're really trying to keep an eye on. And I know you're not going to give us any more money this year. You can't. You can't give us money you don't have. So we came to you, saying here is an expense that would help us out and we're offering it as our part to try to help out on that end. [LB922]

SENATOR STUTHMAN: And I truly appreciate that for that reason. But the reason I felt it was going to two years, it would be, you know, a biennial cycle instead of, you know, three years and three years and the rotation part of it there, so. [LB922]

ALAN ZAVODNY: And I also recall that during that time period there was a big push from the executive branch and from others saying, you know, these state agencies should be able to charge the amount it costs them to administer the programs. And I get

that. But I think it's important to point out the other side, that then that's done on our back and we get no more money to try to get it done. It's a shift. [LB922]

SENATOR STUTHMAN: Yes. It's a burden shift. [LB922]

ALAN ZAVODNY: Yes, it is. [LB922]

SENATOR STUTHMAN: So thank you, Alan. [LB922]

ALAN ZAVODNY: Thank you. [LB922]

SENATOR GAY: Senator Campbell. [LB922]

SENATOR CAMPBELL: Thank you, Chairman Gay. My question, Mr. Zavodny, is in your facilities are there other positions that it's every four years rather than every two years? Or is two years the norm for the license? [LB922]

ALAN ZAVODNY: We don't really have anything else that requires licensure. [LB922]

SENATOR CAMPBELL: Okay. [LB922]

ALAN ZAVODNY: That's the only position that...and the reason for that, certainly meaning you want to make sure you do a little deeper check in what people's backgrounds are. You want to make sure that they're competent. And we have nurses who stay on top of that. They look at that monthly, at a minimum, to say how many med errors the people had. And we've actually had nurses saying I'm not comfortable enough with this person anymore and we've had to take them off the registry because it's a tough thing to get. And with what we're able to pay people, some of them are GED level education, it's a pretty tough thing to do and we're expecting a lot out of them. And I know when I served on the committee, scope of practice was a big deal. So we...that's the only thing we license and nothing else really applies to us in that manner. [LB922]

SENATOR CAMPBELL: Thank you. [LB922]

SENATOR GAY: Any other questions? I don't see any. Thank you. Other proponents? [LB922]

ROGER STORTENBECKER : (Exhibit 2) Good afternoon, Mr. Chairman and members of the committee. My name is Roger Stortenbecker, R-o-g-e-r S-t-o-r-t-e-n-b-e-c-k-e-r. I'm the chief operating officer for Developmental Services of Nebraska. Today I'm here testifying on behalf of and at the request of the Nebraska Provider Network which represents many, many of the community-based developmental disability providers in Nebraska. As Senator Stuthman pointed out earlier and is part of my testimony here,

when he introduced the bill to change from a triennial to a biennial cycle, the intent for the bill was defined as to harmonize it with that two-year cycle. However, as we continue to train new medication aides, new med aides are being renewed every month of every year anyhow, and it would seem that if we harmonize it with a four-year cycle it's still on that two-year increment. So it may still get us to some of that need that public health had to have it on that two-year, easy-to-track mechanism. At the same time then, and it was mentioned earlier, we've gone from a $5 fee when this all began, we went to $8 an hour at $18 every two years for the registration. Developmental Services of Nebraska...in order to give you an idea, I worked with Bob Brinker at ENCOR. It's a large service provider in Omaha. And we put together some numbers here to give you some kind of an idea of what this means to us if it goes to a four-year cycle in terms of savings. Developmental Services of Nebraska renewed 110 med aides over the last two years, and ENCOR renewed 457. Now that's a function of the size of the programs. DSN is quite a bit smaller than ENCOR is. Now assuming no increases in the registration fees or other costs that may be put upon us, DSN would save up to $6,200. Now I want to emphasize this. Those are hard numbers in terms of I've only included the cost in these figures of the staff time, what we spend on our nurses who do the training part of our med aide training, and then the registration fees. I did not include any of, like, say, my costs or admin or those kinds of things. ENCOR, Bob's figures were that by going to a four-year cycle, ENCOR would save $43,000. By count of persons served, because we all have different numbers of full-time and part-time staff and trying to figure that out didn't seem very clean to me, so I went with the number of people receiving supports. That stays a fairly constant number. So using that number, DSN and ENCOR together represent about 24 percent of the services provided in Nebraska. So projecting that savings out from DSN and ENCOR, we project $197,000 that would be saved in staff costs and registration fees over a two-year...going to a four-year over a two-year renewal cycle. Something I would like to point out in addition to the cost savings is that this...there's very low risk to persons receiving services. Every year under the community-based DD services regulations, every employee, which will include the med aides, has to go through criminal history background checks. We do a pretty extensive research on backgrounds so we know exactly who's coming in to provide services, who has access to medications, and who's going to be providing medications and supports. We keep the bad guys out. We do a really good job of that. Providers will continue to train new med aides every year. Probably every month there's a class somewhere going through, so we'll always have this influx of new med aides coming through. Most providers, if they find errors...they're tracking medication errors every day at every location. If they find errors, they send those staff right back through the med aide training if that's what it takes in order to make sure a staff person has the skills they need to deliver medications according to the five rights. Those medication aides continue to be supervised then by licensed practitioners as Alan Zavodny had mentioned earlier. So we have a lot of protections in place and it's just our opinion that going from a two- to a four-year cycle will not have an adverse effect on people receiving services. I'd be happy to answer questions. [LB922]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you, Roger. [LB922]

ROGER STORTENBECKER: Thank you. [LB922]

SENATOR GAY: Other proponents? [LB922]

SEPTEMBER STONE: Members of the Health Committee, thank you for the opportunity to speak today in support of LB922. My name is September Stone. I'm a registered nurse and I'm the administrator of the Nebraska Health Care Learning Center which is a postsecondary school committed to training for long-term care professionals. This school operates with the Nebraska Health Care Association, which is a trade association that represents approximately 85 percent of nursing homes and assisted livings in Nebraska. The school provides training to individuals providing care in long-term care facilities, assisted-living facilities, and the home. The school, among other training, provides courses in nurse aide training and medication aide training. We also...I'm the author and we publish and sell textbooks for nurse aide and medication aide training to colleges around the state. I teach the medication aide training at our school...or I'm one of the instructors. In addition to the initial training program of 40 hours, medication aides are required to have a minimum of 12 additional hours of annual training. Once trained and competency tested, a medication aide is allowed to be placed on the state registry to show the aide is eligible for employment as a medication aide in the state. Prior to 2008, medication aides obviously renewed their registration every three years, and that statute was changed to every two years. In 2008, Nebraska Health Care Association opposed this change as an undue burden on the medication aide related to the costs of the registry renewal without an identified benefit to the safety of our elders in Nebraska. Medication aides primarily work in long-term care nursing homes and assisted-living facilities, as well as the ICF/MRs. All medication aides work with someone who provides direction and monitoring of the medications and the recipients of those medications. Nursing homes and assisted livings are routinely inspected by the state to ensure high standards of care and safety of our vulnerable elders. Consistently, research has shown a reduction in medication error rates due to medication aides' ability to focus on the task of medication provision in contrast to licensed nurses who have multiple responsibilities in these settings. Reference to this research I can provide that support the effectiveness of medication aides in safely providing medications. The employment setting currently provides competency assessments for all medication aides. It is unclear to me what the benefit of a two-year renewal is as the renewal process is separate from the annual education requirements required in order to work. The four-year renewal will not interfere with the ability of the medication aide to safely provide medications. We support the change to every four years as reducing the unnecessary burden on state resources and on the medication aide. [LB922]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. Any other proponents? We'll hear from opponents. How many opponents want to speak on this? [LB922]

JOANN SCHAEFER: (Exhibit 3) Good afternoon, Senator Gay, members of the committee. For the record, I am Dr. Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, MD. And for the record, I'm the Chief Medical Officer and the director of the Division of Public Health, Department of Health and Human Services. I'm here testifying on behalf of the department in opposition to LB922. LB922 makes a revision related to the renewal requirement of the Medication Aide Registry. This bill would extend the time from two to every four years, as discussed already. The department opposes the bill because it changes the credential schedule, and I'm just going to touch on my testimony here and it gets down to the details that have been already discussed. Basically, we oppose it on two issues. It is a safety issue for us and you know this was first brought into fruition because of checking for the five rights when you are administering medication. And those five rights are right route, right medication, right dose, right time, right patient when you are administering a medication to a patient. And it has been felt that for all the other professions that have to renew and look at their competency every two years, this is a bare minimum requirement to reassure that you have that competency and that you can prove that competency, and that a two-year cycle was realistic. In addition, when we set up the Uniform Credentialing Act we did that cycle on two years. It is true the medication aides are not in the Uniform Credentialing Act but the department thought it was wise to keep that two-year cycle and that uniformity consistent. It is also true that we are cash-based and that our fees are set based on the cost of the program. Additionally, the criminal activity, all renewals...and this is one of the few programs that every single renewal that comes in gets a background check. And given this population of licensees, we've always felt that that was a wise investment, and the background checks that are done, given the vulnerability of the population that they work with and given the educational level that they have. So it has been considered a wise investment of money at that time. We believe it's good public policy to keep it at this and with that I think I'll just cut to the questions because I know there are a few. [LB922]

SENATOR GAY: I saw Senator Stuthman. I always see him first because he's right next to me. (Laugh) Senator Stuthman. [LB922]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Schaefer, thank you for testifying. [LB922]

JOANN SCHAEFER: You bet. [LB922]

SENATOR STUTHMAN: And I see the reason why, you know, it should stay at two years. But in my opinion the issue is, would you be willing or the ones that set the prices

be willing to cut that price from $18 for two years down to $12? I think that's the issue. [LB922]

JOANN SCHAEFER: Well...and let me touch on that. You know, we set our fees...and there's no fluff in what we do. We set our fees based on the pure cost of what it takes to do our business. So the things that cost the department are the two people that run the program and there are 20,000 medication aides in the state. So two people running through 20,000 applications every two years, that's a sizeable amount of work. And they all get background checks, so when you think about the amount of work that that generates. There's also due process that comes into it, so there's amount of attorney coverage that is covered for when the department has to...when...just the due process, when you deny an application and people have the right to come and have a hearing and the administrative process for that. So there's all the legal piece that covers that. It covers that piece of it. And so...and then the piece to cover the expense of the background check. So it's not an inexpensive endeavor. So I am very sensitive to the cost of what it costs in healthcare and what a costs a small business to do this, what it costs a provider. I am acutely aware of what that would be and what that is today. And I also would point out that to about 25 percent of facilities cover the costs, this $18 every two years, and they're not statutorily required to cover the cost. They do that. And it's very kind of them to do that for the individuals who are...because these people are not making a lot of money. But $9 every year for your profession is what these folks are paying and the facilities are covering that. And it's my understanding that that's also not where they're incurring the most of their costs. It's not so much the $18 a year. It's the training that we are requiring them to do. So if it's...if they're...if the training is the piece that's costing them a lot, then we should be working with them on trying to figure out how we can get that training more cost-effective for the facilities. And I'm definitely willing to work with them on that if there's anything that we can do to get that cost of the training down. Bottom line is, is they still think the training needs to be done. I mean, you know, medication passing...you know, if you read some of the reports that have occurred, you know, medication errors are one of the single highest incidents of cause of death in this country in the healthcare system. Certainly not all by medication aides by any means, and I don't mean to imply that, but it is a risky business to be passing medications to anybody, whether it's coming from a physician, a nurse, or a medication aide. It's a dangerous business. [LB922]

SENATOR STUTHMAN: Thank you for those comments. The only thing that really concerns me then is, and I truly agree with all of your statements, is the fact that, you know, when it comes down to the bottom layer, you know, you're taking care of all of your increased costs and it had to go up to the $18 and everything like that. But then, you know, the Legislature kept to 1 percent increase to the providers and in order for them to employ the people and what they can afford to pay, it really puts them tight squeeze as far as, and getting and maintaining and keeping employees at that minimal, well, low rate of wages for those individuals. That's where I'm concerned with. You

know, how can we provide the job that requires so much, and yes, you're doing a wonderful job. But it just squeezes that bottom person, that provider just a little tighter and a little tighter, and then pretty soon we just don't have anybody even applying for the job. That's the concern that I have, so. And thank you for your comments you had. [LB922]

JOANN SCHAEFER: You're welcome. [LB922]

SENATOR GAY: Senator Wallman. [LB922]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, thanks for being here, Doctor. I have a couple questions. You know, do we have a massive issue with errors in our medication process, you know, dispensing medication? [LB922]

JOANN SCHAEFER: Well, according to some of the disciplinary actions that we've taken just in healthcare professionals in general, I can tell you that, yes, we do have medication errors. And what we don't know...I can tell you that from the ones that we catch, we know that's the tip of the iceberg. So... [LB922]

SENATOR WALLMAN: So then they lose their certification? [LB922]

JOANN SCHAEFER: No, not necessarily. No. And I can't tell you how many we don't catch. That's what we try to do. We try to do this by training and making sure that, you know, that we're proving competency. [LB922]

SENATOR WALLMAN: Yeah, hopefully with this new electronic meds and these packaging, it would be easier to do it right. [LB922]

JOANN SCHAEFER: Well, I think we're getting better and better every day. I mean, more and more safeguards are coming into medicine every day that are making medication errors, you know, less and less possible. [LB922]

SENATOR WALLMAN: Okay. Then go to plan B. If I'm a doctor, do I have to get recertified every two years? [LB922]

JOANN SCHAEFER: Yeah. [LB922]

SENATOR WALLMAN: A license? [LB922]

JOANN SCHAEFER: Yep. [LB922]

SENATOR WALLMAN: Every two years? [LB922]

JOANN SCHAEFER: Every two years, 50 hours of CME. [LB922]

SENATOR WALLMAN: Thank you. [LB922]

SENATOR GAY: Senator Pankonin. [LB922]

SENATOR PANKONIN: Thank you, Chairman Gay. Thank you, Doctor, for being here today. I'm just trying to get these numbers straight. I've heard that one of our big concerns is the criminal background work that's done, which on the license would be every two years. But I've heard that...I'm confused here. Do we do it every year, we require it of folks for the providers to do it every year, or? [LB922]

JOANN SCHAEFER: It's for the renewal every two years. [LB922]

SENATOR PANKONIN: Okay. But one of the providers said they do it...so that would be a personal choice of that provider to do it every year? [LB922]

JOANN SCHAEFER: That's my understanding. I... [LB922]

SENATOR PANKONIN: And we've...I've also heard that there's 40 percent turnover. I assume that's out of the first year of employment, the statistic there's a lot of turnover in these workers. [LB922]

JOANN SCHAEFER: I would have to leave that for a provider to (inaudible). [LB922]

SENATOR PANKONIN: You don't know. Well, the point I'm getting at is, if we have that high of turnover, how many people even get to the four-year area? And what kind of experience have you had on criminal background checks? Has there been a lot of problems that are...? [LB922]

JOANN SCHAEFER: Yeah, there are. [LB922]

SENATOR PANKONIN: There are. [LB922]

JOANN SCHAEFER: There are. [LB922]

SENATOR PANKONIN: Okay. [LB922]

JOANN SCHAEFER: So, I mean, it's something that we do need to follow up on and make sure that...I mean, it's a group that's vulnerable to having a lot of issues. So we don't want to just...we felt that it's a very valuable thing to do criminal background checks are the folks that are doing medication aides...or the folks that are applying for medication aides. [LB922]

SENATOR PANKONIN: So as a follow-up, would it be 1 percent, 2 percent? I mean, what's your general...? [LB922]

JOANN SCHAEFER: Gosh, I can get that for you. We can run some numbers for you out of our system. But I wouldn't want to shoot from the hip on that because I don't do that every day. [LB922]

SENATOR PANKONIN: All right. I would be interested in that or find out that. [LB922]

JOANN SCHAEFER: Okay. We will get that for you. [LB922]

SENATOR PANKONIN: Thank you. [LB922]

SENATOR GAY: Senator Campbell. [LB922]

SENATOR CAMPBELL: Thank you, Senator Gay. Dr. Schaefer, I just want to be very clear. I'm sort of like Senator Pankonin and I want to make sure I'm taking the right notes. Are you saying that generally across the medical practitioners that it's every two years? This would be the anomaly? [LB922]

JOANN SCHAEFER: Yes. [LB922]

SENATOR CAMPBELL: Okay. Thank you. [LB922]

JOANN SCHAEFER: And it would cost...it would cost, for us to tinker the system to switch it. Because our computer systems are set up to automatically do. So, I mean, there's a small cost. I don't know what that is but every time that we go in and tinker with our computer, just our IT system alone to switch the programming, there's a small cost. It's undetermined. [LB922]

SENATOR PANKONIN: There is a fiscal note that tells you that. [LB922]

JOANN SCHAEFER: It's undetermined because we don't...it's not a straight-out doubling. It's not a straight-out...you know, some costs would be...did you have a question? [LB922]

SENATOR GAY: Yeah, are you done? [LB922]

SENATOR CAMPBELL: Yes, I am. Thank you. [LB922]

SENATOR GAY: The fiscal note says $1,475. But that doesn't include any programming costs, and those programming costs are usually $45,000. How they come up with these

numbers, I don't know, but anyway that's what it is every time we get one of those. The question I was going to get to anyway, and since we're on this, is just because it's good for the state, our program, every...I mean, that always kind of bothered me, what's good for us is...you know, we can change these fees any time we want but yet those people have to suffer on it. And I've seen it, on not just this case, others. So on that, I mean, as times go on, you talked about it, you gave me a number. Two people checking out, how many on the licensing department in this particular thing, you stated that... [LB922]

JOANN SCHAEFER: Twenty thousand. [LB922]

SENATOR GAY: Two people are in charge of 20,000. Okay. That just kind of is interesting because when we did cuts before I was always worried about cutting. But if we're having a problem there and you've got two people checking it, the chances...when you say the tip of the iceberg it scares me, that you're going to catch some of these situations. I mean, the point I'm getting at, is that just for these medication aides, you've got two people? [LB922]

JOANN SCHAEFER: Yes. [LB922]

SENATOR GAY: So in the whole licensing division then, are you shorthanded doing that? [LB922]

JOANN SCHAEFER: Well, but you've got to understand where the people who are that are going to be reporting problems with them, that, you know, if there's an error out there, those two people are not the ones who go out and do the investigations and that. [LB922]

SENATOR GAY: Yeah. So you've got them out in the field. [LB922]

JOANN SCHAEFER: No, they're not the ones out in the field. They are the ones that are... [LB922]

SENATOR GAY: Yeah, okay. These are just the processors. [LB922]

JOANN SCHAEFER: ...the processors of the licensing. [LB922]

SENATOR GAY: Okay, that's the point I was getting at. [LB922]

JOANN SCHAEFER: Yeah. Oh, sorry. [LB922]

SENATOR GAY: I was getting a little nervous there, but it was like, oh my God, we really cut you to the bone. Well, we cut that thing we didn't even know we were cutting. [LB922]

JOANN SCHAEFER: No, no. No, the investigations unit is separate. But the investigations unit is a separate thing, but part of their salaries and fees are, you know, part of their salaries are built into the fees. [LB922]

SENATOR GAY: Yeah. So a medication aide, how much is the nurse overseeing them? I mean, how...do they oversee several, do you know this, or...you don't have to answer that question if you don't know. But do they oversee six people, eight people, one-on-one supervision? [LB922]

JOANN SCHAEFER: I think that's spelled out in regulation and someone probably here knows that better than I do. But it's...I'd have to look that up in the regulations. But they do oversee. And they oversee several, I don't know how many, at a time. And the nurses are fantastic at doing that. But it...and there's some oversight. But I couldn't tell you and I'd want to look back at the regulations of it. There is some oversight, there's no doubt. [LB922]

SENATOR GAY: Well, we can check into that, too, or maybe someone else will answer that. [LB922]

JOANN SCHAEFER: Yeah. You bet. [LB922]

SENATOR GAY: Sorry, Senator Howard. Senator Howard. [LB922]

SENATOR HOWARD: Thank you, Chairman Gay. I really want to thank you for your diligence on this matter. It's a big responsibility when people are hired to take care of vulnerable people especially, and I think the background checks are nothing to scoff at, nothing to disregard. And the medication issue, there's...you and I have talked about this, and some of the things I learned in talking with you I wouldn't have guessed and really were very shocking to me. I just happened to read a story yesterday out of Chicago where they did a sweep of individuals working in nursing facilities and found 22 convicted felons that were working with that population. So again thank you for all that you do on that. [LB922]

JOANN SCHAEFER: You're welcome. [LB922]

SENATOR GAY: Senator Gloor. [LB922]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you, Dr. Schaefer. Just a very relatively simple question I think. I'm guessing that a medication aide has a very limited scope of practice. They don't get involved in the IV therapies or anything of that sort. [LB922]

JOANN SCHAEFER: You are correct. That's correct. [LB922]

SENATOR GLOOR: It's just the distribution of some...a limited formulary of medications? [LB922]

JOANN SCHAEFER: Right. [LB922]

SENATOR GLOOR: Controlled substances? Can they be involved in distributing controlled substances? [LB922]

JOANN SCHAEFER: I believe so. [LB922]

SENATOR GLOOR: Okay. Thank you. [LB922]

SENATOR GAY: All right. Any other questions for Dr. Schaefer? I don't see any. Thank you very much. [LB922]

JOANN SCHAEFER: Great. Thanks. [LB922]

DON WESELY: (Exhibit 4) Chairman Gay, members of the...Public Health and Welfare Committee. I went back about 20 years. Health and Human Services Committee. I'm Don Wesely, representing the Nebraska Nurses Association. And we, too, come in opposition to LB922 and recognize the important role that medication aides do play. But the nurses are the ones who supervise these individuals and work with them across the state of Nebraska. And their concern is basically twofold and you'll see it in the letter, basically. Medication changes over the years are very rapid and in a two-year time frame a lot can change. A four-year time frame is an even longer period of time to try and keep up. I know they have the continuing education, but the chance to make sure that they're up-to-date and with the renewal every two years is a chance to make sure they're actually understanding what they're doing and the importance of it. And secondly, and again it ties back, Senator Campbell, you talked about others are every two years. Nurses are every two years. The other professions are every two years. And it's just a practice that seems to work for other professions and we think a medication aide is doing important work and ought to, likewise, have a two-year cycle on that. And I think that's the main points we want to make and appreciate your attention. [LB922]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB922]

DON WESELY: Thank you. [LB922]

SENATOR GAY: Any other opponents? Anyone neutral? Senator Coash, do you want to close? [LB922]

SENATOR COASH: Thank you, Chairman Gay and members of the HHS Committee. We had a good hearing. I appreciate the feedback. I'm going to touch on a couple things that the opponents mentioned and clarify a few things. And Senator Stuthman, you hit on this when you were talking with one of the testifiers. Costs for providing services continue to rise and we as a Legislature have not done what we...we've done what we can do but it hasn't been enough to meet those needs. You talk about the $5 to $18. We've got to help. We've got to do something otherwise we're going to start losing providers. And it might not be this issue that takes providers out. But you put this issue onto every other thing that happens when we make decisions and those costs get pushed down, we could be in trouble. Somebody asked about the costs. The cost is in the labor of the ongoing training, okay? Senator (sic) Schaefer mentioned that statutorily providers are not required to pay that licensing fee. Many providers pick that up on behalf. Because if you're paying a $9-an-hour staff, you've got to do that otherwise you can't even keep a $9-an-hour staff. There was evidence presented that I wanted to reemphasize. You don't get to be a med aide in just in and of itself in Nebraska. You can't just be a med aide. You have to have a nurse who says I will be on your license. So if I'm a med aide, I've got to have a nurse who says...who takes responsibility for me. And that's a big responsibility and I understand Mr. Wesely's concern about that. But that provides the protection, okay? That nurse is not going to put his or her name on your license if you're not competent. And that nurse is going to continue to assess your competency, otherwise that nurse is going to call and say I want off this person's license. So I believe that that constant review and competency is taken care of. Another thing. Providers who employ med aides are mandatory reporters, okay? If they employ a med aide who is making mistakes and medication errors, they are required to contact the department and say we have a med aide that we employ; they have been making mistakes; we want you to know that because that might affect their license. And sometimes they do pull those licenses. That's the department's responsibility. Senator Pankonin, you asked about the background checks. The Med Aide Act states that when you go to renew your med aide, you have to redo the background checks...or the department does that. Okay? Other statutes require these same providers to do background checks on their own employees every year, so that's where that comes from. So if you're a DD provider, the DD Act says you've got to do these background checks annually, and the same with the healthcare...and other regulations govern that. And so there's a lot of dual work that's going on, on behalf of the...or by the providers, because they have one set of rules that says you've got to do it every year. So providers are catching the bad guys. The costs of the program--and I'm glad there were some questions about this--the costs of administering these licenses, right now what the department is telling us, that's $18. Okay? So...and that's supposed to be tied to the issuance of that license. If we want to reduce the work of HHS because they're not seeing them as frequently, I think this committee could find lots of things for HHS to be working on, so...and I can help you with that, as well. So in closing, I appreciate all the testimony. I would ask the committee to look at this and work with me and members to

see what we can do to push this out. Because this is a small thing, I believe, that we can do to assist providers without compromising safety of the people that they're in charge of. Thank you. [LB922]

SENATOR GAY: Thank you, Senator Coash. Are there questions for Senator Coash? Senator Howard. [LB922]

SENATOR HOWARD: Thank you. Thank you, Mr. Chairman. Just a couple of quick questions. Did you say the nurses supervise these individuals? [LB922]

SENATOR COASH: That's correct. [LB922]

SENATOR HOWARD: And the nurses are opposed to the decrease in the...or the abbreviating the time to two years. The second thing I'd ask is are these credit hours that they are required to take, are the available on-line at no cost to them? We learned yesterday they are available to the doctors on-line and so I would assume there would be other courses, too. [LB922]

SENATOR COASH: If they are, I'm not aware of them. But it doesn't take care of the costs. You still...if it's an employee and you say...whether you have to put an instructor in front of them or put that employee in front of a computer for six hours, you're still paying them per hour. So being on-line may be more convenient but I don't...it's not going to affect the cost of the training. [LB922]

SENATOR HOWARD: Being on-line may eliminate the cost of a class or a seminar or a, you know, whatever the people have typically taken in the past. [LB922]

SENATOR COASH: You might be able...I'll grant you that. You might be...if on-line ability was out there you might be able to shave some costs of that, but you're still going to have to pay that employee to sit to do that for whatever time that might be. [LB922]

SENATOR HOWARD: Okay. Thank you. [LB922]

SENATOR GAY: I've got a question for you. Do you know the turnover ratio or the cost of the...? You said they're not the highest dollar employees per se, but is there a high turnover ratio? Senator Pankonin asked that earlier and I know maybe you can only speak from your own experiences, but. [LB922]

SENATOR COASH: Sure. I can speak from my experience working in the field of developmental disabilities. Turnover is high, and there's a lot of factors that go into that. You know, unfortunately we, as a community and as a state, haven't been able to, through wages, elevate a person who does this noble work to the level of a career. And so what you find is a lot of turnover. For that...it's hard to make...it's hard to make a

living for your family doing this work. So people frequently use it a stepping stone to something higher or they find something they can support their families better. But I can tell you from one industry, the turnover is close to 80 percent. [LB922]

SENATOR GAY: Close to 80 percent? [LB922]

SENATOR COASH: Yes. [LB922]

SENATOR GAY: But there's no firm statistics. You're just...maybe you can get those. [LB922]

SENATOR COASH: Well, there's plenty of studies...from...you know, I can tell you, from one industry it's close to 80. From other industries, they're going to... [LB922]

SENATOR GAY: So when they come on board they're getting their training there. [LB922]

SENATOR COASH: That's right. [LB922]

SENATOR GAY: And then 80 percent turnover. [LB922]

SENATOR COASH: Yeah. So it's not just the one-time, you know. If we could freeze everybody and say you'll do this work forever, you know, you wouldn't see me here today. But you'd see providers, they continually have to pull new staff in. It's the same as happened at BSDC. They just continued to float in. [LB922]

SENATOR GAY: Okay. Any other questions? I don't see any. Thank you, Senator Coash. [LB922]

SENATOR COASH: Thank you. [LB922]

SENATOR GAY: All right. We'll move on to LB828, Senator Gloor. [LB828]

SENATOR GLOOR: Thank you, Chairman Gay and fellow members of the committee. My name is Mike Gloor, G-l-o-o-r, introducing LB828, which events the Medical Radiography Practice Act to clarify the current scope of practice for licensed medical radiographers. I know this committee loves to hear the term "scope of practice" but I can assure you that we've worked very hard to make sure that this is a small technical tweak. Prior to licensing provisions for medical radiographers being transferred to the Uniform Credentialing Act several years ago, medical radiographers were licensed under the Radiation Control Act. Under the Radiation Control Act, the definition for medical radiography was specific to the application of radiation to patients and how the use of x-ray equipment and the positioning of patients directly affected the dose of

radiation received by those patients. This was the old school approach towards how radiographers or radiology techs were utilized. However, this old definition does not accurately reflect the existing education or examination requirements that must be met for medical radiographers to obtain a license to practice in Nebraska. Therefore, LB828 simply clarifies current licensing requirements by more clearly specifying the current scope of practice of medical radiographers. The medical radiography scope of practice confusion--and it's a good word to use, I believe, in this case--is the result of a hospital inspection by the Centers for Medicare and Medicaid Services--CMS--completed this past summer. CMS questioned whether a medical radiographer could provide patient care management when the radiographer moved oxygen from one source to another. The specific example was having the radiographer move the patient's source of oxygen from a canister to a wall O2 dispenser, or back, in order to transport a patient to or from x-ray rooms. Medical radiographers transporting patients to and from patient rooms to imaging rooms has been going on for as long as there have been medical radiographers, but this is...and has been...as has been the issue of changing oxygen as part and parcel of that. However, because the old statutes based on the Radiography Control Act did not specifically allow for such patient care and management, CMS required the hospital to immediately cease this practice. In other words, even though the current education, training, and licensing requirements in Nebraska would have permitted the medical radiographer to move oxygen from one source to another, a strict reading of the current law does not. Unfortunately, as a result of this interpretation, hospitals and any other medical facility operating under the existing expectations of the education, training, and licensing of their medical radiographers must now provide other licensed medical staff to supervise patients while those patients are being x-rayed and transported. This is not only a redundancy in care of patients, but ties up other health professionals unnecessarily at a time when we have a shortage of many of these same professionals. Since this initial incident, the Nebraska Society of Radiologic Technologists has worked with the Board of Medical Radiography, the licensing body for the medical radiographers, and with the Department of Health and Human Services Credentialing Division in an effort to correct this interpretation. The discussion included a question of the need for a 407 review. It's my understanding that all parties are in agreement that this issue is not one that needs to go through the 407 process, but LB828 truly is an update of the statutes then to reflect the current scope of practice reflected in the training for medical radiographers. This language reflects the curriculum established by the American Society of Radiologic Technologists and the American Registry of Radiologic Technologists' definition for a medical radiographer. There is no fiscal note. And the department, I know, based upon just before we came in here, will provide a letter with some further technical wording that relates to the definition that they would like to have, and I'd be glad to incorporate that into this bill. And I'd be glad to answer any questions. [LB828]

SENATOR GAY: (Exhibits 5 and 6) Thank you, Senator Gloor. We have two letters of support here, too. One is from Alegent Health and the other one is from the Nebraska

Medical Association. They'll be put into the record. Any questions for Senator Gloor? Senator Wallman. [LB828]

SENATOR WALLMAN: Thank you, Chairman Gay. Thank you, Senator, for introducing this. Are we then in correlation with other states with this same kind of language? [LB828]

SENATOR GLOOR: I'm sure we are. Senator Wallman, I can't imagine that there is another state in the Union that has any problem at all having radiology technologists do this. The curriculum that we're talking about here, because it comes through and relates to accreditation, will be nationwide. So I can't imagine...although I don't know for sure, I can't imagine that that won't be the case. [LB828]

SENATOR WALLMAN: Okay. Thanks. [LB828]

SENATOR GAY: Any other questions? I don't see any. Thanks. [LB828]

SENATOR GLOOR: Thank you. [LB828]

SENATOR GAY: How many people are going to be speaking in support of this? Just a couple. Anybody opposed to this? That's a good sign. (Laughter) Any neutral? [LB828]

LINDA BLACK: Senator Gay and members of the committee, my name is Linda Black, L-i-n-d-a- B-l-a-c-k, and I'm the legislative chairman for the Nebraska Society of Radiologic Technologists, and worked very closely with the Department of Health and the licensing board and all of the interested parties in putting this together. I'd liked to reiterate a couple of things to follow up on Senator Gloor's comments, that being the education that we go through and the testing that we have to have in order, and have to successfully complete in order to get a license in Nebraska. The curriculum is all a national-based curriculum. The test is based on that curriculum and our scope of practice is all related to the curriculum as well. So all three of those types of things do fall hand-in-hand when it comes to our education testing and scope of practice. There are a number of things that we talk about when it comes to patient care and management, which is really what the issue was here. And I've got a list of all the things that are in our curriculum that involve patient care and management, and certainly can provide that to you if you would like to. But some of the things that are included are proper communications, patient transfer, movement, and monitoring of vital signs, infection control, medical emergencies, trauma, properties of contrast media, functions of various devices, including tubes, catheters, IV lines, and the use of oxygen. That all is included, along with a lot of other things in our curriculum when it comes to patient care and management. That being on top of all of the radiation issues that we're trained in, in those two years of a program that we are required to complete. Right before I came into the room, I was handed a letter from the Department of Health and Human Services. My

interpretation of this is that it basically we had stricken some of the language and felt that the new language had adequately incorporated the stricken language. And basically what the department is asking to do would, my interpretation is, add that stricken language back in, which we do not have a problem with. I would ask that the committee would look at it to see if there's other places within the bill that need to have that updated, as well. I have not had a chance to look at it closely enough to know whether or not there's other places where the definition needs to be changed. But once again, what it basically does is keeps the old language and adds the new language that we had suggested. So it really doesn't change the intent. We have worked with all of the interested parties. We received technical assistance from the department when it came to putting this language together. We have gotten confirmation from the Medical Radiography Licensing Board that they do support the changes that we had proposed. We had...you have the letter from the Nebraska Medical Association indicating their support. We do have confirmation that the Nebraska Hospital Association supports this and we do know that the nurses and the podiatrists and anybody else we've talked to does not have a problem with this. So with that, as Senator Gloor said, it truly is a clarification of the scope of practice based on what we are required to do in order to obtain a license in Nebraska. And I will open that to any questions. [LB828]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB828]

LINDA BLACK: Thank you. [LB828]

SENATOR GAY: Any other proponents? Any opponents? Anyone neutral? Oh, Ron. [LB828]

RON JENSEN: This will be very brief. [LB828]

SENATOR GAY: We're on opponents now. [LB828]

RON JENSEN: I'm not an opponent. I'm neutral. [LB828]

SENATOR GAY: Oh, okay. We're on neutral now then. [LB828]

RON JENSEN: I'm sorry. I thought you said that. [LB828]

SENATOR GAY: Sorry. I thought I was (inaudible). [LB828]

RON JENSEN: My name is Ron Jensen. I'm a registered lobbyist appearing before you on behalf of the Nebraska Podiatric Medical Association. J-e-n-s-e-n. The podiatrists employ limited medical radiographers. And they don't transport patients, they don't move oxygen canisters. They do one thing. And the present licensing system has

worked very well for them. I've been assured by the people bringing this bill that it changes nothing for limited radiographers. I've not seen the new language, and just because of that I want that in the record that we have been given to understand that this legislation changed nothing for the limited medical radiographers and would like to have the opportunity of reviewing the language before the bill moves. [LB828]

SENATOR GAY: All right. Thank you, Ron. Are there any questions? I don't see any. Thank you. [LB828]

RON JENSEN: Thank you. [LB828]

SENATOR GAY: (Exhibit 7) Senator Gloor, do you want to close? Actually I've got a question I want to ask. No, nothing bad. I just...on this little letter we got from the department, is that going to need an amendment, do you think, just for clarification then? Because if... [LB828]

SENATOR GLOOR: It might. We just got it a couple of minutes before, and looking through it... [LB828]

SENATOR GAY: Okay, you just saw it? [LB828]

SENATOR GLOOR: Yes, we just saw it, and so it may as we analyze it. [LB828]

SENATOR GAY: I guess if that needs an amendment and this wants to...something is going to happen on this, it probably needs to be talked with legal counsel and get the amendment done and... [LB828]

SENATOR GLOOR: Have it ready as a committee amendment. [LB828]

SENATOR GAY: ...because we just got it, too. I assume everyone has this letter? Yeah, so let's check that out, as well, and then... [LB828]

SENATOR GLOOR: We certainly don't have any objection to what it attempts to do in here, but whether it's going to require...I'm guessing it's probably going to require an amendment because I think it's going to have to change verbiage. [LB828]

SENATOR GAY: Yeah, it looks like it. I just glanced at it. That's all I needed. All right, thank you, Senator Gloor. We'll move on to close on LB828 and move on to LB902. Senator Howard, LB902, LB903, and LB904. [LB828 LB902]

SENATOR PANKONIN: So we're starting with LB902? [LB902]

SENATOR GAY: Yeah, we're just going to go in order, Senator Howard. LB902, then

we'll go to LB903 and LB904. [LB902]

SENATOR HOWARD: All right. We're ready. [LB902]

SENATOR GAY: Yep, right now, LB902. [LB902]

SENATOR HOWARD: (Exhibit 8) Thank you, Senator Gay and members of the committee. I am Senator Gwen Howard and I represent District 9. I appreciate the opportunity to present LB902 for your consideration. LB902 would create a disclosure process for assisted-living facilities. Under LB902, the Department of Health and Human Services would create a standardized format for collecting information about assisted-living facilities. The information collected would include services provided by the facility, charges for those services, to what extent the facility participates in Medicaid, when and why a resident would be discharged from a facility, and how resident service agreements are developed and updated. I'm introducing this bill at the request of the AARP because I believe that when citizens of Nebraska and their families are considering options for later in life it is essential that they be aware of all the choices available. I think perhaps that the Assisted Living Federation of America articulated it best in the letter that was sent in support of LB902. And this is to quote what they had put in the letter. "The resident-centered focus of assisted living contributes to a variety of communities to meet the varied needs of elderly consumers. The expensive choices available to consumers can sometimes be overwhelming. Consumer disclosure is key to helping consumers understand the differences among assisted living communities and select the one that best meets their needs or the needs of their loved one." LB902 would allow consumers to sit down with their families and look at each facility side by side. They would be able to use the information collected, not just to evaluate which facility best fits them today or tomorrow, but to find a facility that can be a home for years to come. I should note that I do have an amendment to this bill. I can just give you the information on that. It's on page 3 of the bill. It's second to the last sentence. It simply says "Any other information specified by the department." And we would remove that sentence with this amendment. The amendment allows facilities to know exactly what will be required of them and means less work for the department. LB902 is about making sure consumers have the right information so they can choose the right facility. Thank you for your time and attention to LB902 and I wanted to let you know that I had just, shortly before I came in here, received a letter from Dr. Schaefer with some suggestions on this bill. And I think it's...these are good suggestions and I would really encourage the AARP to review these and take some time to talk with Dr. Schaefer about this. [LB902]

SENATOR GAY: All right. Thank you, Senator Howard. Any questions? Senator Campbell. [LB902]

SENATOR CAMPBELL: Thank you, Senator Gay. Senator Howard, there is a fiscal

note to this. Now don't cringe. [LB902]

SENATOR HOWARD: Grimace. (Laugh) That's a grimace. [LB902]

SENATOR CAMPBELL: I know. But in the last one it says that the cost would be paid from licensing fees? Is that...? [LB902]

SENATOR HOWARD: Well, (laugh) ideally. But along those same lines, the letter that Dr. Schaefer submitted has some ideas on how to save costs, such as putting things on-line rather than requiring brochures to be published every year. So I think with the AARP, Mark Intermill, sitting down with Dr. Schaefer, I think that they can address that and hopefully not really have too much of a cost. [LB902]

SENATOR CAMPBELL: Okay. Thank you. [LB902]

SENATOR GAY: Senator Gloor. [LB902]

SENATOR GLOOR: Thank you, Chairman Gay. Senator Howard, did you have any sort of format you followed when deciding what to include under the disclosure? I mean... [LB902]

SENATOR HOWARD: Actually, that information came from AARP. It was their suggestion. And I think that would be a really apt question to ask their spokesperson what they had decided was the criteria. [LB902]

SENATOR GLOOR: Thank you. [LB902]

SENATOR HOWARD: It seemed valid to me. And not having a vast knowledge in that area, that's why we included it. [LB902]

SENATOR GLOOR: Okay. Thank you. [LB902]

SENATOR GAY: Any other questions? I don't see any. Thank you, Senator Howard. [LB902]

SENATOR HOWARD: Thank you. [LB902]

SENATOR GAY: We'll hear from proponents. How many proponents are going to be speaking on this issue? Two. Are there any opponents going to be speaking on LB902? All right. Anyone neutral? Hi, Mark. [LB902]

MARK INTERMILL: (Exhibit 9) Thank you, Senator Gay and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today to speak in

support of LB902. As Senator Howard said, this is an attempt to try to provide consumers with information prior to becoming a resident of an assisted-living facility, about the conditions of the services and the requirements of them and also what the facility will provide. This is a basic consumer disclosure bill. It enhances the likelihood that the consumers will receive the information prior to admission that they need in order to make a good decision about which assisted-living facility best meets their needs. And I want to say at the outset, that we want assisted-living facilities to succeed in Nebraska. This is the type of residential long-term care that our members like. It provides a degree of privacy and autonomy and it really does...we find that there is a high degree of desirability or favor among our members about that option. But one of the things that we found in our survey says that there has been a bit of an erosion in the support or desire to live in assisted-living facilities, and we have included in my statement some information about the surveys that we've taken, both in 2002 and 2008, where we've asked members, "Where would you like to live if you found yourself in a certain type of care situation? " What we have found is a decline in assisted living and an increase in home care. And I think we...just this is surmising on my part, but I think part of it has been a bit of a disconnect about the expectations that people had going into an assisted-living facility, and then what their experience might have been afterwards. And we think that disclosure of information about what sort of services a person will receive in assisted living, what the costs are, what's the participation in the Medicaid program and the degree of participation that the facility provides access to Medicaid, and probably the biggest item is under what circumstances might I be asked to leave the facility. I think that's where we see the most complaints from around the assisted-living facility issue. And that's essentially what we tried to identify, were those issues where we were seeing complaints from either our members or others that we've encountered. So that's our desire is to try to get information up front for consumers so that they understand, going into a facility, what it is that they can expect and what's expected of them. And I'd be happy to try to answer any questions. [LB902]

SENATOR GAY: Thank you. Senator Pankonin. [LB902]

SENATOR PANKONIN: Thank you, Chairman Gay. Mark, thanks for coming today and testifying. I'm just curious on that question of, which I think is a valid one, about how I may be asked to leave the facility. I could see that's very valid for someone that's worried about a parent or yourself or whatever. What kind of examples, give me just a couple of them, have you see happen? [LB902]

MARK INTERMILL: Increase in care needs is probably the most common. If...and it could be incontinence, that it could be an additional need for assistance in transferring that a facility may not be able to provide or address those issues. So again, these are the types of things that would be good to know, going in. You know, what sort of care needs will necessitate that. [LB902]

SENATOR PANKONIN: Would you have any idea how many assisted-living facilities are tied to a long-term care facility? I know, you know, many are. Is that a 50 percent, or what do you think you see in that? Do you know? [LB902]

MARK INTERMILL: I couldn't answer that question with any certainty. I can certainly look...we can find that information for you. I think in Nebraska it tends to be a higher percentage than in many states. We don't have as many of the freestanding assisted-living facilities as, say, in the east coast or some of the other states. [LB902]

SENATOR PANKONIN: And obviously the reason I ask that question is that in most of those situations there's probably not as big a problem because they do have that other facility linked. And that way, you know, even if it's a couple living there, one can go on to have greater care. Would that be a fair assertion? [LB902]

MARK INTERMILL: That they could stay within the same building. [LB902]

SENATOR PANKONIN: Well, or the same campus type of thing. Is that a fair assertion? [LB902]

MARK INTERMILL: I think that that's fair. And I think that really gets at the issue that...I think a lot of folks go into an assisted-living facility with the expectation that this may be the last move they have to make. But then if there are some care needed changes and they are then asked to move, that kind of disrupts that whole process. But being in the same building or in the same campus does provide some ease of transfer. [LB902]

SENATOR PANKONIN: Thank you. [LB902]

SENATOR GAY: Senator Campbell. [LB902]

SENATOR CAMPBELL: Thank you, Senator Gay. Mr. Intermill, this was done by the national--the survey that's attached. Do you know when they gave the survey, did they give a definition of what is assisted living, or was that whatever the person filled out thought it was? [LB902]

MARK INTERMILL: I don't believe there was. I've got a copy of the survey back in my office and I'll certainly check on that. The first survey in 2002 was shortly after...I think we began licensing assisted living in 2000 and there was also a lot of activity around conversions of nursing facilities, portions of nursing facilities into assisted living. So there was quite a bit of information in the news, in the media, about assisted living. We may not have had that same degree in 2008. [LB902]

SENATOR CAMPBELL: Okay. Thank you. [LB902]

SENATOR GAY: Senator Wallman and then we'll go to Senator Gloor. [LB902]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, Mark, thanks for living here. I do live in assisted living in my house. (Laughter) But we've had to deal with this. You know, I had a close relative, had a stroke, an anger management thing, and we did get kicked out. But in all fairness to the assisted living institution, they told us...you know, we asked the hard questions. So I think that's up to the person to ask, too. And they gave us fair answers. So we had to look for a different place, overnight literally. But it can be done with the help of the...I'm really proud of the assisted living and nursing homes in Nebraska. [LB902]

MARK INTERMILL: I concur. As I said, we want assisted living to succeed but we think that if we are able to provide consumers with some standardized information, that will help that process of being able to select a facility that best meets their needs. [LB902]

SENATOR WALLMAN: Thanks. [LB902]

SENATOR GAY: Senator Gloor. [LB902]

SENATOR GLOOR: Thank you, Chairman Gay. Mark, thank you for your testimony. I will now direct my question to you that I posed to Senator Howard--the basis for these questions. And let me give you the reason or my rationale behind it. If we're going to take these specific questions and build them in the statute, I hope they're vetted to the extent that they really do cover the key issues that ought to be shared so we're not coming back every year or every couple of years having to add something more. That would be a hassle. [LB902]

MARK INTERMILL: The issues that are listed in the bill, and I didn't bring a copy of the bill in front of me but I think I can remember what they are. One of them was the question about the circumstances of moving out, and that is probably the most common issue, problem, that we run into or consumers run into. The issue of cost is something that we are looking for, both the base cost of care in assisted living and any add-on costs. Those are things that sometimes consumers may not understand fully, going in, and that can cause some disruption if they pick them up later. The issue of Medicaid participation is one. We want to know this is...even though assisted living is less expensive than nursing facility care, there is still a substantial cost. People may run out of assets. The question needs to get out whether or not...what's the likelihood that a person would be able to stay in the facility with Medicaid support. Some facilities may only designate a small number of beds for that purpose. The staffing of the facility is another area where sometimes consumers may not understand the staffing pattern, which again gets at the ability of the facility to meet changing needs. So these are the...I guess to answer the question, these are the best we can come up with right now. These are the ones, just based on issues that we have heard consumers raise, these are the

ones that we...that rise to the top. [LB902]

SENATOR GLOOR: Can you explain, since one of those is a resident services agreement, what a resident services agreement is? [LB902]

MARK INTERMILL: That is the crux of assisted living. The resident services agreement is what every resident...will determine what services a person receives. So that's something that residents need to understand the importance of that resident services agreement because that will tell them what they will receive. And how that resident services agreement changes is a key issue in assisted living--what's the process for making changes in the resident services agreement--so again, that the consumer will understand what changing circumstances in their care needs might mean for their continued residence. [LB902]

SENATOR GAY: Senator Campbell. [LB902]

SENATOR CAMPBELL: Thank you, Senator Gay. Mark, is there an assisted-living association in the state? [LB902]

MARK INTERMILL: There are. The Nebraska Assisted Living Association. I think they're represented here today. The Nebraska Association of Homes and Services for the Aging have assisted-living members. There's also an Assisted Living Federation of America which doesn't have an affiliate located in Nebraska but they have members in the state. [LB902]

SENATOR CAMPBELL: Have they done any work in terms of developing a uniform format? [LB902]

MARK INTERMILL: There is, in fact. There's the Centers for Excellence for Assisted Living that has been working on developing a uniform format for assisted living. The indications I have is that they will have something by 2012. There are eight states that currently use a uniform format, a consumer disclosure statement. Texas is probably a leader in that area, and Texas does use a Web-based type of approach where people can go and get this uniform information, although they do also have a requirement of providing a document to prospective residents. [LB902]

SENATOR CAMPBELL: Thank you. [LB902]

SENATOR GAY: Any other questions? I've got one for you, Mark. Then if this is being developed, I was going to ask you why wouldn't AARP, as the largest organization in these things, why don't you do this? Why does the government need to do this? [LB902]

MARK INTERMILL: I think to assure that there's full participation of all assisted-living

facilities. We don't have the authority to do that, so. [LB902]

SENATOR PANKONIN: I want to follow up on that one, or you will. [LB902]

SENATOR GAY: No, go ahead. Senator Pankonin. []

SENATOR PANKONIN: Thank you, Chairman Gay. I think what Senator Gay is getting at, Mark, is when you've got a fiscal note involved, and stuff, and I think what he is saying is a credit to your organization because of the clout and the size and whatever, that if you worked with these associations, that you had this standard set of information and you worked with those associations about what trail you thought was valid and appropriate. And obviously, like any work in progress, might be some compromise there. But if...not that it would be AARP-endorsed for the facility, but they had followed the protocol that you had found, your organization found from national studies to be important. I think that's what Senator Gay is getting at. If we could get this worked out without a bill, without a statute, without a fiscal note, it would be much more...it could be just as effective and not involve the government in another program, whatever. And that actually goes back to my question of the situation in Nebraska. Because I do feel, from just my personal knowledge, that many of the assisted-living facilities are tied to a care center. I think that question, like Senator Wallman raised, where you do get the call and you've got to be gone, is a very jarring experience and an important thing to know about. And I think that is a valid concern if it's me or a parent or a spouse or whatever. So I think you raised a legitimate issue, no doubt about it, but I think Senator Gay has also got a good suggestion. You know, if we don't move ahead with a bill...I mean, just like the question here of the number of staff employed by the assisted-living facility. I realize this is an annual requirement, but even then, during...we've heard about staff turnover or whatever. I mean, I would be a little concerned as a person in charge of one of these facilities to say, well, we've got 18 people here. And you said about staffing patterns. And that could make a big difference in the experience, but you don't answer that question or you don't even ask that question. So I think there's more work to be done and maybe could be done, your organization working with these others. [LB902]

MARK INTERMILL: And we're always up for working with others to try to be... [LB902]

SENATOR GAY: I'm trying to remain impartial, I guess, and you kind of hit the nail on the head. So I guess another question though, too. When I was in...and these are hard decisions and we hear a lot of people on these issues of aging and long-term care. But when it comes to a decision, wouldn't monetarily...of course, everyone wants their loved one to be safe and the training and all those things. But isn't it...cost has to be probably the number one factor for people. I can afford this or I can't afford this and maybe I can only afford this. It's the reality of things. But I guess on the safety thing, you've got to look at that. But when we look at these things, I just don't see how or why...everyone is going to advertise that I've got the best facility and here's why. And that's the way we

work. But on that, there's...we have people regulating them already. We have people surveying them. We do a lot of this. And now we're asking them again, just prior to this we had a testimony on LB922 about the cost of these things. So I'm just kind of wondering if we're putting...you want to keep them around, but we're putting another undue burden on them. That's why I said your organization could be a huge help probably in this. [LB902]

MARK INTERMILL: And if I could just respond to...the assisted-living facilities are, I consider the regulation of assisted-living facilities to be quite light. [LB902]

SENATOR GAY: Light? [LB902]

MARK INTERMILL: Yeah. As I look at the statutes and the regulations, most of the services provided are covered by the resident services agreement. There is very little that's actually mandated that assisted livings provide. As I read the law and the regs, it's essentially one meal a day. And I'm not suggesting we should provide any more regulation. What I think...given that we have a lightly regulated industry, we need to make sure that consumers have good information about what services they're going to be receiving, what the expectations are of them, so that we can have good situations, good care situations for them. So I don't want to give the impression that I want a lot more regulation. I just want to make sure that people have information. [LB902]

SENATOR GAY: Exactly. All right. Any other questions? I don't see any. Thanks, Mark. [LB902]

MARK INTERMILL: Thank you. [LB902]

SENATOR GAY: Other proponents? [LB902]

CLAYTON FREEMAN: (Exhibit 10) Thank you, Senator Gay and members of the committee. My name is Clayton Freeman, C-l-a-y-t-o-n F-r-e-e-m-a-n. I am the program director for the Alzheimer's Association Midlands Chapter. LB902 will help consumers receive the information necessary to decide if an assisted-living facility would best meet the needs for...meet their loved ones' needs. Caregivers for persons with Alzheimer's disease and other dementias need to know the services provided by an assisted-living facility, especially the facility's participation in Medicaid, circumstances that would lead to a discharge, and to know and regularly review their service agreement. Choosing a long-term care facility is one of the most difficult and complicated decisions a caregiver or person with Alzheimer's disease faces. This process will help the individuals we serve make an informed decision and give them peace of mind that the facility they choose will meet their long-term needs. Thank you. [LB902]

SENATOR GAY: Thank you, Clayton. Any questions? Senator Wallman. [LB902]

SENATOR WALLMAN: Yeah, thank you for coming. In regards to this here, Alzheimer's, you know, versus assisted living, is there a huge Medicare reimbursement difference in the cost? [LB902]

CLAYTON FREEMAN: What I know is that people, you know, one of their big questions is, is Medicaid going to be able to pay for it? And that's the first question they always want to know. And so that's the question they want to find out when they go to look for an assisted living: Is it going to pay for that? So that's their big question, is cost. [LB902]

SENATOR WALLMAN: Thanks. [LB902]

SENATOR GAY: Any other questions? I don't see any. Hey, Clayton, we've got...so you've got three. [LB902]

CLAYTON FREEMAN: Okay. [LB902]

SENATOR GAY: We'll include this in every bill, this one handout, okay? [LB902]

CLAYTON FREEMAN: Okay. Yes. [LB902]

SENATOR GAY: But you can come up each time and we'll just do it... [LB902]

CLAYTON FREEMAN: Okay. That's fine. I just put them all on...all three on one. Okay. [LB902]

SENATOR GAY: But we'll make sure they go into each bill for the record, so. [LB902]

CLAYTON FREEMAN: Okay. Thank you. [LB902]

SENATOR GAY: All right. Thank you. Any other proponents? Opponents? [LB902]

SHARON COLLING: (Exhibits 11 and 12) Good afternoon, Senator Gay and committee. My name is Sharon Colling, last name C-o-l-l-i-n-g. I am the administrator and part owner of a 33-bed assisted-living facility and a 67-bed skilled nursing facility located in Tecumseh, Nebraska. I've been in this position for 14 years. I am here today to discuss the proposed legislation, LB902, which would add a requirement that all Nebraska assisted-living facilities must complete a new, annual, mandatory disclosure document established by DHHS and disseminated in a uniform format for all applicants to admission at an assisted-living facility. As a provider and a former daughter, sister, of long-term care residents with Alzheimer's disease and as a participant in a national coalition to create a similar document, I am here to represent my personal opposition to LB902. I am a member of the National ALDC Disclosure Collaborative Committee,

which is a national collaborative that consists of approximately 24 national consumer and provider associations, as well as national government agencies, that has been actively working on a monthly basis for over two years on the exact type of disclosure document that is being proposed by this legislation, except for two key differences. First, the national collaborative document is national in scope rather than state-specific; and it is voluntary, not mandatory. National consumer agencies, including the Alzheimer's Association; the Consumer Consortium on Assisted Living; the Paralyzed Vets of America; the National Association of Social Workers; and AARP are represented on this national consortium and have participated in the formation of this document, as have the U.S. Administration on Aging; the U.S. HHS Office of Disability, Aging, and Long-Term Care Policy. And the National Conference of State Legislatures is also represented on this committee, as well as several provider groups, including the NCAL, which is the national umbrella of the Nebraska Assisted Living Association. The reason for the national coalition is that right now there are several state documents and state requirements and a wide variety of services and amenities provided by assisted livings across the United States, and this makes it hard for consumers to understand the uniform information. It's hard to compare apples to apples. Indeed, most states have a different definition of assisted livings. The definition in this bill, I believe, is different than the definition used by the Nebraska Assisted Living Association, which is different than the one being used by the collaborative. Part of the mission of the Advancing Excellence in Health Care and Centers for Excellence in Assisted Living's collaborative with the 24 agencies is, because of the mission, we want to improve the quality, the safety, the efficiency, and the effectiveness of assisted living. And to briefly summarize, the consortium was conceptualized in 2006. There was a technical expert panel that was gathered at that point in time, and they recommended doing a national disclosure document. I came on board with this as the representative for the American College of Health Care Administrators at the national level and I am the only...I believe I am the only Nebraska person on this national consortium. I've been actively involved on a monthly basis since mid-2007. The document has now been formulated. It is beta tested in a very small way. It is being disseminated to all 50 states this year. Not to every assisted living. It is a select sampling this year. At the end of the year the plan is to statistically analyze that data, tweak the questions if they don't seem to be being answered in an understandable way, and then to disseminate it next year in 2011 to every assisted living in the entire United States, with a goal of having a database that can be on every state's Web site and that that information could be used by area agencies on aging across the United States so that, again, you can compare apples to apples. And the goal then for 2012 is that we are also planning to come up with a document for consumers. It's like, this is what you should look for in assisted living; this is what you should ask; and here are the answers for the facilities in your area. Okay? So it will be very consumer-friendly. Of course, it will be consumer-friendly because we have had so many national consumer groups involved in the entire process. So although I completely agree with the concept that consumers must be fully informed and educated about the services, amenities, and guidelines, I think this bill is completely

unnecessary. The national document that we are looking at...or that we have formulated, looks at four things: assisted living services--what does that particular facility do and how much does it cost by each individual item if they're itemizing out their cost, what is their staffing, their patterns, their staff training and the turnover rates for their facility by stats criteria; the move-in and move-out criteria for that particular assisted living; resident rights--the house rules for that facility; and life safety. In Nebraska, we have two different assisted living Fire Marshal regulations: residential and healthcare facility-related. So that way they will know the life safety codes of the particular building they're moving into. And also dementia-specific services, one very near and clear to my heart, having had several members afflicted with Alzheimer's disease and needing nursing home placement at a point in time. Different facilities have different abilities. The one of the best things about assisted living, especially in our state, is that assisted living is very little less regulated than nursing homes. What that means then is each assisted living can really select the clientele that they're going to specialize in. Some assisted livings tend to take folks with just behavior issues. Others are equipped with automatic locks on doors for people who may be wandering. Others do provide care. [LB902]

SENATOR GAY: Thanks. We're going to stay to this...thanks. [LB902]

SHARON COLLING: So there is a variety of different services. [LB902]

SENATOR GAY: Very good. Thank you. [LB902]

SHARON COLLING: One of the points I do want to make is the document that is currently being established is voluntary and at no cost to the state. [LB902]

SENATOR GAY: I'm trying to...thank you. Thank you very much. [LB902]

SHARON COLLING: Thank you. [LB902]

SENATOR GAY: Let's see if there's any questions for you. Senator Gloor. [LB902]

SENATOR GLOOR: Thank you, Chairman Gay. I do have just I think some follow-up questions as relates to the issue of...I mean, you've seen the listing of disclosures that's in the statute and you kind of gave us a quick overview of what you think is going to be in this voluntary disclosure statement nationwide. Where do you see the mismatch or the lack of a match-up? You talked about life safety or...yeah, you talked about life safety or fire issues. How about the resident services agreement component? [LB902]

SHARON COLLING: The resident services agreement is a legally binding document that every assisted living must have and that is always available to families upon asking. And just like any contract, you wouldn't go buy a house without reading the contract

first. Why would one want to place a loved one without reading the contract first? The gentleman that's coming behind me has actual samples of the contracts so you can see what they look like in the state of Nebraska. They are very individualized and very specific and I believe meet the needs. [LB902]

SENATOR GLOOR: We're clearly talking about a voluntary level of participation as opposed to a mandatory level of participation here. Why do you think institutions will, across the country, assisted living facilities across the country will voluntarily go ahead and adapt this? [LB902]

SHARON COLLING: Two reasons. First, because just about every major player in long-term care and consumer groups that may be interested has been involved with this. They are going to be pushing it down to their state and local affiliates and encouraging participation. So that's one very important. Two, it's in the facility's best interest because assisted livings are not as highly regulated. There is increased liability. The burden is on the administrator in that facility to only accept people and keep people that they can take care of. If they keep somebody or admit somebody that they can't take care of, then they are risking significant legal liability. So it's in their best interest. And, too, we want to do things voluntarily because we don't want the extra burden of regulations like in nursing homes because it increases the cost. [LB902]

SENATOR GLOOR: Okay. Thank you. [LB902]

SHARON COLLING: You bet. [LB902]

SENATOR GAY: Senator Campbell. [LB902]

SENATOR CAMPBELL: Thank you, Senator Gay. We appreciate that you're serving on a national committee and it's fascinating. Does that mean that Nebraska gets to be part of the pilot? [LB902]

SHARON COLLING: You know, that's an excellent question. The pilot is going to every state so there will be some facilities in Nebraska that will be part of the pilot program. Hopefully, I get to be one. (Laugh) [LB902]

SENATOR CAMPBELL: Thank you. [LB902]

SHARON COLLING: You bet. [LB902]

SENATOR GAY: Any other questions? I agree with Senator Campbell, thanks for your service. Sounds like you're putting a lot of time into this. [LB902]

SHARON COLLING: Thank you very much. [LB902]

SENATOR GAY: You bet. Thank you. Other opponents? [LB902]

BRENDON POLT: (Exhibit 13) Good afternoon. My name is Brendon Polt, that's B-r-e-n-d-o-n P-o-l-t. I'm here representing the Nebraska Assisted Living Association. That's part of the Nebraska Health Care Association. We have a membership of about 200 assisted-living facilities. What I'm here to do is briefly walk you through two things. One of them, I've got a couple of sample resident service agreements and then also in my written testimony I just pulled out the regulation pertaining to resident service agreements. You can see that Chapter 175, Administrative Code 4, says, "The assisted-living facility must evaluate each resident and must have a written service agreement negotiated with the resident and authorized representative, if applicable, to delineate the services to be provided to meet the needs identified in the evaluation." So then there's 1 through 4 of what it must include. The first one is, "Services to be provided by the...facility" including that 175 NAC 4-006. That's Alzheimer's special care. So they're under regulation to explain what those services are. And then it also says that they are not able to do complex nursing interventions unless they're brought in from third parties like home health. Hospice can be brought in. Therapies can be brought in. This agreement has to discuss the "rights and responsibilities of the facility and the resident," the "cost of services in terms of payment." In reality, that usually includes, you know, whether or not they accept Medicaid. "Terms and conditions of continued residency," so there's the issues on when you would have to transfer, you know. So the facility must negotiate this with every single resident. Every single resident has to read and sign this after coming to an agreement on exactly what it includes. So the existing regulations protect the consumer from the standpoint of knowing what they're receiving once they move into a facility. Now what's being proposed here is a mandatory promotion. Some way, as a clearing house, to go on-line and be able to see these items. Well, my sense is, if there's confusion about what I think is so clearly spelled out in these documents, then I don't think a Web site is going to help someone that wasn't otherwise reading what they agreed to when they moved into a facility. Now that being said, we very much support the National Coalition that Ms. Colling testified to before me, and when we brought this issue before our membership and asked them what do you think about this, they said it was a great idea to be out there. And like she said, you would be at a competitive disadvantage if you knew your competition was out there on this Web site that listed their services and you weren't there. So what our members say is, yeah, let's do this. But do we want a regulation in a state law that says you have to do it? Then you get a survey violation if you don't do it or if you're missing one component. This is a promotional method of a facility promoting its services, and any facility would have an incentive to comply. But why don't we require this of personal care aide services and home health and any hospital or any clinic or any other business that cares for vulnerable populations? So assisted-living facilities, in this bill, are being singled out with a new state law. And so it's that mandatory nature of the bill that we would ask that you not advance. And let's take care of this voluntarily. Let's see if the

process that's in place works. Because we really think we can get next to if not 100 percent participation. Any questions? [LB902]

SENATOR GAY: Thank you. Any questions? Senator Wallman. [LB902]

SENATOR WALLMAN: Yeah, Brendon, thanks for being here. The only thing--I read this stuff over in a hurry--is this the first of the month. Well, the only thing we had trouble with assisted living--we got...had to discharge a relative--was we got charged an extra month's rent because it was the middle of the month; you know, the 30-day. That's the only problem we really had. Is that common practice? [LB902]

BRENDON POLT: Well, there would be a terms of payment on how to deal with partial months. And these are samples. [LB902]

SENATOR WALLMAN: Probably different institutions have it different, huh? [LB902]

BRENDON POLT: Yeah, you would have...you could negotiate that however you want. [LB902]

SENATOR WALLMAN: But, you know, it says 30 days. So I think this one was 30 days from the first of the month. So we had to pay, like, almost 60 days, you know. But I got two aunts in one. You read this stuff, and most of it's pretty clear. [LB902]

BRENDON POLT: Yeah. My thought is, you know, sometimes you look at a contract. You know, you sign an insurance form, and boy, you know, that's pretty difficult. But this stuff is written at a high school level. It's just...it's very straightforward, what's in the resident service agreement. [LB902]

SENATOR WALLMAN: Yeah, we only had one complaint, so that's it. That was the one: money. (Laugh) Thanks. [LB902]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you. Any other opponents? Anyone neutral? Senator Howard, do you want to close on this? [LB902]

SENATOR HOWARD: In closing, LB902 is a consumer protection bill. And I'd like to say I really appreciate the work that the AARP does for us. I think we would have many more serious issues to deal with concerning the elderly if they weren't available. This bill simply requires facilities to disclose and present information necessary to make an intelligent and informed decision about the latter part of many people's lives. I ask that you reflect on all the information presented here today and you consider how this bill will assist Nebraska's elders and their families in planning for their futures and how it will affect the future of us all. And again, I'll say Dr. Schaefer did submit a letter that has

some, I think, very valid suggestions and we'll make sure that Mark Intermill gets a copy of that so he can continue to work on this issue. [LB902]

SENATOR GAY: Sounds good. Are there any questions for Senator Howard on this bill? I don't see any. Okay, we'll close the public testimony on LB902 and you can introduce LB903. [LB902 LB903]

SENATOR HOWARD: Thank you, Senator Gay and members of the committee. I am Senator Gwen Howard and I represent District 9. And I appreciate the opportunity to be before you once again to present LB903 for your consideration. I'm introducing LB903 at the request of AARP because I believe that facilities with Alzheimer's special care units must be able to serve the people who need them. In LB903, basically this is a commonsense bill that requires the department to set standards to evaluate the effectiveness of facilities that serve one of our most vulnerable populations. We had quite a lot of compelling testimony during the hearing on LB726, the bill requiring training for workers in special care units. It's my hope that this bill is complementary to Senator Karpisek's bill. Appropriate training is only one of the pieces that makes special care units unique. Currently, facilities are required to disclose what they believe sets them apart from regular facilities. When the Department of Health and Human Services makes a roster of special care units available to the public, the department is essentially lending its endorsement to the care available. The problem with this is that the state does not even set the minimum standards for these facilities. LB903 would require that the department is to at least scrutinize those who are designated Alzheimer's special care units using criteria specifically developed to evaluate information facilities are already required to disclose. LB903 would mean that when the state allows a facility to be designated an Alzheimer's special care unit, the state is able to ensure that appropriate care is available. Thank you for your time and attention to LB903. [LB903]

SENATOR GAY: Thank you, Senator Howard. Are there any questions from the committee? I don't see any. [LB903]

SENATOR HOWARD: Mark Intermill is here to answer anything. Thank you. [LB903]

SENATOR GAY: All right. Thank you, Senator Howard. We'll hear from proponents. [LB903]

MARK INTERMILL: (Exhibit 14) Thank you, Senator Gay and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today to speak in support of LB903. LB903 seeks to develop an answer to the following question: What makes an Alzheimer's special care unit, special? We do have an Alzheimer's Care Disclosure Act. It provides consumers with information about what services are provided in an Alzheimer's special care unit, not unlike what we were, are seeking in LB902 for all assisted-living facilities. What this bill is seeking is to allow the

Department of Health and Human Services to establish criteria that would help to evaluate whether those claims made by the assisted-living facility that has been designated as an Alzheimer's special care unit, to make sure that those rise to the level of being able to provide that care. In the statement I've listed several states, what they require. Some states actually license special care units and have separate criteria that are required to meet that level of care. They generally fall around the areas of staffing and then the physical location requirements of the physical location, making sure there's an adequate amount of space for the residents, that they can be mobile around the facility but still be safe. We have 284 assisted-living facilities in Nebraska, 45 of which are designated as Alzheimer's special care units. This is listed in the roster of Nebraska assisted-living facilities. In a sense, the state is providing its imprimatur on those 45 assisted-living facilities, that they do provide a level of care that makes them separate from others. What we think we need to do in this case is to provide some sort of criteria that allows consumers in the state of Nebraska to make sure that those services provided by those facilities do rise to that level of care so that they rightfully have that designation. So that's essentially what we're trying to do and I'd be happy to try to answer any questions. [LB903]

SENATOR GAY: Thank you. Senator Wallman. [LB903]

SENATOR WALLMAN: Thank you, chairman Gay. Yeah, thanks again, Mark. I know there's varying degrees of Alzheimer's, especially at the beginning. Who would make these assessments, then, as you enter an institution? [LB903]

MARK INTERMILL: What we are looking at is what are the types of...as I said, probably the two areas that we need to look at in terms of what makes...what special care units need to address are the physical facility and the staffing. And along with staffing goes the training that was addressed in LB726. The physical facility needs to allow residents to be able to wander but still be safe. So those are the types of things that we would want to make sure we had criteria. The staffing needs to be adequate. I think one state, Washington, requires 2.25 hours of staffing per person per day. We're not suggesting that we should do that, but at least some indication of what type of staffing should be available and what sort of training those individuals should have to be able to meet the needs of that diverse population. [LB903]

SENATOR WALLMAN: I noticed Kansas I don't think was mentioned. Are you familiar with Kansas? [LB903]

MARK INTERMILL: Vaguely. [LB903]

SENATOR WALLMAN: Yeah, I know they have a mental health clinics in Marysville, I think, is one of them. So they do this assessment. So thank you. [LB903]

MARK INTERMILL: Thanks. [LB903]

SENATOR GAY: Senator Gloor. [LB903]

SENATOR GLOOR: Thank you, Chairman Gay. Mark, with Senator Karpisek's bill I made mention of the fact that this strikes me as a truth in advertising sort of proposed bit of legislation. If I wanted to provide the service but didn't hold myself out to having a special unit that dealt with Alzheimer's or dementia, this wouldn't apply to me I wouldn't think. I mean, I may have a residential services agreement that spells out we'll do this for the family member, but they didn't come to me because I was running ads or handing out brochures that said that I had a special care unit. Am I correct in that? [LB903]

MARK INTERMILL: You're correct. And I think as we looked at the 45 from the list...the roster's list of facilities that had Alzheimer's special care units, those 45 facilities were clustered in the urban counties of the state. Now I would guess that they're...in rural counties, that there are people with Alzheimer's disease who live in assisted living but those facilities have not sought the designation and wouldn't be addressed by this. This would only look at those facilities that are holding themselves out to be an Alzheimer's special care unit. [LB903]

SENATOR GLOOR: But what does the designation...? Who grants the designation and what difference does it make to be designated? [LB903]

MARK INTERMILL: The designation currently is by the Department of Health and Human Services. And what those facilities have to be able to do, they need to disclose what services that they provide that indicate that they have a special capacity to serve those individuals who have Alzheimer's or some sort of dementia. [LB903]

SENATOR GLOOR: But I want to make sure I'm clear on this. There may be assisted-living facilities, long-term care facilities scattered throughout the central and western part of the state who, in fact, provide that scope of services; have an understanding with family members and patients that's what they do. They just don't hold themselves out to say that they have a dementia or Alzheimer's unit. [LB903]

MARK INTERMILL: That's correct. And the states that I've referenced here are...they have requirements, if you have residents who have dementia, you have to have a dementia care license, and then there's certain specifications that have to be met in order to do that. We're not proposing to do that. What we're proposing is just for those that are listing themselves as special care units, to make sure that that...essentially, that that term has meaning. [LB903]

SENATOR GLOOR: Okay. Thank you. [LB903]

SENATOR GAY: Any other questions? I don't see any. Thanks. [LB903]

MARK INTERMILL: Thank you. [LB903]

SENATOR GAY: Other proponents. [LB903]

CLAYTON FREEMAN: (Exhibit 15) Clayton Freeman, again with the Alzheimer's Association, Midlands Chapter and Great Plains Chapter. The Alzheimer's Association recognizes the increasing need for special care units that provide specialized care. Currently, over 70 percent of those individuals with Alzheimer's disease are cared for at home. As these individuals require more specialized care, the number of special care units will increase, and these units must have the appropriate levels of staff training, programs, and facilities to meet the unique needs of persons with dementia. I think we mentioned LB726, Senator Karpisek's bill, which we think is a nice companion to this and would work well together. So we just...you know, we're really about wanting people with dementia to get the very best care, quality of care. And, you know, if you're an Alzheimer's specific unit, what makes you different and what kind of level of care can people expect to receive there. And so LB726 gives some standards to wanting some required hours of training for those folks, and we think that's important so that those people get the specialized care that they get in those facilities. Thank you. [LB903]

SENATOR GAY: Senator Campbell. [LB903]

SENATOR CAMPBELL: Thank you, Senator Gay. Sir, in the businesses that provide home healthcare to people with Alzheimer's, do we require them to have certain criteria if...and to outline that, if they advertise that they would care, or whether they don't advertise? [LB903]

CLAYTON FREEMAN: You know, I'd have to find the answer for that for you. But I know that, for example, those who go and do companion care and things like that, I don't know if there is any kind of requirement that they do. We, the Alzheimer's Association, do provide training for them, so we are now going out and saying, you know, again, if there is someone going into a home, if you're hiring someone through a company, we want to be there to help train those folks. So we're hoping that we can be a part of the training of those individuals also. But to answer your question, I'd have to find out exactly if they are actually required to have that training. But we certainly would support wanting them to have training. We go out and do that training, so. [LB903]

SENATOR CAMPBELL: Thank you. [LB903]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB903]

CLAYTON FREEMAN: Um-hum. [LB903]

SENATOR GAY: Other proponents? Any opponents? [LB903]

RON JENSEN: Mr. Chairman and members of the Health and Human Services Committee, I don't know quite how to feel about the fact that it seems like, increasingly, I'm the keeper of the institutional memory on many of the issues to come before this committee. But I think the institutional memory can serve us well with regard to this bill. Many, many nursing homes care for persons with Alzheimer's or senile dementia. My mom passed away in a nursing home in central Nebraska. She was there several years. And the last few years of her life she was profoundly confused. The doctor put Alzheimer's on her death certificate but I don't think she had it. And as I think most of you know, only a full autopsy after death can diagnose Alzheimer's. It's a rule-out. Otherwise, you know, well, they don't have this, they don't have this, they don't have this, they must have Alzheimer's. So it's just not at all uncommon. Most nursing homes in this state, a fair portion of their population has dementia, whether it's Alzheimer's or just regular senile dementia. And the care that they provide for those persons is currently governed by a set of regulations that literally, if not figuratively, will stretch from here over to the Judiciary hearing room. And they're surveyed annually on the adequacy of their treatment planning and the care and services that they provide of the people who are in their charge. When this legislation was originally considered, this committee and the Legislature made a decision that was so reasonable I think it was almost elegant. And what they said is this. Most long-term care facilities deal with dementia and Alzheimer's, but there are those who hold themselves out to the public as being special, of having a special unit for that purpose, of having a special service for that purpose. Or themselves as a facility being entirely devoted to that kind of special care. And those that do, have an obligation to the public to say what it is that makes them special. We did not oppose that legislation at that time. I think the state has been well served by it. This legislation that is before us, however, crosses a kind of a bright line. There is no state designation of Alzheimer or dementia units at this time. You define yourself in that way and then you're subject to this disclosure. This legislation, now, crosses the line to regulation, and lays the foundation. You've heard about adequacy of staff, adequacy of training, for a whole new universe of regulations and a whole new kind of facility to go along with it. And it's almost a perfect example of the kind of mission creep, if you will, that is the reason healthcare costs increase 10-15 percent a year. This stuff costs money, as good as it may be. I know Mark. I know how sincere he is. And when he says that his organization wants to strengthen these facilities and these programs, I know he means it. But respectfully, I don't think this piece of legislation would do that. I think it would revisit in the wrong way that elegant decision that this committee and the Legislature made originally on this issue. I'd answer questions if there are any. [LB903]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB903]

RON JENSEN: Thank you. [LB903]

SENATOR GAY: Any other opponents who would like to...? [LB903]

BRENDON POLT: (Exhibit 16) Again for the record, my name is Brendon Polt; that's B-r-en-d-o-n P-o-l-t, representing the Nebraska Health Care Association and the Nebraska Assisted Living Association. There are 90 of our members that have Alzheimer's special care units. There's 115 total in the state. Mark mentioned the assisted living, and then there's another 70 that are nursing homes that have that registration as a special care unit. What I have for you here in a handout, for your reference, is a couple of special care unit disclosures. One of them, you received it with LB726. I got another one for you just so you can get a feel for what's being done out there, and if you are looking to be placed in a facility if you could look at this document and make a determination of whether or not something, in fact, is special or something is a specialized service that's being provided above what just any regular nursing home without a special care unit provides. I think what you see is these documents speak for themselves. And the consumer is protected by what facilities are reporting. If you, in good faith, complete the disclosure in 1 through 8, it's impossible to not paint an accurate picture of your facility and what the services are that you're providing. Adding this new level of regulation that Mr. Jensen mentioned is exactly the position that our association has, is that we take a consumer disclosure and turn it into a new, almost, licensure; a new regulated-type of facility with associated costs. And those must be passed on to Medicaid, those must be passed on to the private payer. And so we ask that you let the current system work. If there's a view out there that disclosure statements aren't being completed, then we already have a process in our existing laws to make sure that these statements are done. But if you good-faith comply with 1 through 8 in the Special Care Disclosure Act, there can be no doubt or no question from a consumer's standpoint what you're doing for special care. Are there any questions? [LB903]

SENATOR GAY: I don't see any. Any questions from the committee? Thank you. [LB903]

BRENDON POLT: Thank you. [LB903]

SENATOR GAY: Any other opponents? Anyone neutral? Senator Howard, do you want to close on this? [LB903]

SENATOR HOWARD: Again, I want to thank AARP for being diligent about these matters and looking at the needs of our most vulnerable population. I wanted to let you know, too, that Senator Karpisek came to me regarding this bill and asked to sign on to it as he sees it very supportive of his bill. Alzheimer's special care units serve a

population of Nebraskans that are especially in need of extra protection and this high level of care. Under LB903, the Department of Health and Human Services would evaluate special care units and ensure that the appropriate level of care is given to this population. Thank you for your attention to LB903. [LB903]

SENATOR GAY: Thank you, Senator Howard. Are there any questions? I don't see any. [LB903]

SENATOR HOWARD: And there is no fiscal note. [LB903]

SENATOR CAMPBELL: I noted that. [LB903]

SENATOR GAY: I will close the public testimony on LB903 and Senator Howard will open on LB904. [LB903 LB904]

SENATOR HOWARD: Thank you, Senator Gay--we're on the home stretch--and fellow members of the Health Committee. For the record, I am Senator Gwen Howard and I represent District 9 and I appreciate this opportunity to present LB904 for your consideration. I'm introducing LB904 at the request of AARP because it addresses the needs of a growing population of Nebraskans. Assisted-living facilities create an environment of independence and privacy that is not available in nursing facilities. On the whole, Nebraska's aging population favors this environment, but many are unaware that it may not be available to them for an extended period of time. Nebraska assisted-living facility residents are all too often asked to leave an assisted-living facility because that facility believes that their care needs are too great for the facility to provide. LB904 would allow assisted-living facilities to provide a service program in a physical environment that minimizes the need for residents to move within or from the facility to accommodate their changing needs and preferences. It would establish a separate category of assisted-living licensure called enhanced assisted living. An enhanced assisted-living facility operator could opt to seek an enhanced assisted-living certificate to be able to serve those residents whose conditions may change and require additional support and services. Basically the idea is that so people who, quite frankly, don't adjust well to change, are not facing unnecessary moves. LB904 would allow Nebraska citizens to age in an environment that affords them the autonomy and the dignity that they deserve. LB904 also seeks to recognize the need to balance those autonomy needs with the need for safety. To that end, LB904 would develop the...would require the Department of Health and Human Services to develop requirements and standards for enhanced assisted-living certificates and to promulgate the regulations which would require at least one direct care staff to be on the premises and awake at all times; provide for an annual survey of assisted-living facilities; establish training requirements for cardiopulmonary resuscitation--I hope I said that correctly--and first aid; and require the development of a disaster response plan for all assisted-living facilities and training of staff in the implementation of the plan. Others who are here will

be able to discuss the technicalities of the facilities and the law, and I appreciate your thoughtful consideration for LB904. [LB904]

SENATOR GAY: Thank you, Senator Howard. Are there any questions? Senator Wallman. [LB904]

SENATOR WALLMAN: Thank you, Chairman Gay. You're in the hot seat today, Senator. [LB904]

SENATOR HOWARD: Well...(laugh). You know what? It always worries me when I bring in these aging bills, because I am reminded I'm not getting any younger myself. (Laugh) [LB904]

SENATOR WALLMAN: In regards to these things, you know, you have 1, 2, 3, 4. Would that be also require that the facility could charge more, you know, as far as getting paid? [LB904]

SENATOR HOWARD: You know, that's a very good question and I don't have an answer to that. I would expect Mark Intermill, not to punt this off on him, but I would expect that he would be able to answer that for you. [LB904]

SENATOR WALLMAN: Okay, thank you, Senator. [LB904]

SENATOR HOWARD: You bet. [LB904]

SENATOR GAY: So you get to put Mark in the hot seat, is what he's saying. (Laughter) Okay. [LB904]

SENATOR HOWARD: When one requests that. [LB904]

SENATOR GAY: Senator Campbell has a question for you. [LB904]

SENATOR CAMPBELL: Senator Howard, did you want to make any comment about the fiscal note? [LB904]

SENATOR HOWARD: Let me look at that. [LB904]

SENATOR GAY: It's a lot. Substantial. [LB904]

SENATOR CAMPBELL: It's a lot. [LB904]

SENATOR HOWARD: Well, (laughter), given our current... [LB904]

SENATOR CAMPBELL: Shall we talk about that at the end maybe? [LB904]

SENATOR HOWARD: Yeah, let's hold that. [LB904]

SENATOR CAMPBELL: Okay. [LB904]

SENATOR HOWARD: Thank you. (Laugh) [LB904]

SENATOR GAY: All right. Proponents. [LB904]

MARK INTERMILL: (Exhibit 17) Thank you, Senator Gay and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l. This is the complicated bill of the three that you've heard today, and I also noted the fiscal note and I recognize the impact of that. AARP is comprised of people who pay taxes and we are always aware of those types of issues. But what our goal was in bringing this bill to you is to address something that I think we desperately need to address in the next, if not this year, in the next few years, and that is the fact that we are an aging population. By 2040, our estimates are there will be twice as many people in Nebraska over the age of 80 as there are today. So we need to be looking at long-term care. We need to be looking at the system of long-term care that we have to make sure that it is ready for the numbers of individuals. What our goal in presenting this bill is to try to foster the goal of aging in place to make sure that people have the opportunity to live out their lives where they want to live in the setting that gives them the most independence and autonomy and at the same time address their needs to be safe. We have looked at what different states are doing in terms of how they structure assisted living, and we looked at this concept in particular of having a separate certification of enhanced assisted living as a way to meet those increased needs. It would be something that a facility could opt in or out of to get that certificate. But by having that certificate, it would be a signal to a consumer that this is a facility I can move into and the chances that I may have to leave would be minimized. So that's the basic concept of what we're trying to do. We have been in close communication with the Assisted Living Federation of America on this concept. I talked to one of their representatives today and said that this bill had a $300,000 fiscal note and probably is not likely to move forward. And they said that of the three bills this is the bill that they were most interested in because they want to make sure that their facilities have that option to serve people to allow them to age in place. One other technical aspect of what is included in the bill is some change in language that removes language from the statutes that is currently being interpreted as prohibiting nurses from fully practicing nursing in an assisted-living facility if they're employed by an assisted-living facility. What we're seeing in the research is that that factor, having a nurse on staff is the factor that is most indicative that a person would be able to age in place. A survey that was done looking at a...a longitudinal survey looking at residents at one point and then 11 months later, found that the thing that made the most difference in whether or not those residents were able to stay where they were was the presence

of a registered nurse in the facility, employed by the facility, providing for the needs of the residents. So that's one of the things that we tried to address in this legislation. And if we...I think it was the enhanced certificate that is really adding to the cost. If that is the barrier and if we could still go back and allow the practice of nursing in assisted living, I think that is worth the committee's attention, because those are the types of things that will allow a person to be...to stay where they are in an assisted-living facility. And with that I'd be happy to try to answer questions. [LB904]

SENATOR CAMPBELL: I just have one. [LB904]

SENATOR GAY: Senator Campbell. [LB904]

SENATOR CAMPBELL: Thank you, Senator Gay. Mark, are you acquainted with what Tabitha is trying to do here? [LB904]

MARK INTERMILL: With Green House? [LB904]

SENATOR CAMPBELL: Yes. I mean, is that what you're talking about here in terms of enhanced assisted living? [LB904]

MARK INTERMILL: The Green House is actually licensed as a nursing facility, so that's the license that they have. But it does...it's that type of...what the Green House does is it does provide the independence...or seeks to make sure that people are as independent as possible. We think the Green House concept is wonderful and we're encouraged that Tabitha is expanding it. We have been very supportive of that small scale-type of residential long-term care that can support people's needs as they change. [LB904]

SENATOR CAMPBELL: For my colleagues, Tabitha has done these houses and they're really built with all of the stages of what you might need if you are no longer...if you need a wheelchair or, you know, whatever you might need. It's all built into the house so that's it ready for you and you would never have to leave that home. [LB904]

MARK INTERMILL: Yep. That's great. [LB904]

SENATOR CAMPBELL: It's really interesting. Thank you. [LB904]

SENATOR GAY: Senator Stuthman. [LB904]

SENATOR STUTHMAN: Thank you, Senator Gay. Mark, the way you see it, this bill could really benefit me in 40-45 years. (Laughter) [LB904]

MARK INTERMILL: Well, aren't you going to be driving the bus in 40 years? [LB904]

SENATOR PANKONIN: Years or months? (Laughter) [LB904]

SENATOR STUTHMAN: Years. (Laughter) So I could, you know, hopefully stay in my home in 40 or 50 years. [LB904]

MARK INTERMILL: Well, staying in your home is another issue and that's our ideal is to be able to support people and that's what people...in the surveys that we've done, that's where people want to live is in their own home. If they're in an assisted-living facility and that facility would have an enhanced certificate that you would know what sort of service they provide, yeah, I think that would help. [LB904]

SENATOR STUTHMAN: For the individual that's in their home yet. [LB904]

MARK INTERMILL: Yes. [LB904]

SENATOR STUTHMAN: Okay, thank you. [LB904]

SENATOR GAY: Senator Gloor. [LB904]

SENATOR GLOOR: Thank you, Chairman Gay. I'm really kind of struggling with this. This has...and this throws me to flashbacks of different levels of registration, certification, licensure. And I pretty much know what the testimony of the opponents is going to be, and that is if it looks like a duck, flies like a duck, quacks like a duck, it ought to be licensed as a duck. You know, help me...give me an argument I haven't heard yet as to why this deserves to be called a duck of a different feather. [LB904]

MARK INTERMILL: Well, the enhanced...the certificate of enhanced assisted living is...there would be some...there would need...by definition, there would need to be some requirements that would indicate that a facility does meet those standards. So those could be staffing levels that would need...we're looking at people who may be...whose mobility may be more impaired. That may be one of the reasons why they need to leave a facility now. So in order for it to be an enhanced facility, they would need to be staffed to make sure that people are assisted in getting out of bed and moving from place to place. So those are the types of things in order to allow a person to age in place you would need to have some additional support for those individuals. But this would...as we see it, this would provide the consumer with the understanding that this facility can provide those services. [LB904]

SENATOR GLOOR: But if this designation isn't going to translate into Medicaid or Medicare having to pay, or pay more, isn't this a market issue? I mean, if I want to hold myself out as an assisted-living facility that can provide a broader scope of services than the assisted-living facility down the street, what I choose to call myself from a market standpoint is one thing, but I've got a leg up on them and may have a

justification to charge more because of a broader scope of services. I'm trying to decide why the state would have a role in what to me appears to be more of a, once again, a marketing issue rather than a legislative oversight issue. [LB904]

MARK INTERMILL: Um-hum. And I guess I would say that it goes back to the roster of assisted-living facilities. And, you know, I printed out the roster the other day and handed it to my wife who has a master's in gerontology. And said, what...here's a list of facilities...and I used Kearney. If you had a parent who had Alzheimer's disease, where would you want to put that person? And she went directly to the Alzheimer's unit. That would be the first place that she would look. Likewise, if I am looking at a place for myself for a family member and I wanted to be sure that their care needs could be met as they change, because we do know that care needs change, I would probably want to look at those places that say they can have, provide extended assistance. So that's a publication of the state and I think the state needs to be able to back up what they put in that publication. [LB904]

SENATOR GLOOR: Okay. Thank you. [LB904]

SENATOR GAY: Any other questions? Mark, I've got a question for you. I've got a friend, Jolene Roberts, she owns several of these things. You probably have heard of her. But they just created and she will probably shoot me. I can't remember the name of it, but it's...you can buy a residence. And basically the way I understand it, you just...you stay there because you can transition and it's like a lifetime deal. Very nice. Invested a lot of money to do this thing. And I think it's doing very well, there in Papillion. That's aging in place. What is the difference between what she's already doing and why this would...? Wouldn't this hinder more what she's doing? Or what good would this do if it's already being done? Because Senator Campbell talked about what's happening in other...the market is demanding some of these things. [LB904]

MARK INTERMILL: She would not be required to get an extended certificate, extended assisted-living certificate. That's one of the things we tried to make sure is in the legislation that this is voluntary, seeking this certificate. So the continuing care retirement communities in Lincoln, Eastmont out of O Street, provides that same type of service. You know, that, in effect, is aging in place. You may move from one room to the other but you're on the same campus. [LB904]

SENATOR GAY: Yeah, it's like a community thing. So this is just the regulation of what you're going to call yourself or... [LB904]

MARK INTERMILL: Yes. [LB904]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you. [LB904]

MARK INTERMILL: Thank you. [LB904]

SENATOR GAY: Any other proponents? [LB904]

CLAYTON FREEMAN: (Exhibit 18) Clayton Freeman of the Alzheimer's Association. The opportunity to minimize the need for residents to move from their facility by accommodating new changing needs and preferences I think is an interesting way of moving. And, you know, these services would allow a person to age in place, avoiding the need, I think, for more disruptive and moving away from where they're already at and perhaps more costs to them in the long run. And so for people with Alzheimer's disease, again that struggle to keep costs under control, if they could have something that would allow them to have another level of care within the facility that they're already living in would be something I think would be more cost-effective for them and less disruptive. [LB904]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. Any other proponents? Any opponents? [LB904]

BRIAN CURTIS: Chairman Gay and members of the Health and Human Services Committee, my name is Brian Curtis, B-r-i-a-n C-u-r-t-i-s, and I'm here today to testify in opposition of LB904. I'm here representing the members of the Nebraska Association of Homes and Services for the Aged and I will tell you that I am an assisted-living administrator. And prior to that position, I did serve as director of assisted living for one of the statewide assisted-living associations here in Nebraska. In that role and in my role as an administrator, I have served on many different task force and committees, talking about what should assisted livings look like, what types of regulations should be involved in overseeing the services. Assisted livings, like any organization, cannot be everything to everybody. There will come a time when a person has to move to a higher level of care in order to meet their ever-changing needs. On these national and state committees, there has been a lot of talk about regulating assisted livings federally. And in my opinion, LB904 would take us just one step closer to that. I don't think anybody in this room wants to see more federal regulations. That wouldn't do any good for the residents who desire to live in the assisted living level of care. For the state, federal regulations would mean more money. There would be more oversight. We'd need more surveyors. For the facilities, our focus would change from that homelike atmosphere to much like what we see in a nursing home. We'd be spending much more time dotting our i's and crossing our t's and spending less time taking care of the residents and individualizing those personal needs. And the biggest losers would be the residents and families, those who are looking for choices, those who have chosen to move to an assisted-living facility because they want that homelike setting. They don't want the cookie-cutter approach. They want something that specifically meets the needs that they have. Under the current regulations, individuals can age in place in assisted living. It's spelled out very specifically. Right now, what Mr. Intermill had talked about was

complex nursing cannot be done in assisted living under regulation and if you're not stable and predictable. That doesn't mean you have to be discharged from assisted living. Many residents in the community where I serve as administrator, they bring in private duty care. And as long as the families, the doctors, and the residents themselves are willing to pay for that care and the facility itself is willing to allow that, they can age in place. I have people who move in who are very healthy, go from independent to assisted, all the way till death. They go on hospice. So that is already in regulation. My fear is if you allow LB904 to pass, you're going to have some tremendous costs to the state. This year, the statewide Medicaid rate for assisted living under which many residents participate, the state waiver program pays $2,218 on average per month. That same resident living in a nursing home under Medicaid, the nursing home is reimbursed at a rate of about $4,295, almost double. And I can tell you as a provider, if I'm being asked to provide nursing services I'm going to ask for reimbursement at that same nursing level. The bill also would require that on an annual basis a survey be done at the assisted-living facilities. Under current regulations, 25 percent of the assisted livings are supposed to be surveyed annually. That's not being done. There's not enough staff to do that. If this were to pass, it would be a total disservice to the residents if those surveys were not done on a timely basis, because you're going to have a much more frail population. In closing, I just want to say I don't think anybody wakes up one day and says I want to go to a nursing home. I've had aging grandparents who had to go to nursing homes. I've had grandparents who have been in Alzheimer's special care units. But sometimes a nursing home is the only place that can provide that care that that resident needs. I would say that in assisted livings, we are one of the best regulated assisted-living organizations or states. As I visit with colleagues when I went to national meetings, they love what we have here. There's a lot of flexibility but the regulations are written in a way that we can make them fit the needs of the residents who decide to move into our communities. So in closing I would just remind you that we do have the best assisted-living regulations. I think that our regulations allow for individuals to age in place. And I think in these economic times this is not the time to change those regulations when there's going to be such a high fiscal note to this bill. Thank you. [LB904]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. Other opponents? [LB904]

BRENDON POLT: (Exhibit 19) Good afternoon. Hope you're not sick of me yet. One more bill. For the record, I'm Brendon Polt, B-r-e-n-d-o-n P-o-l-t, representing the Nebraska Assisted Living Association and our approximately 200 members. Nebraska Assisted Living Association is part of the Nebraska Health Care Association, so I'm actually testifying on behalf of both organizations. And most of my written testimony that I have here was the identical things that Mr. Curtis just talked about in his testimony. I do want to point out a couple of things that have come up in questions on this bill. The Tabitha Green House or Jolene Robert's facilities that would enable aging in place,

those are nursing facilities so clearly you could move in to one of those and need the most complex types of nursing care. But we don't want to turn assisted-living facilities into nursing facilities. Yesterday, many of you know we had a large member meeting, and so we had a large group of assisted-living providers around. And they look at this bill and they, oh, I don't want to be a nursing facility; if I wanted to be a nursing facility I would open a nursing facility. And the residents didn't want to move into a nursing facility. They wanted to move into a social model, an assisted-living facility. The thing about this bill, though, that I really want to point out is although there is an elimination of that term "complex nursing interventions" and "stable" and "unpredictable," the intent there was presumably to then be able to creep into those level of services and assisted living. But you see in Section 7 of the bill, an enhanced assisted living is still prohibited from doing nursing facility level of care. So basically what you have here, if this is the continuum of very light assisted-living care and here's the heavier assisted-living care, we haven't grown anything out this way under this bill. Really what we've done is taken the higher need assisted-living people and told them, you've got to move out; you've got to move into an enhanced assisted-living facility. So now hundreds of people, literally, under this bill are out the door in the name of aging in place. So we're scratching our heads. So what you have is a current system where you'd be in assisted living, and if you ended up needing complex nursing care you have to move into a nursing facility. Nothing has changed about that in this bill. But under this bill, you would instead go from an assisted living, pick up enhanced assisted living, pick up nursing facility. So it's actually an additional transition. So for these reasons our members really beg of you to not advance this bill. We believe our current regulations protect assisted-living residents and allow for home health, hospice, and therapies to be brought into assisted living where there are services that the facility can't itself provide. So the existing system is superior to what's being proposed here, and it also better facilitates aging in place. Any questions? [LB904]

SENATOR GAY: Any questions? I don't see any. Thank you. Any other opponents who would like to speak? [LB904]

JOANN SCHAEFER: (Exhibit 20) Good afternoon, again. For the record, I am Dr. Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, MD. I'm the Chief Medical Officer and director of the Division of Public Health. I'm here to testify in opposition of LB904. And although the department understands the desire to have folks age in place, and myself personally would have that desire, the reality is that the medical needs of people change as we get older. And assisted-living facilities, we have some concerns and I have some numbers to go through with you at the end of my testimony. Basically, LB904 proposes to make major changes to two existing statutes, the Health Care Facility Licensure Act and the Assisted-Living Facility Act. We have, under the existing statutes and regulations, confusion under the fact in Section 6 of LB904. The "dependent on medical equipment and require more than intermittent or occasional assistance from medical personnel," that clause is confusing to us. And the fact that...I'm sorry. I'm trying to sum up my

testimony quickly for you. The licensure settings in some homes, apartments, and facilities where casual care is provided at irregular intervals and where 25 percent of persons that require such care, but the remainder of the population is competent individuals, some of those settings might be required now to hold assisted-living facility licenses. So that's a minor technical issue and it might be an unintended consequence. Also, too, there's some State Fire Marshal issues with some of the wording for...that would need to be taken a look at that I think is an unintended consequence as well. Obviously, the biggest concern that we have and the reason for the fiscal note is the annual inspection which would require additional surveyors. But the biggest concern that we have is the fact that assisted-living facilities would be having folks that are requiring more and more care that really should be at a higher level of care and in a nursing home. And before I get into our numbers, which is the real meat here, if you...I have to say, first and foremost, that we are the envy of many other states nationally, and you need to know that. Our nursing home care is very good in this state and our assisted-living home care is very good in this state. And our quality indicators that we have and our nursing home indicators compared both in the Midwest we do very well and Nebraska compared to the Midwest we do very well. Does that mean that we don't have room for improvement in some facilities? No, we absolutely do. But you need to know that we actually do very well in comparison to the nation. Now, having said that, I just wanted to go through some of the three years' past data with you on why this has the department concerned. Over the last three years when you just look at the types of violations that we go out and look at, we've been out...we've done 423 inspections for 2007, 2008, and 2009. In that, 185 citations were written; 40 of them had to do with the fact that in the assisted-living facilities people were not in the right levels of care. So 40 out of 185 were for that reason. We went in and somebody wasn't in the right level of care and that's not a lot but that's not a little. So it's about 10 percent of the inspections that we were doing. So it's just something to keep in mind when we're thinking about allowing an assisted-living facility to take on this enhanced medical care. It sounds really good in theory to just keep bringing in more. But as you've heard in the prior testimony, we do allow a lot to be done with the family's consent to allow hospice, to allow home healthcare to come into the assisted-living facility to do those things already. But if you keep allowing more and more and allow these assisted-living facilities to turn into what really should be a nursing home, where that individual should be placed where the level of care is actually better, we're afraid that we're going to see more and more of these types of situations. And that's what we don't want to get into. We understand the need for families. We understand the whole idea of aging in place. And we also understand that nobody really wants to be in a nursing home, and the assisted-living facilities look so wonderful and there are so many activities and they are beautiful places. But when it comes to the complex medical needs and the nursing needs of some of these individuals, the safest place for them, many times, is in that higher level of care. And instead of bringing all the pieces to the assisted-living facility, sometimes it's safer for the person to be in the higher level of care. So with that, I'll answer any questions. [LB904]

SENATOR GAY: Thank you. Are there any questions for Dr. Schaefer? Senator Wallman. [LB904]

SENATOR WALLMAN: Thank you, Chairman Gay. Yes, end of life issues as far as hospice and some of these, do a lot of nursing homes have this? Is that separate contracts, or...? That costs extra. [LB904]

JOANN SCHAEFER: Well, nursing home or an assisted-living facility? In both. In nursing homes, they are very well equipped with that. And assisted-living facilities, they can get separate contracts in and they're usually done through, you know, home helping agencies or specific agencies that specialize in hospice. [LB904]

SENATOR WALLMAN: Okay. Thanks. [LB904]

SENATOR GAY: Any other questions? I don't see any. Thank you, Dr. Schaefer. [LB904]

JOANN SCHAEFER: Okay. Thanks. [LB904]

SENATOR GAY: Any other opponents who would like to speak? [LB904]

SHARON COLLING: Good afternoon again. My name is Sharon Colling, S-h-a-r-o-n C-o-l-l-i-n-g. I'll keep this one pretty brief. As an administrator and owner of both a 30-some bed assisted living and a nursing facility, I am adamantly opposed to this legislation for one reason and one reason only. It does exactly the opposite of its title. It does not allow aging in place. What it does is strip from the assisted livings an ability that we already have, and that is to allow somebody to stay in their own assisted-living apartment and receive ancillary services from a third-party provider. They have to be in a stable condition to be in an assisted living, but they can contract with a home health agency or from an outpatient part of a hospital. They can contract with a hospice. They can contract with PT/OT speech. Under this legislation they will no longer be able to contract for an outside service. That is stripped from the regulation. So if they are living well in assisted living and they get pneumonia and they need a week or two of home health, they can no longer do that in their assisted-living apartment. They will have to move out or go to the hospital for that short-term acute stay and then come back to the assisted-living rather than contracting with home health for the week or two that they're ill. If they should fall and dislocate a shoulder and need some assistance with giving their own insulin or something along that line, rather than being able to contract for the therapy to come do therapy in their own apartment or be able to contract for home health to come in to give the shot, they would be required to move from that assisted living. The legislation, as proposed, eliminates the ability to bring in other providers, usually paid for by Medicare, which is part of their, you know, Medicare benefit. And yet

it doesn't provide, as Brendon said, anything on the other end. It does not allow for anything that is not a stable and noncomplex service to be provided. So it cuts off the whole upper tier. So where are those people, especially in rural Nebraska--and I'm only an hour away but I'm very rural Nebraska--where are they going to go? There's nowhere for them to go. They cannot handle home by themselves with home care and they cannot go to an assisted living. Now, technically they could go to an assisted living, but, you know what? There's nobody to pay for that assisted-living service. If they're eligible for assisted living, then the state, if they're a Medicaid person, pays the default assisted-living rate, which is right around the $70 a day range. Our base costs at my facility are $160-some a day. I can't take that kind of hit for each person that wants to come into the nursing home because they are assisted-living eligible but because of this regulation now they need an ELF and there isn't one in the area. Another significant concern...and so rather than aging in place, it's immediate removal. In my 36-bed facility at this moment I have seven people who would not be eligible under this bill. That means the day it's enacted, I've got seven people I have to kick out. I don't know where to put them. If a facility opts to be an ELF, then there are Fire Marshal issues. Every assisted living is built either to residential fire code or nursing home healthcare fire code. And so if you want to be an ELF, I suspect you're going to have to have that healthcare fire code, which means many of the assisted livings in the state and several of the chains, they're built to the residential model. So they'll be, in fact, prohibited by their actual building to elect to go to the ELF standard. That means that we've got significant parts of the state where there may be no options for assisted living whatsoever. That's a concern for the consumers of the state of Nebraska. Thank you. [LB904]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. [LB904]

SHARON COLLING: Thank you. [LB904]

SENATOR GAY: Any other opponents who would like to speak? Anyone neutral? Senator Howard, do you want to close? [LB904]

SENATOR HOWARD: I was looking for Lavon Heidemann to come in when he saw that fiscal note. (Laugh) I was guessing he was going to be negative. I just want to thank you for your time and attention. I think these are important issues for us to look at and I was very encouraged to hear about Tabitha and the other facility that's kind of got a head start on this. So thank you. [LB904]

SENATOR GAY: Thank you, Senator Howard. With that, we'll close public testimony on LB904. [LB904]