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BANKING, COMMERCE AND INSURANCE COMMITTEE  
September 14, 2012

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The Committee on Banking, Commerce and Insurance met at 9:00 a.m. on Friday, September 14, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public briefing on the Patient Protection and Affordable Care Act. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: None.

SENATOR PAHLS: Good morning. Good morning, I want to welcome you to the Banking, Commerce and Insurance Committee hearing today. My name is Rich Pahls, I chair this particular committee. There are...as most of you know by now, that this meeting will be discussed, basically, around the Patient Protection and Affordable Care Act. We've invited the department to give us some more information. And a few other individuals were invited to speak to the committee. And I think you probably saw those on the wall outside. I think we are ready with the...oh, you know what I do, I'm skipping everybody around. I guess I'm getting so used to running this thing through so fast I'd better have the people introduce themselves here.

SENATOR SCHUMACHER: I'm Paul Schumacher, District 22.

SENATOR LANGEMEIER: I'm Chris Langemeier, District 23, Schuyler.

SENATOR MCCOY: Beau McCoy, District 39, west Omaha.

SENATOR GLOOR: Mike Gloor, District 35, Grand Island.

SENATOR CHRISTENSEN: Mark Christensen, District 44, southwest Nebraska.

SENATOR PAHLS: And the other two senators will be with us in a little bit. And many of

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you know Bill Marienau, our legal counsel; and the person who makes sure that we...everything we say is recorded and she's doing it with a smile on her face, Jan Foster. Also, we have two pages today, Paige Schreiber from Columbus, and I think we...oh yes, we have another one also, Lacey Schuler from Tekamah. The only thing I'm going to ask you now is to turn your cell phones off and we will be ready. Thank you.

BRUCE RAMGE: (Exhibit 1) Good morning, Senator Pahls and members of the Banking, (Commerce) and Insurance Committee. My name is Bruce Ramge, for the record that's B-r-u-c-e R-a-m-g-e. I have with me today Mike Sciallo. Mike, would you care to spell your name.

MIKE SCIULLO: Sure. It's M-i-k-e S-c-i-u-l-l-o.

BRUCE RAMGE: We're here today to give you an update, a presentation on the (Patient Protection and) Affordable Care Act and the ongoing planning and design with regard to a health insurance exchange. And today what we would like to cover are basically three broad topics: the essential health benefits; Nebraska's exchange progress update and the public meetings that have been held; Nebraska's next steps with regard to planning and designing for a health insurance exchange. With regard to the essential health benefits under the Patient Protection and Affordable Care Act, the U.S. Secretary of Health and Human Services was to adopt standards for the essential health benefits. And what these are, are the minimum standard to be applied for insurance plans that are qualified health plans to be sold inside and outside of the exchanges. In a guidance bulletin the federal government determined that the states could make the decision only from the following four plan choices: that would be the state's largest health maintenance organization plan; the state employee benefit plan; a federal employee benefit plan; or the largest small group health plan offered in the state. And the states are authorized to decide this issue whether or not they elect to operate a state-based exchange. All of the states are still awaiting for the federal government to issue regulations. Those have not yet been issued. Current advice to all of the states is

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that the U.S. Secretary of Health and Human Services will select any of the states' largest small group plan if no plan is selected by a state. So that is pretty much the default plan. Since our last briefing, we completed an actuarial study of those four federal options and we have published the actuarial study that was commissioned to study those available options on our Web site. We also sought public comment on the state's available options and received written comments. Those are available on the Department of Insurance's Web site. But the public meeting was held here in Lincoln on August 16 to discuss the options. And the common theme throughout the public comments seem to encourage balance...to balance the coverage with affordability. Many seemed to encourage selection of the most popular small group plan. There was a recognition that such selection would be the least disruptive to the marketplace because that's what's most widely used. There were comments that an HMO plan really would not be popular; it's not used that much and really would not fit well with the current methodologies. There's some individuals expressed desire for the most comprehensive plan, especially with related to some types of specialty services such as rehabilitation therapy. It was also discussed that stand-alone dental to meet the pediatric dental requirements would be the most desirable because dental plans are typically administered and structured differently than comprehensive major medical insurance. Governor Heineman has asked the Department of Insurance to recommend a basis for the essential health benefits. And since we have not received the final regulation, it's really not possible at this time to present due to the federal government's failure to issue those...not even preliminary regulations. Currently, there is only guidance and that has no force of law. And we understand that those regulations may be issued in November. And it's...there's really no rule on such important points as how the states will be required to pay for current or future mandates beyond those contained in the essential health benefit regulations. And again, if no regulations were issued based on what has been made public to date, the Nebraska Department of Insurance would be recommending a benchmark selected to be the state's largest small group insurance plan. And we feel that this is also consistent, but we know about the federal government's default selection. Nebraska's current largest small group plan is Blue

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Cross Blue Shield of Nebraska's Blue Pride Option 5. And this is the state's most widely chosen small group plan. Coverage would be a reflection of the basic health plan. Again, this is a floor for coverage, it's not the ceiling. No alternative to this choice was identified in the comments received or voiced in the public meeting. And using richer plans, such as the Federal Employee Health (Benefit) Plan, would require a relatively benefit-rich minimum standard that would apply both inside and outside of the market...or the exchange. Therefore, it would increase the cost for all insured Nebraskans. And this would also increase the number of uninsured Nebraskans who may not be able to afford the benefit-rich plan. Now I'd like to go on and discuss briefly Nebraska's exchange progress and the public meetings that have been held. The Department of Insurance has held meetings in Gering, Kearney, Nebraska City, Omaha, and South Sioux City. In addition, the Governor has held public meetings to hear testimony from advocates, healthcare providers and hospitals, insurers, and insurance agents. Since our most recent briefing, we conducted phase two...those phase two stakeholder meetings. And it was aimed at a statewide public education session. The format was, basically, a presentation like this covering aspects of the exchanges and then we'd open it up for informal discussion and questions. The Department of Insurance is scheduled for its second gate review with the Centers for Medicare and Medicaid Services for the week of September 17. And we're working on completion of the mandated blueprint application which would be due in November. We're also working on development of a level one extension application to continue our planning funding. In terms of those meetings, again, to just give you an update or an idea of the reaction and discussion there. There were a lot of questions. Many expressed opposition to Obamacare in its entirety. But some...many were concerned about the cost that could potentially be imposed upon the state. There were many questions about how it would impact their specific situation, their specific insurance situation. Many expressed concern about delegating such a thing to the federal government, therefore supported a state exchange. Some had sincere interest in the concept of a hybrid state-federal partnership model, especially when evaluating the cost and duplicate spending. Insurers in general seem to favor state-based exchange; hospitals were

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mixed. The community health centers represented by the health centers of Nebraska suggested that the state should go with the federal exchange and leverage what they did to improve upon that. Other hospitals favored a state-based exchange. The insurance agents, some said it really doesn't matter; others expressed desire for a state controlled. And in terms of opinions regarding the financial aspect, there's difference of opinion whether it should be funded on a broad-based basis or whether it should be used imposed...funded by imposed...imposition of user fees and fees upon the insurers who participated in the exchange. Back to the department's work here: we have completed the business model flows of the exchange functions to determine business and technical requirements. The business flows are a method in which the business plans drive the technology and create the back office procedures. And they include such functionality as eligibility and enrollment for the individual and the small employer; health plan management leveraging existing infrastructure as much as possible; financial management and data exchange which leverage existing health plan capabilities where applicable; consumer assistance and the call center requirements; compliance, auditing and reporting. And at this time, if I may, I'd like to ask Mike to show you just some examples of what some of these business flow models look like.

MIKE SCIULLO: Thank you, Director. So I know this is difficult to see so I do apologize for that. But this is the high-level business process flow for how the eligibility and enrollment section of the insurance exchange would work. Here is like the first step where an individual would apply for the exchange and they would prepare their initial application. So the first thing you would want to do in the business process is determine whether or not they have an existing account or whether or not they are a new account. For the sake of demonstration, and the fact that nobody was enrolled in an exchange, let's say they have a new account. So there's four basic verification functions that need to be performed for anybody that would want to purchase insurance on the exchange. And that would be to verify their residency in the exchange service area. And that's based on whether or not they live in the state of Nebraska or they intend to reside in the state of Nebraska. We'd have to verify their individual incarceration status, as well as

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verify their individual citizenship, Social Security, or status as a national or lawful presence. And then we have to verify whether or not the individual is an American Indian or Alaska native. So these are the four things that you would need just to purchase insurance on the exchange. The next three is what you need to determine if you're seeking financial assistance from the federal government in the form of advance payment of a tax credit or a cost-sharing reduction. So you would have to verify the individual's eligibility for public minimum essential coverage, as well as employee-sponsored minimum essential coverage. So what this means is, the law states that if you don't have access to affordable coverage, then you can receive advance payment of the tax credit in the exchange. But if you do, you can't receive that advance payment of the tax credit. So for example, if you receive TRICARE, Medicaid, Medicare, or you receive affordable coverage based on a certain percentage of your required payment on your income through your employer, then you also would not be eligible for financial assistance through the exchange. The third step of that is to verify the household income of the applicant. All these verification procedures are done through the federal hub which is currently in phase two of its development. And the hub, to take a step back, is a conglomeration of federal agencies, including CMS, IRS, Social Security Administration, Department of Homeland Security. Next step would be to determine whether or not somebody is eligible for Medicaid or CHIP or to assess that. The idea here is to...you have to satisfy this other public minimum essential coverage provision. So if somebody may be eligible for Medicaid or CHIP, then they wouldn't be eligible to receive the advance payment of the tax credit and the cost-sharing reductions in the exchange. So after you've been able to assess that portion, you would determine individual eligibility. So this is the highest level business process flow for eligibility. Each one of these purple boxes here is represented by another flow. And I don't think we would have the time or maybe the patience to go through all this today, but I just kind of wanted to flip through them so that people could understand the level of detail that's required to create and design and plan for an insurance exchange. So, for example, this next flow is just what you would need to do to prepare the initial application. Flow after here is the one that I talked about for verifying individual citizenship, Social Security

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number, and status as a national and lawful presence. This is for determining the eligibility. This is for updating the account. This is for verifying incarceration status. And there's 26 of these flows. And this is just for the individual eligibility enrollment portion of the exchange. These flows exist for all the business functions. So this is the type of work that the department has been doing. And these flows are really based around the federal law and the regulations. They don't deviate too much from the federal standard that was provided as a guide for us to follow because, quite frankly, in order to be compliant with the law, you need to stay very close to the federal regulations and standards.

BRUCE RAMGE: Thank you, Mike. I'd like to now move into discussion of Nebraska's next steps in the planning and design process. At our July briefing we mentioned federal regulations that all states lack. And I'd just like to go through some sample of some of the more important ones, this is by no means comprehensive. They included new rules after the Supreme Court of the United States ruling; question as to if the "No Wrong Door" approach is still valid with the interaction between Medicaid and the commercial insurance market; what is the definition of Medicaid expansion and what effect does that definition have on the operations of the exchange; questions about risk adjustment, risk corridors and reinsurance; regulation of essential health benefit, only a bulletin has been issued to date; formal regulations regarding the federal exchange since what's out there now is really in the preliminary stage. There were numerous mentions of forthcoming guidance in that regulation. The appeals process, and that is as it applies to appeals for eligibility by subscribers and participants, as opposed to claim disputes. No regulations on these substantial elements of operating an exchange have been issued. The states are still also waiting for the federal government to provide regulations on MOU, memorandum of understanding, requirements between the agencies, between the states and the federal agencies; more guidance on community rating; affordability exemptions; advisory committees; navigators and assisters; cost and operational details; and Medicaid integration. Nebraska Department of Insurance will be attending a second federal gate review meeting to have the Nebraska exchange progress evaluated

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and validated. And these gate review meetings are part of the process for all states to have the exchange certified by the federal government. Regulations implementing the exchanges require that the U.S. Department of Health and Human Services approve or conditionally approve the readiness of a state-based exchange no later than January 1, 2013, and to receive approval or conditional approval for a state-based exchange or a state-federal partnership exchange, the state must complete and submit the exchange blueprint application, along with a declaration letter signed by the Governor and an exchange application. The blueprint application is presently due no later than November 16 of this year. And the approval, it basically demonstrates the ability to satisfactorily perform exchange requirements; conditional approval is...basically indicates that the state is making significant progress and will be operationally ready to open enrollment for October 1, 2013. With regard to further next steps, we'll be moving forward with the design of a state-based exchange; continued study that all states, again, still need those federal regulations; the agency continues to welcome input from all parties; we'll have continued Banking Committee and briefings and public information sessions so long as we're permitted to do so, Senator Pahls. And in terms of the other states, to date, 13 states have signalled moving ahead on state or state-federal partnership; 37 states have selected federal exchanges or have not yet made a decision. And with that, I would like to permit any questions or discussion as you might have.

SENATOR PAHLS: You guys have been working, haven't you?

BRUCE RAMGE: It's been busy.

SENATOR PAHLS: Yeah. And I do want to thank you, because I've attended...had the opportunity to attend several of the meetings and I've been impressed from where we began and where we are right now. I mean, it does appear we still have an awful lot of things to do.

BRUCE RAMGE: Thank you.



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SENATOR PAHLS: Senator Pirsch.

SENATOR PIRSCH: Thanks for your testimony here today. So the second gate review with Centers for Medicaid, Medicare is going to take place in a couple of days.

BRUCE RAMGE: Yes.

SENATOR PIRSCH: What do you anticipate in terms of the most important information that you're going to ask for that they may be...you expect they'll be in a position to tell you?

BRUCE RAMGE: I expect that they will, basically, have a check list to see where the state is with regard to each of the detailed requirements; and they'll sit down and evaluate what areas we've made suitable progress; and that will also give us feedback of where they feel we may need to get back and do some more thorough work. So until we get the feedback, I guess I don't really anticipate any specific areas, but we'll soon find out.

SENATOR PIRSCH: Are these going on with other states simultaneously or where...we have our second gate review so our first one was when?

BRUCE RAMGE: Our first one was, oh, Mike...

MIKE SCIULLO: It was in April.

SENATOR PIRSCH: In April.

MIKE SCIULLO: That was the planning review and now this is the design review.

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SENATOR PIRSCH: Is each state doing its own schedule, some ahead, some behind, so...?

BRUCE RAMGE: Yes, correct.

SENATOR PIRSCH: So do they have a formalized list of things that they're looking at then at the second gate review?

BRUCE RAMGE: Yeah, I believe that their list would be, you know, similar for each state in terms of the progress and that would vary by state.

SENATOR PIRSCH: Okay. And is there any important, in terms of...you had mentioned the list of some things that you...we have not...no state has received in terms of guidance that...is this in material, you know, big type of questions or is this kind of...

BRUCE RAMGE: Yes, I mean they're very material. Even just this week there was testimony in the House, Ways and Means Committee from states and other parties that discussed these lack of regulations and the state of Pennsylvania provided testimony. And we have also, in a face-to-face meeting with CCIIO, which is a branch of U.S. Department of CMS, stressed the importance of getting this information to us because it really impedes progress for planning and design. So they are aware, and hopefully the information will eventually get filtered down to us.

SENATOR PIRSCH: Have they given any time lines for...or kind of notices that there will be forthcoming information on those?

BRUCE RAMGE: No, no, we're not getting that specific guidance. There are a few pieces where there are some additional information that's suppose to come forth, but as a whole it's still problematic for the process for all states.

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SENATOR PIRSCH: Okay, thank you.

BRUCE RAMGE: You bet.

SENATOR PAHLS: I'm looking at some of your recommendations, as I...I'm going back to the essential health benefits. You are recommending...if you...to the Governor, Blue Cross Blue Shield, am I interpreting that right?

BRUCE RAMGE: We have not made the recommendation as of yet because there's no regulation.

SENATOR PAHLS: Right.

BRUCE RAMGE: That would be the way we're leaning.

SENATOR PAHLS: Okay, yeah, that's...I understand.

BRUCE RAMGE: Yeah. Yes.

SENATOR PAHLS: Okay, so. And the Federal Employee Health Plan you say is too rich?

BRUCE RAMGE: Yes.

SENATOR PAHLS: Is that the same one that the Congress is under?

BRUCE RAMGE: I believe so.

SENATOR PAHLS: Okay. Senator Gloor.

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SENATOR GLOOR: Thank you, Chairman Pahls. Mr. Director, thank you for being here this time. I appreciate it. I've got some questions built up. And one of them relates to community rating.

BRUCE RAMGE: Yes.

SENATOR GLOOR: Why don't you, if you would, take a second and educate us on something that gets talked about very little, but I think is pretty important, that is what is community rating and what's its significance to us as it relates to the development of this?

BRUCE RAMGE: I'd be happy to. Community rating, basically, is a terminology that accounts for the fact that insurers will be using guaranteed-issue methodologies and they will not be able to use a person's health history to determine what rate classification you would be subject to. It also takes into account new rules such as age banding. Historically, insurers in the state have used a differential in rates, anywhere from 5 to 1, to 7 to 1 because of the new rate rules that will be shrunk down to a 3 to 1 margin. And what this is going to do is raise the rates for younger individuals and perhaps lower the rates for older individuals. And it could, actually, create some price shock out there in the marketplace, especially for small employers who have a group of younger employees in their employment. And there are other rules; I don't have them all in front of me, but in terms of age there's...the only health factor that can be taken in account of is smoking and there are...I believe that there would no longer be a differential between male and female rates.

SENATOR GLOOR: And so we're waiting for further guidance on what, as it relates to...because you're being pretty specific here?

BRUCE RAMGE: It would be the transition rules...for transitioning from the current rating methodology to the new requirements under community rating.

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SENATOR GLOOR: Let me ask you, I'm...this is strictly a guess on your part, but I'd be curious. You know we're waiting for something that is important as community rating, memorandums of understanding, essential benefits, there are a lot of things we're waiting for; do you think the feds are going to make the time frames they've laid out for themselves? I mean is it reasonable to think with all the things that are hanging fire at this point in time that we're dealing with reality when it comes to the time frames that supposedly are locked in at this point in time?

BRUCE RAMGE: I ask myself the same question whether or not they also will be able to meet these time lines. But every indication from our communications from them is that they do plan to move forward and follow these time lines. One of the large insurers who testified at the public meeting here in Lincoln indicated that it is their opinion that the federal government will have an exchange operational by January 1, 2014. So it's to be seen is a good...

SENATOR GLOOR: But...so are we suppose to guess? I mean, when it comes to some of these components of an exchange without firm guidance, are we suppose to make a best guess as to what we think the feds are going to say? Or are we in a position where we need to take the bull by the horns and just start making some of these decisions and see how well they match up, or making an argument that this is best for Nebraska as it relates to an exchange if the feds come back later and say no, no, no, this is what our expectation was when it relates to the memorandum of understanding, as an example?

BRUCE RAMGE: Well, I believe that the states are being pushed to go forward with or without the information. And in terms of whether it's best to make a decision and grab the bull by the horns and go forward, I think depends on the specific piece of information that's being waited for. I think you have to look at each thing and see is this something that is major enough to cause a person to wait or cause a state to wait, or whether this is something that could be easily changed at a later date.

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SENATOR GLOOR: Do you have your own top ten list that you could share with us of things that you think fit into that category?

BRUCE RAMGE: Well, right now I think the essential health benefit is important because insurers also need to plan and design and get their products ready to be sold; otherwise, there would be very few of them that can move that quickly to get their products into the exchanges and out to the general market outside the exchanges. So that would be my number one.

SENATOR GLOOR: Number ten is?

BRUCE RAMGE: Well, number two I'll say is all of the details on the interaction between the exchange and the eligibility for the existing Medicaid programs, because there are some changes there, and how that interaction with the application process on exchange. I think that's very key.

SENATOR GLOOR: That's helpful. I appreciate that degree of specificity. Thank you.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: One of the things in your presentation and your notes say that no formal recommendation is possible at the present time due to the lack of final, and in some cases even preliminary, regulations. Well, that's kind of understandable. There are some pretty good indications of which way the wind is blowing on these preliminary regulations, aren't there?

BRUCE RAMGE: They've not issued any...well, they've issued guidance, of course, and that is, basically, what I would consider a informational, but there's no force of law behind it. And I believe that one of the important pieces will be...that needs to be fleshed

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out by the U.S. Department of Health and Human Services...excuse me, CMS, is the pediatric dental provision. The other provision that is very important is habilitative services because they're not well defined and the states and the insurance companies, we don't know what specific direction to take with that requirement.

SENATOR SCHUMACHER: So there's like ten of those requirements, isn't that the case?

BRUCE RAMGE: Yes, that's correct.

SENATOR SCHUMACHER: So there's two of them that are still under guidance, not very clear. Are the other eight pretty well established?

BRUCE RAMGE: Many of them are well established just through a matter of what's been common business practice.

SENATOR SCHUMACHER: And, you know, you indicated that the states are kind of being pushed along. Is that because, maybe, the federal government wants to squeeze a little creativity out of the states so that...?

BRUCE RAMGE: That's very possible.

SENATOR SCHUMACHER: So that...I mean, this procedure kind of being slow issuing guidance, preliminary regulations, final regulations, this is not atypical to this particular thing. This is...you probably see this in wind regulation and energy regulation too. They don't come out with the final right up-front. Is that a fair statement?

BRUCE RAMGE: Yeah, I'm not familiar with the other areas of regulation, but it's new for insurance. I've not dealt with these types of federal requirements before that weren't clarified. For the last major piece of federal legislation that really impacted the

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Department of Insurance would have been the HIPAA regulations. And when those came down they were pretty much carved in stone and we knew which direction to take. So this is a whole new foray for the Department of Insurance and for the other states.

SENATOR SCHUMACHER: But it's a fairly rational foray. I mean, you start out with guidance; you start out with preliminary things; you work with the people you got to work...then you...when the wind finally settles down and the wind vane points north or east or west you come out with the final ones. I mean, pretty hard on something this complex to come out with the final first. I mean, is this...do you see this as an irrational process?

BRUCE RAMGE: I guess I would have to think about that. I really can't comment whether I say it's rational or irrational. But I understand the point you're making.

SENATOR SCHUMACHER: Okay. All right. Yeah. The 14 states that have said, okay, we think we're going to be up and going by October of '13, do they have...I mean, they're kind of basing the way they're generally shaping their programs off of these preliminary guidances, aren't they?

BRUCE RAMGE: I would guess so. But I believe that even some of those who have made the decisions to go forward, in many aspects are in the same position as the rest of the states who are in the planning and design phase because they can't finalize their plans yet either.

SENATOR SCHUMACHER: Well, and naturally because, I mean, they can kind of shape them a little bit. The one thing that in one of your charts here was kind of interesting, that we don't want to choose a high-level standard like the Federal Employee Health Plan because the cost would be so high. And by increasing the cost of insurance it increases the number of uninsured and that creates a vicious cycle. Is that kind of a generally accepted insurance principle?



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BRUCE RAMGE: Yes, because, you know, many of the individuals who will be using exchange or buying insurance in the individual market, whether inside or outside the exchange, will be on their own. They will not qualify for the federal tax subsidies. And so for many individuals it could really create an affordability issue to where it was just cheaper for them to pay the penalty and do without health insurance or find some type of supplemental coverage that's not as comprehensive as a major medical plan.

SENATOR SCHUMACHER: So the more people that we can bring under an insured umbrella, the lower the cost? Is that a logical extension of that?

BRUCE RAMGE: That's the goal of the act.

SENATOR SCHUMACHER: Okay. And so if we leave anyone uninsured or without some type of coverage, we're going to drive the cost up?

BRUCE RAMGE: That's correct.

SENATOR SCHUMACHER: Okay. You mentioned that we're going to apply for a level one extension to get some more dollars to plan this.

BRUCE RAMGE: The level one extension would be for us to be able to continue using the existing level one funds that were allocated and that would just extend the time period that...for us to use those dollars.

SENATOR SCHUMACHER: And I think you mentioned that there's going to be some insurance meeting in a little while to review how things are going. Are any of those funds available for the staff of this committee or committee members to begin to apply for some of our own research and maybe bring some people in for...so we have an idea, based upon our own research, what might be the right thing to do when it comes to

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finally approving whatever plan you guys come up with on the legislative floor?

BRUCE RAMGE: I'll be happy to check into that and get back to you.

SENATOR SCHUMACHER: It would be...you know, right now is...you know, we haven't spent much money, as a committee, yet I don't think...and on any independent research and...you may have to pass on some of that. The flowchart that was shown up here, that looked rather overwhelming, many level of things, but...and maybe I can address this to you, if we were to flowchart out the Nebraska Advantage Act or the tax act or many, many pieces of legislation, we'd come up with an equally complex-looking flowchart with many different pages, wouldn't we? I mean, that's just a logic chart, isn't it?

MIKE SCIULLO: I'm not familiar with those particular acts so I wouldn't be able to make a comparison for you, Senator.

BRUCE RAMGE: I think the purpose of us showing those today is to demonstrate that we're not sitting and waiting; we are going forward and doing the planning and into the details that we can. But, yeah, I would agree. Any complex project would have equally...

SENATOR SCHUMACHER: So we're not looking into something, you know, draconian or unusual with that. You said that that flowchart stayed very close to the federal regulations and they defined out all those little decision boxes in there. So there must be a fairly decent set of almost able to be relied upon regulations in order to get that flowchart?

MIKE SCIULLO: Well, that chart is specifically for eligibility enrollment and one portion of the regulation, both for the exchange and for Medicaid that was released in the, quote, final exchange regulation specifically focused on eligibility enrollment. So there is a fair amount of guidance or, I should say, fair amount of defined final regulation about

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how those processes will work. But there's certainly still some questions regarding some of the points of those flows, you know, specifically, one example, would be regarding affordability.

BRUCE RAMGE: Just...if I may, to provide some further clarification, as those business flows are translated into actual vendor RFP requirements and those types of things, that process all would have to be approved yet by CMS or (U.S.) Department of Health and Human Services in order to go forward with the approval, or conditional approval process. So they're not going to let the states go out there and make assumptions that might not fit in with their way of thinking.

SENATOR SCHUMACHER: Now one final thing, and I...the flowchart like that and the logic and tying into that federal hub and all that, that's not done manually. It's going to be done with a pretty fancy computer program, I would guess, and a pretty big computer sitting someplace. Do we have any idea or has any discussion been started of who's going to do that programming, where that computer is going to be located? Or does that make a difference if we tell the feds, you know, you go do it for us? Can the feds run that computer and we put our own little tweaks onto it? Any thought as to how this is going...how the actual mechanism is going to take place? And when you go on the Internet you're going to get to this thing in just a year time?

BRUCE RAMGE: Yeah, I'd be happy to respond to some of those questions. First of all, in order to...who would be building this if it were a state-based exchange, that would be through an RFP process where vendors would bid and be evaluated through the state's processes that are set out by the Department of...the Materiel Division of the Department of Administrative Services. I would anticipate location of any hardware would be at the state's current computer system with the CIO. If the federal government were to build this, or if it were a state-federal hybrid model, then they would be responsible for all the IT portion. On a hybrid model, or a partnership model, the state would operate the consumer assistance and the plan management; and then the federal

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government would operate and maintain the computer operations.

SENATOR SCHUMACHER: Would under that model there be in some dungeon in Washington a Nebraska computer, an Iowa computer, or would there just be one federal computer with subprograms on it?

BRUCE RAMGE: I...

SENATOR SCHUMACHER: We don't know?

BRUCE RAMGE: I don't know.

SENATOR SCHUMACHER: Okay. By not...is there any effort along these lines to use this as an economic development tool and maybe see if some folks over at the university or our "young byte" Nebraska programmers and people that are coming out of school can get in on this industry so that we can work with them so that we don't have a RFP come back from Silicon Valley while we sit out here wondering how we're going to get welding jobs?

BRUCE RAMGE: I believe that any vendor who would bid on this project overall would probably need to use subcontracts. It's...it's...this is an enormous project. Some have said that it's the largest IT project, nondefense project in the history of the country. So I believe that there will be...there could be opportunities out there. I don't know if, you know, someone at the university could build the whole thing. I think it would be pieces of it.

SENATOR SCHUMACHER: Should we be looking then at...or from your perspective that you've seen on this, to someday or another come in early on with, if we can, with either legislation or mechanisms that would encourage things so that our kids and computer companies could get in on some of these subcontractors, give them a little bit

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of an edge so maybe we can market this to other states who are going to have to have this too? I mean, have you seen anything that we could be doing, because this looks like if it's the biggest nondefense project ever, to the extent there's economic development opportunities, can we do anything to help our people get involved in those?

BRUCE RAMGE: I think that's a very good thought. The, I guess, practical limitations on that is the time frames we are up against in terms of...can somebody, you know, if they can bid the project and do it as quickly as anyone else, then it would be a fair assumption. But...

SENATOR SCHUMACHER: Well, isn't everybody against the same time lines? I mean...

BRUCE RAMGE: Yes. Yes.

SENATOR SCHUMACHER: ...so it's...we should be able to be as good as the next guy.

BRUCE RAMGE: Yes.

SENATOR SCHUMACHER: Thank you for your testimony.

BRUCE RAMGE: Thank you. Yeah, I appreciate your thoughts.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Director, and thank you, Mr. Sciallo, for your testimony this morning. You mentioned in your prepared presentation that you conducted a state...a number of statewide public education sessions. Would you mind going into a little...and I happened to have the chance to be at one earlier this week in Omaha, what

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some of the top reasons that you're hearing from Nebraskans across the state to create a state-run exchange. I know there's been some discussion along those lines as being, obviously, one of the three options that we have, have there been some consistent top reasons as you conducted these meetings?

BRUCE RAMGE: I believe that there's two themes that I hear. One is that the citizens would like the state to maintain as much control as possible. And there's not a good understanding about how formulaic this whole thing is and how many, you know, what limitations we actually have on designing and operating a state-based exchange. The other theme seems to be people just simply much prefer to deal with local individuals rather than having to deal with someone at the federal level should they have a question, a problem or a comment.

SENATOR McCOY: Okay. Now one of the things...one of the options, I think, we haven't had, probably, a whole lot of discussion about and that would be the state partnership exchange. Would you mind delving into that a little bit?

BRUCE RAMGE: I'd be happy to.

SENATOR McCOY: And kind of explain, maybe, a little bit what that is, because I think in all of our hearings thus far, that's probably been one area, not to disparage anything you put together, or any other testifiers have talked about, I don't...we've had a whole lot of discussion along those lines on that option. It appears also that, and maybe you could also address, out of those 13 states that are proceeding either with, at this point, either with the state exchange model or a partnership model, how many out of those 13 are proceeding, that you're aware of, with the state partnership model?

BRUCE RAMGE: Okay. In terms of what the other states are that's...I'm going to have to research that, and I'll get that back to you, because that...that, yeah, I'm very interested in knowing myself. And things seems to change day to day. But in terms of

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just the overview of what the hybrid or partnership model is, is that the state, if it were to elect a partnership model, could indicate that they would plan to do plan management and/or consumer assistance. And planned management is basically what the Department of Insurance has done historically where we review policy forms, give a thumbs up, a thumbs down before the insurance companies can put those in the marketplace. The same thing with rates and rate increases. And just...it fits in with the financial regulation of insurance because rates and solvency are very complimentary tied together. If rates are inadequate, then there could be solvency concerns. So that's pretty much what plan management is. It would, also, extend to the promotional materials and information materials that go along with an insurance plan that would have to be displayed on the exchange. Customer service or consumer support would actually be the...operating the call centers, the walk-in centers, assisting individuals within enrolling, who would also be managing the navigators. Although the hybrid approach does not allow the state to select the navigators, it does allow us to manage them and manage the program. And then the federal government would be responsible for all the information technology side of this in terms of maintaining the software, building it and making sure that it interfaces correctly with the state's Medicaid systems.

SENATOR McCOY: Along those lines, you'd mentioned the top reasons that you're hearing across (inaudible) state, local control, and kind of Nebraska's best as far as people being...rather dealing with officials here rather than in Washington, D.C., possibly. Can those reasons that you're hearing for an exchange be fulfilled through the partnership model as you see it?

BRUCE RAMGE: I believe they could be. For the average consumer and citizen, I think it would probably be not even visible to them, you know, because they would be walking into a state facility, talking to individuals here on a local basis to assist them with their needs. I think where the difference would be would be for the state agencies in doing the coordination with the federal government.

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SENATOR McCOY: And you just touched on something, Director, that the federal government would be responsible for IT, I want to make sure I'm understand correctly what you're saying, the IT maintenance. So we've heard in the past that you've talked about...which was my next question, what would the cost differences be for Nebraska between a state exchange, a partnership, and a federal exchange, so maybe you could address that a little bit, and especially in line with what you just mentioned about the feds being responsible for IT. Is that management? So when you've talked about in the past there being a \$17 million to \$20 million cost annually to manage the IT, is that what you're addressing, that the feds would be responsible for that under a partnership model versus the state of Nebraska?

BRUCE RAMGE: Yes. You know, with any type of computer program there's always going to be needs for upgrades for...with the software as the new operating systems change, and so those expenses would have to be borne by the federal government because it would be their computer program.

SENATOR McCOY: Are there any other costs differences as you see them now besides...which that's a pretty large chunk of money that would be covered by the federal government versus covered by the state of Nebraska on the maintenance of the IT function. Is there any other cost differences between the three models at this point?

BRUCE RAMGE: I think one of the...well, backing way up, there's...it would reduce duplication. If you look at the cost to put these together in terms of a global sense, it would not require a separate IT project for Nebraska and a separate IT project for the federal government. So there would be overall cost savings that way, although albeit maybe not to the state but to the federal government. In terms of other cost factors is we would not be able to direct how those costs are collected. In other words, if a state-based exchange, the state would have the ability to determine how that exchange becomes self-supporting or self-sustaining. In a hybrid model that decision would be made completely by the federal government. At this time it appears as though their plan



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would be to pass those costs directly to the insurance companies, who operate on the exchange, as a sole funding mechanism.

SENATOR McCOY: And to switch gears a little bit, in the grant funding aspect of all this, is it...as I look into this, is it correct that in a state exchange that the state doesn't receive any grant funding for 2013 unless they're fully certified or conditionally certified? And then I think it's in 2014 that they would have to be fully certified. Is that a correct understanding of that?

BRUCE RAMGE: Yes.

SENATOR McCOY: Okay. And how...I guess my question would be, and what kind of risk is there to states on that, not knowing? I mean that's a...that's a pretty big area of unknowns there, is it not?

BRUCE RAMGE: Well, if the...say we're to rely on participation and user fees, then the risk would be that there would not be enough people using the exchange to make it self-sustaining.

SENATOR McCOY: Now going along the lines of...and I think when we're talking about a hybrid or a partnership model are just kind of different words for the same thing, obviously, but...you may say hybrid, I may say partnership, but under the hybrid or partnership model, we in Nebraska would receive the funding for functions the state performs in 2013 and 2014 from the feds. Is that correct?

BRUCE RAMGE: Yes, it would be through a grant process.

SENATOR McCOY: Okay. And is there any...I'm having a hard time finding any benchmarks for that. Is there anything you've heard in the rules and regulations process that we have to meet in order to get that funding?

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BRUCE RAMGE: That's something we would still need more rule making from the federal government. But we can also do some more research and be ready to provide additional information at our next hearing or before, even, if you are interested.

SENATOR McCOY: I would be.

BRUCE RAMGE: Okay.

SENATOR McCOY: I find that very intriguing just to kind of know...again, this appears to me of...in the plethora of meetings and briefings and hearings that we've had on this subject, I think this appears to be one option that definitely ought to be explored more thoroughly. Obviously, a lot of information that's yet to be received, as you've said, from the federal government and federal HHS, but to me this is an area that's very worthwhile to understand a little more about. I would be very appreciative of any information that you would have along those lines. Thank you, Director.

BRUCE RAMGE: Okay. All right, we'll be happy to do that.

SENATOR PAHLS: After hearing Senator McCoy, it makes me sort of smile because, to be honest with you, I wrote down I thought the solution to this issue, this was when this first started, was the hybrid model,...

BRUCE RAMGE: Um-hum.

SENATOR PAHLS: ...a long time ago, being maybe very naive. But I saw that if Nebraska had certain control and the money was provided elsewhere, it would make life easier, if we were going to go ahead with the exchange. There's just a couple things I...at the meeting in Omaha, I thought you made it very clear the difference...I understand the difference between an agent and a navigator.

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BRUCE RAMGE: Yes.

SENATOR PAHLS: But I had picked up, by listening to the agents in the past, they're very concerned that they're going to lose. But after listening to what you said...you actually see the agent as being a very important part of this process.

BRUCE RAMGE: I do. The services that they provide...the need for those services are not going to go away. And I don't believe that navigators will be able to actually make a sale or solicit or negotiate insurance. So what I would perceive is a hand-off process to the point where a navigator would provide general information, and if an individual then decides they need assistance making a selection or a purchase, that at that point the navigator would hand off that to an insurance agent. They could provide them a list of agents or make a...help the person find an agent in their location or town. So I think that part of the concern from the agent community has been with the medical loss ratio requirements, which basically left less administrative costs available to pay commissions. So that's been a very big concern. And the state has no control over that requirement. It's being worked on at the federal level.

SENATOR PAHLS: Okay. And another thing, I'm just curious, what would be...if I were receiving help, what would be the maximum dollar that I could receive, if I'm a Nebraskan, for tax credit?

BRUCE RAMGE: Okay. How these tax credits are set up are...it's all based on modified adjusted gross income. So starting at 100 percent of the federal poverty level, which roughly...and these numbers change again, they're for a family of...or for an individual at 100 percent is basically...roughly \$11,170. The most that that individual would be expected to pay would be 2 percent of their income. So their insurance would cost them roughly \$25 a month.

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SENATOR PAHLS: Well, how much would be subsidized, and what would be...?

BRUCE RAMGE: Well, the full 98 percent. So if...it's not a flat dollar amount. It's based on what the actual plan for a...then they...I got...silver, for a silver plan would cost.

SENATOR PAHLS: Okay.

BRUCE RAMGE: So the...it would be a split, a 98 percent paid by subsidy, 2 percent by the individual. And those subsidies go all the way up to like 400 percent. They're graded at between 300 and 400 percent of the federal poverty level. The most that an individual or family would have to pay is 9.5 percent of their income. And so that would leave them roughly...these are just, again, rough estimates, \$265 to \$354 for an individual, maybe up to \$734 a family of four.

SENATOR PAHLS: A month?

BRUCE RAMGE: A month.

SENATOR PAHLS: Okay. And the rest would be subsidized?

BRUCE RAMGE: Yes.

SENATOR PAHLS: By tax dollars.

BRUCE RAMGE: Yes.

SENATOR PAHLS: Okay. Okay. Senator Pirsch.

SENATOR PIRSCH: Thank you very much. Just a couple things, couple three things maybe. With respect to the fee structure if the federal government runs the show, then

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you indicated that the inclination right now is that they'll impose a tax directly on the insurers, is that right, who are operating it?

BRUCE RAMGE: Yes.

SENATOR PIRSCH: And there are other approaches, should the state engage in a...I guess in a joint...in talking with Mr. Dunning, we were talking about joint federal-state things at the Omaha venue a couple...last week, and I appreciate all the good advice on that, that with respect to those hybrids or partnerships he had indicated that the fee would be set, that structure would be set by the federal government again. So the presumption would be that also would be a tax on insured...or not...a fee placed on insurers for that, right?

BRUCE RAMGE: Yes.

SENATOR PIRSCH: If we were...the difference would be if we ran our own exchange then we would have greater freedom to decide. Is that right?

BRUCE RAMGE: That's correct.

SENATOR PIRSCH: So, of the other kind of competitive setups that we could use, we could...is there...we could impose a transactional fee on any...that would be kind of a user fee envisioned, right?

BRUCE RAMGE: Yes.

SENATOR PIRSCH: What other types of leading competitors would there...competitive ideas would there be for the...I know there's the idea of utilizing the CHIP's funding, the existing CHIP's funding?

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BRUCE RAMGE: Yes, that would be the other source.

SENATOR PIRSCH: Are those the only three, are there any other sources?

BRUCE RAMGE: Those are the most common three. I suppose, you know, it could be...a state could finance it in any other way that they might handle a need for revenue.

SENATOR PIRSCH: Do you...uh-huh.

BRUCE RAMGE: But I think the three have been discussed most seriously are those that you've already identified.

SENATOR PIRSCH: Okay. So assuming...do you have a preference with...assuming that the state were to manage its own exchange, because that's the only situation that it would arise, at this point in time?

BRUCE RAMGE: Well, there's pros and cons to everything, so I'm not going to say I have a preference, but the considerations are that a strict fee on insurers may reduce the number of companies that want to sell in a particular exchange. User fees might drive away customers and might make it so it's hard to sustain an exchange to make it self-sustaining. And the use of other funds then takes away from the use of the state's General Fund and schools. So those are the considerations that have to be looked at.

SENATOR PIRSCH: Okay, and I appreciate that. With respect to...a different question...so the original Affordable Care Act, as envisioned, would make the Medicaid expansion mandatory, compulsory, if a state wanted to participate in even traditional Medicaid-type of program. The Supreme Court decision that came down over the summer changed that mandatory nature of that and turned it into a permissive. But looking at the language that was employed in the Affordable Care Act, are there any questions with respect now, because there are...it's up to the states, the Supreme Court

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said, whether to expand it out to 138 percent of adjusted income...medium...I'm sorry, income...adjusted gross...no, was adjusted...

BRUCE RAMGE: Modified adjusted gross.

SENATOR PIRSCH: Modified adjusted.

BRUCE RAMGE: Yes.

SENATOR PIRSCH: And so...so because of the language that the Affordable Care Act uses, is there any question now that...with respect to certain situations where there would be eligibility for subsidies? You know, the subsidies that range up to 400 percent for individuals within this range, is that...is there any question but that...say we were to do something...I mean, it's up to the states to expand Medicaid. If we were to expand to, say, 120 percent, so not the full 130 percent, would there be subsidies for individuals who would be caught between 100 and 120 percent, or is that a question that's unclear at this point in time?

BRUCE RAMGE: That's one of those pieces of rule making from the federal government that we're still waiting for. As...even without any type of Medicaid expansion, there still is a requirement for some interaction because the law did also change the methodology that Medicaid needs to use in their determinations. And I'm not the best person to ask about that, but there is still that need for the interaction in the systems.

SENATOR PIRSCH: I'm trying to get a sense. There's been a question that has been put forward, and I know it's kind of vague, it's not been fleshed out, but because of the permissive nature of the Medicaid expansion now under the Supreme Court's interpretation,...

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BRUCE RAMGE: Yes.

SENATOR PIRSCH: ...if the state was to do something less, elect to do something less than full implementation, go to 138 percent, but say for instance 130 percent...

BRUCE RAMGE: Yes.

SENATOR PIRSCH: ...does the afford...would the federal HHS Centers for Medicaid and Medicare have even the ability to offer subsidies for any newly added...and so I know...

BRUCE RAMGE: Yeah...yes...and...

SENATOR PIRSCH: ...you've kind of testified that it's unclear to you,...

BRUCE RAMGE: It is unclear.

SENATOR PIRSCH: ...but do they...do they...do you know if they even, in your opinion, do they have...does the federal government...does HHS have the ability, in your opinion, to allow for the expanded Medicaid? Is it all or nothing, so to speak?

BRUCE RAMGE: Yeah, and the act itself anticipated the subsidies to begin at 133 percent because it anticipated that the individuals from zero to 133 percent would be all Medicaid expansion.

SENATOR PIRSCH: Right.

BRUCE RAMGE: But the way the law was written, the subsidies are available all the way for 100 percent. And so it's...and so that was just by force of law. It's really unclear as to what direction the federal government will take for the zero to 100 percent. And



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there's been no information provided to us at this time yet what the plans are for that.

SENATOR PIRSCH: Okay. And I suspect there may be some who testify after here who can help flesh that out as well, the issues. So thank you.

BRUCE RAMGE: Yeah. Okay. You're welcome.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. Access issue, I brought it up before and probably will continue just to make sure we're on guard to access being, when it comes to provider networks specifically, having some geographical specificity to it. My concern is that whether you're in Henry, Nebraska, in the west or Brownville on the east, you have access to whatever provider panels may be put together. And the example I used is it's easy for an insurer, it's easy for a panel of providers to be put together where someone could say 80 percent of Nebraskans have a provider available within a 15- to 30-minute drive. But you don't have to go any further west than Seward to be able to say that, given our geographical distribution of individuals in this state. So we've got to make sure that we have broad provider panels across the state and not one that's spoken to in terms of percentages. We need to speak to it in terms of geography. So that's a caution.

BRUCE RAMGE: Okay.

SENATOR GLOOR: But along those lines, one of my questions would be, have you seen or heard anything that relates to, for want of a better term, setting up provider panels that have centers of excellence, in other words, that there will be negotiations based upon price and quality outcomes that might narrow down where specific high-tech services are provided, cancer treatment, open heart surgery, as an example? That's not unusual in the insurance world right now, and I expect we'll see more and

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more of a swing towards that. I'm not advocating for it, necessarily. I'm just trying to find out if it's part of the dialogue that's been out there, or part of what we hear, maybe, coming out in some guidelines.

BRUCE RAMGE: I believe there will be a movement towards those types of structures. There is a lot of discussion that the current fee-for-service base of reimbursing healthcare has some drawbacks. And so I believe that what we will see in the future are the centers of excellence, like you mentioned, the medical home concept. And even in some parts of the country there may be a desire for the accountable care organization, which is...will be likely partnerships between major insurers and major medical health systems initially, because I think those health systems will need the expertise of the insurers to manage risks, since insurers are in the business of risk management and also they will know how to operate the out-of-network exposure. So I think that's yet to come down the road, but I believe that it's coming.

SENATOR GLOOR: Well, and, Bruce, I agree with you that fee-for-service is probably something that's slowly but surely kind of being winnowed away. But we've also said...or you said earlier that we're not looking at an HMO model as something...

BRUCE RAMGE: Yes.

SENATOR GLOOR: ...that's applicable within the state of Nebraska. Well, you can define HMO pretty broadly. I mean, you say HMO most the time and consumers get quite concerned, but it's, frankly, a different payment model than fee-for-service. So a lot of things can be lumped under HMO and I would hope...I would hope you were using a very specific reference to HMO rather than a broader reference that relates to payment policies.

BRUCE RAMGE: Yes. Because there is a huge similarity for the accountable care organizations with the HMO model. And unfortunately, you know, well, or fortunately or

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unfortunately, either one, it's just how it occurred. The HMO concept initially started out with a clinical model and then it gradually evolved into a network participation model, more of a preferred provider network model.

SENATOR GLOOR: Should providers be alert to the fact, if they aren't already, that their open heart program that they're very proud of may in fact be at some degree of risk with insurance exchanges because there may be a center of excellence? There may be a bidding process that's not just based on price but also based upon quality outcomes.

BRUCE RAMGE: I believe that when we heard testimony from the hospitals, you know, at the meetings that the Governor held here in Lincoln, I think that they're looking at all of these issues and they seem to be very much on top of the trends and planning for the future.

SENATOR GLOOR: Okay. Thank you.

BRUCE RAMGE: You're welcome.

SENATOR PAHLS: Do you see the scope of practice being an issue in the future because of the pressure of dollars?

BRUCE RAMGE: I believe that the pressure is going to be on the...excuse me, I'm searching for the word, but, you know, the family doctors,...

MIKE SCIULLO: Primary care.

BRUCE RAMGE: ...the primary care, thank you, Mike, the primary care physicians. I think it's going to be a challenge for the medical community to meet the demands in that area and just for a number of reasons. One is because many medical providers like to get into the speciality fields and it's just an availability and a demand issue. But other

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than that, I don't see any other or know of any other scope of care issues that will change. You know, there's always going to be those speciality areas as how they're defined and how they provide services, but I don't see them changing because of this act.

SENATOR PAHLS: Okay. Senator Schumacher.

SENATOR SCHUMACHER: Just a little bit on...starting off on the mechanics of the exchange computer system. One comment was made that at...there was some thought that the...you won't be able to buy your insurance on this thing; at some point it's handed off to an agent. Did I misunderstand?

BRUCE RAMGE: Oh, there will be...for individuals who aren't comfortable making decisions on their own, who need assistance, much...or who want to rely on the professional expertise of an insurance agent. So I believe it's going to be a matter of choice for individuals out there as to whether they want to self purchase or to make the decisions themselves, or whether they will want to use the services of an insurance agent.

SENATOR SCHUMACHER: So just so we all kind of understand this, there's this Web site out there and I either can sit down by myself or I can sit down with a helper who has been through the routine a few times to help me go through it, but we sit down, we put my information in there, we tell them whether I'm an Indian or what...you know, whatever the classifications are. We work our way through this maze in the computer system, click here, answer this income category that checks my income against my tax records, this big fancy system. And then it tells me, okay, I got these levels of insurance policies that I can choose from. And at this particular point in the process do I...could I at that point ask the navigator, gee, should I go with a gold or a bronze? Or do I have to make that decision myself? Or is there a button I click that says save all the work I've done up to this point and let me go talk to an insurance agent and I'll get back to you? I

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mean, how's this going to work?

BRUCE RAMGE: Well, the navigator, at that point, when you asked that question, the navigator would not be able to give you further advice, because that would violate the insurance laws. And they would need to be licensed as an insurance producer. So at that point they would need to...if an individual was not comfortable making a choice on their own, then the next best option would be to get in touch with an insurance agent.

SENATOR SCHUMACHER: Either that or do "eenie-meenie-miney" and pick one.

BRUCE RAMGE: Yeah, we hope not, but...

SENATOR SCHUMACHER: Well, but I mean...so...I mean, that seems to be something we should be addressing here, because here you got this person sitting there helping you, click, click, click, do this, do that, and when it comes to the decision of, you know, what do I do, you know, the dog has now caught the car and has got to do something with it, then saying, you know, gosh, I don't know, I can't tell you, I can't help you. So what can we do...or what, from your impression, can we do to say...to make that person sitting there a licensed seller of insurance and so we didn't do all that work to get to this point for nothing? And, I mean, how can we reconcile...is there anything we can do in our laws and in our bill when they ask that question, should I go with gold or silver, from saying, you know, really we think that the silver thing is probably in your case a better thing?

BRUCE RAMGE: The federal law prohibits us from requiring that navigators be licensed. A licensed insurance agent can function as a navigator, but if they do so then they cannot collect commissions on those sales. So it's one of those, again, issues where the state's hands are fairly tied because of the federal law and the federal regulations. But I think that taking those issues into account are very important when a navigator program is designed, because individuals should have the information right

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up-front what's going to be expected of them in terms of what information they need to have at their disposal and, perhaps, what decisions they should be prepared to make. So this is work yet to be done because the navigator program has not yet been fully fleshed out. But you make a very good point. Be very frustrating to get in the middle of a project and say, oh gosh, now I, you know, can't go forward because no one here can help me. So I understand; your suggestions are very, very well taken.

SENATOR SCHUMACHER: In that flow chart thing, is there any spot in there where it says, save what we've got up...we've done up to now, come back in a week?

MIKE SCIULLO: Well, I can speak to that. So one of the things we have to look at is when you talk about the exchange solution system, or the software program, you have to set requirements for the people that would be bidding on something like this. One of the requirements that we have identified is that people can save their progress at any page of the process. So we imagine that it will be a complicated process for consumers, particularly since most consumers haven't bought insurance before on their own. And, yes, we have made that a requirement to where at any point in the process, even if it's just after registration or on the very last page, that they would be able to log in and resume where they left off, so that if they did need to seek the help of a licensed agent or broker and then return back right where they were that it wouldn't be damaging to the consumer experience.

SENATOR SCHUMACHER: And another couple of quick questions: Did I understand correctly that if you are between 100 and 138 percent, you will still be able to use the exchange...will you get credits? You will get tax credits?

BRUCE RAMGE: Between 100...

SENATOR SCHUMACHER: And a 138?

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BRUCE RAMGE: Yes.

SENATOR SCHUMACHER: Yes, okay.

BRUCE RAMGE: Yes.

SENATOR SCHUMACHER: So, and then...but if you're below a hundred, if you're making \$15,000, roughly, as a single person, you can't use the exchange?

BRUCE RAMGE: Well, anyone can use the exchange. It would be just a matter of what the tax credits may be available.

SENATOR SCHUMACHER: Yeah, and the idea was there, there would be Medicaid to cover that person, but that got changed a little bit by the Supreme Court.

BRUCE RAMGE: Correct.

SENATOR SCHUMACHER: Okay. And then finally as in the category of people then between 100 and 400 percent of poverty, how many Nebraskans are...would be getting subsidies on their health insurance under this program?

MIKE SCIULLO: The estimated enrollment numbers have slightly changed since we have included that zero to 133 group. But we estimate the number by 2016 to be somewhere between 150,000 and 175,000 Nebraskans.

SENATOR SCHUMACHER: And what percentage of our working population is that?

MIKE SCIULLO: That's a great question that I would be happy to follow up and do some additional analysis.

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SENATOR SCHUMACHER: And that doesn't include the people whose employers may be providing coverage that may be getting...the small employers that may be getting subsidies too.

MIKE SCIULLO: The enrollment projections do include people that are insured now, as well, that would be possibly transitioning to exchange coverage. So it's not just the uninsured but the uninsured plus people who would be applicable to receive subsidy that may be currently paying for their plan on their own now or through their employer.

SENATOR SCHUMACHER: And if I'm a small employer under 50 and I decide...and I don't have to provide insurance to my employees but I select to, I'm going to get some kind of a subsidy. Is that correct?

MIKE SCIULLO: There's a two-year tax credit for small businesses that would provide coverage through the SHOP portion, which is Small Business Health Options Program in the exchange. But after the two years that tax credit for the business is no longer applicable per federal law.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And, Director, a few more questions along the lines of navigators. In advance of our hearing today we received some e-mail information from five difference groups, advocacy groups, one of which, I believe, is going to testify a little bit later on here during this hearing. But it brought up a point that I think is worth mentioning and wondered if you could touch on it, because I don't know...I can't recall, anyway, that this has been addressed. We know that the penalty won't exist for businesses with less than 50 employees to not provide coverage, correct?



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BRUCE RAMGE: Yes.

SENATOR McCOY: What about part-time employees? Has that been discussed. I can't seem to find there to be really any definition of part-time employees and how that would interact.

BRUCE RAMGE: I believe Mike knows the answer to that if...

MIKE SCIULLO: Thank you for the thoughtful question. The way that they're classifying part-time is 30 hours a week. So...but there's a complicated formula on how they kind of determine whether or not you have enough employees. It would be the exchange's responsibility to notice these businesses if they go above that threshold. But that's one of the things that we're still waiting on, as far as how that process works with the noticing. As you can probably imagine, doing that calculation when people...employers change their roles and then having...us having the knowledge...or the exchange, I should say, having the knowledge of when to do that notice is extremely complicated. So that's something that we're seeking more answers on from the federal government.

SENATOR McCOY: Would that then be any different under any three versions of an exchange, a state exchange, a federal exchange, or a partnership exchange, that interpretation of what you just said? Is that going to change or is that going to be consistent across all three of those models how that's reviewed, that complicated process you just mentioned?

MIKE SCIULLO: I wouldn't want to speculate as, you know, that hasn't necessarily been strictly defined, all of the noticing requirements. There's some noticing requirements in the regulation. But certainly Nebraska and other states have been asking lots of questions to the federal government regarding noticing and we're...

BRUCE RAMGE: I would expect that the requirements would be consistent across the

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three different types of exchanges, however, whatever their final determination is.

SENATOR McCOY: Okay.

BRUCE RAMGE: Yep.

SENATOR McCOY: I have a copy of a letter that was sent to Congressman Kinzinger from Secretary Sebelius a couple months ago, actually almost a couple of months ago to the day, talking about the role of navigators and agents and all that. I'm sure you're familiar with that. And I think you talked about it a little bit today, and I know it came up in the discussion in the Omaha public meeting on Monday night of this week in that the final rule required the exchanges to develop training standards for navigators. I guess my question would be, who is responsible to set up those training standards? Who is responsible to develop that under the different models? So, you know, federal, partnership, state, how would that work with the different models? I don't...I don't...unless I missed it, I apologize if you even touched on that, but I don't think we have.

BRUCE RAMGE: Okay, yep, nope, haven't touched on that.

SENATOR McCOY: So what...?

BRUCE RAMGE: I believe that, well, under a federal model, of course it would be, you know, the federal government with...I believe that under hybrid or state, the state would develop those training standards. I expect they would be very similar to the licensing and continuing education standards that we hold our licensed insurance agents for but perhaps with some of the more specific information as to actual operation of the exchange and more Affordable Care Act type information relating to subsidies and things like that. But again, I believe it would probably be the state who developed that for the partnership or the state model, and it would be very consistent with what is being

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done currently for the insurance agent continuing education programs.

SENATOR McCOY: And a follow-up question to be...to that would be who is going to pay for it under...I mean, I don't know that we've had the discussion about that either, under the three different models, because that training, is that...how would that work?

BRUCE RAMGE: I don't believe we've fleshed that out. It could be one of these situations where the individual who would actually apply for a grant to become a navigator would be responsible for paying for their own training, much like insurance agents are now. I suppose the other model is where the exchange itself would pay for all of the training and continuing education and then just require the navigators to become proficient with it. And again, that's...we've not gone that far in terms of planning.

SENATOR McCOY: But it might be conceivable to assume that, just as the...developing the training, that process might differ between...in other words, the...if I'm understanding you correctly, with the training and the...but who's going to pay for it may be the same with a state exchange and a partnership exchange but may differ when it comes to the federal exchange...

BRUCE RAMGE: Yes, yes.

SENATOR McCOY: ...because obviously under the...well, it sounds like, I shouldn't say obviously, but the assumption being that under a state exchange and a partnership exchange much more of that decision-making process on how that we develop that, just as you said it is now with...would be here in Nebraska and would be...those decisions would be made here.

BRUCE RAMGE: Yes. And again I have to preface that on the hybrid...or a partnership model that I'm kind of operating on a best guess there, as an assumption, since the state would manage the navigator program.

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SENATOR McCOY: Thank you. And in Secretary Sebelius' letter back to Congressman Kinzinger, she noted that the preamble to the final rule talks about giving consumers recourse if they feel they've been negatively affected by the actions of a navigator. It doesn't really explain a lot more in detail what that means. If you would, I'd like you to address does that mean that citizens would have the ability to sue the state of Nebraska? How would...what would those...has there been a discussion of what those...what that recourse could be if the difference between a state and a partnership and a federal exchange? Could you go into that?

BRUCE RAMGE: There's been no further information about the recourse. One would certainly...it's been a concern because the law prohibits the state from requiring navigators from holding errors and omissions coverage. Many insurance agents, by their own errors and omission...of course the navigator would be free to seek their own coverage. But if whatever entity, whether it be the federal government or the state, then I believe there is that concern, that liability falling on the state for the actions of a navigator. The best way to help prevent that I suppose is through good, sound, adequate training, perhaps a very defined use of script material, advertising material so that as much due diligence is placed as possible on that program.

SENATOR McCOY: But the possibility does exist that as a state we are...or we could, I should say, open ourselves up to a fair amount of liability in regards to what that recourse may be and how that's interpreted by the federal government, i.e., federal HHS.

BRUCE RAMGE: Yes, yes. There is a program now where volunteers assist seniors with making Medicare decisions. And the former recourse there that the federal government is that they're very good about reversing decisions that were made incorrectly or through erroneous materials. But we've not got any guidance to know that that would be also handled by the navigator program.

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SENATOR McCOY: And finally I wanted to switch gears, beg your indulgence as I change topics slightly. You mentioned that, and hopefully I heard correctly, that this is most likely the largest federal implementation of a program that the department, perhaps the state government in totality, has anticipated implementing since HIPAA, which would be back in the early 2000s, I guess, 2002, 2003. I've mentioned before there's an excellent [governing.com](http://governing.com) article from yesterday that talks about a recent hacking episode of the Utah exchange. And all of that, I think it references that there has been more than 22,000 complaints about privacy violations since HIPAA was implemented. Director, how is that going to work? Is there...with a security breach, who is going to be responsible for that and be...or, I should say, who is going to be held responsible for that? If there is a security breach, is that going to be different with...we talked about earlier with a partnership exchange that the federal government would be perhaps more responsible for the IT side of this. Does that mean then under a partnership exchange the federal government is who's responsible for that, a state exchange, the state of Nebraska is responsible for that? Can you address the security aspect of this?

BRUCE RAMGE: Security issues surrounding the information in the computer systems is a tremendous concern because the information now is not only just medical information but it's financial information. It's information from the IRS, and there are extremely strict penalties for misuse or mishandling of that information. So yeah, it would put a very large responsibility on the state if the state decided to be responsible for the IT. And there would be a lot of strict guidelines that need to be followed in development of the information technology to prevent these types of security violations. And if the federal government were running the exchange or if there were a partnership where they would be responsible for the IT, there would still be responsibilities on the state in terms of, you know, how that is accessed, you know, through the customer service and that type of thing but not to the great extent in terms of maintaining the database and the hacking and that type of thing, so.

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SENATOR McCOY: So it's your understanding that under a partnership exchange or the default position of a federal exchange, so the more than 37 states at this point, 37 states plus whatever the 13 might be anticipating a partnership exchange, for the state of Nebraska, if we were to go down that road, that the federal government would be in charge of oversight and monitoring and responsibility from a broad sense over that...over any of those potential security breaches;...

BRUCE RAMGE: Yes.

SENATOR McCOY: ...that the only real way that we put ourselves on the line for that, as the state of Nebraska, is under a state-based exchange.

BRUCE RAMGE: That's correct.

SENATOR McCOY: Okay, thank you.

SENATOR PAHLS: Thank you. Senator Schumacher.

SENATOR SCHUMACHER: Following up on that question, which is a real good line of questioning, the juicy stuff, the information itself, your Social Security number, your tax records, your welfare status, that's all in the federal hub thing, or isn't it? Or how much of that is not on the federal hub's thing, I should say?

BRUCE RAMGE: I believe most of that will be in the federal hub.

SENATOR SCHUMACHER: Okay. If that's where that information is stored, in this federal machine sitting someplace, and all the state machine is doing is going out and plugging in your particular information and then it queries the federal exchange, is this guy lying about his Social Security number, his number of dependents, his income,

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whatever, and the juicy stuff is all at the federal level, then whether or not that query comes from a federal machine or it comes from a state-owned machine that really isn't going to be doing anything more than storing maybe the policy number that you ended up choosing, what difference does it make if...who runs the exchange?

BRUCE RAMGE: I'm going to let Mike address that.

MIKE SCIULLO: Well, so certainly there would...the application that the state would have would include the collection of the Social Security number. There is also numerous amount of data information exchanges that take place. And when I say that I don't mean it in the same way that I...we say exchange typically. A data exchange is a concept. So there is lots of reconciliation between the federal government and the state exchanges as far as data is concerned. So, you know, per my understanding of the federal requirements, we're held under all of the strictest data and security exchange standards for state-based exchanges that exist, so, you know, HIPAA, FIPS 199, and a lot of the very specific security compliance, because that information, although it is used at...is stored at the hub, it's pulled down by the state exchanges to be used for the verification process, so access to Department of Homeland Security records, access to Social Security records, and access to IRS records, for example.

SENATOR SCHUMACHER: Now when it pulls...when it issues the query to the federal hub thing and asks for the particulars on Social Security number XYZ, the state...is the concern then that the state query would be faked or wouldn't be secure and that some crook could get the information there? Or is it that the state will then store that information on its own systems and those can be hacked?

MIKE SCIULLO: I think both are legitimate concerns, Senator.

SENATOR SCHUMACHER: So then is there more wisdom in a federal exchange rather than have 50 states opening windows into this system?

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MIKE SCIULLO: I think there's certainly people that would think that. I don't have an opinion on the matter, frankly.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Senator Pirsch.

SENATOR PIRSCH: A couple things with...and just following up on some of the questions Senator Schumacher asked. So because the Supreme Court made it permissive, not mandatory, the Medicaid expansion, was the...so in the instance where a state, for instance, would not expand, opted not to expand Medicaid at all, so you have individuals who are over 100 percent of the federal poverty line and between 138 (percent) who were originally envisioned to have Medicaid under the ACA Medicaid coverage and now they would not be, is it clear...is there an issue...somebody had brought up the topic that it might be an issue that the way that the Affordable Care Act was written is they assume those individuals up to 138 percent would be covered by Medicaid expansion and that that wouldn't be permissive. And so the way that they phrase the eligibility for the subsidies for everybody 139 percent and above, that they narrowly define that if you are 139 percent and above you are at that point eligible for subsidies that can range up to, you know, X amount, 98 percent. But was the language then of the Affordable Care Act so specific into grouping that 138 percent and above such that those between 100 and 138 percent...that there wouldn't be a legal basis for the state to come in and say, well...or for the federal government through HHS to come in to say, well, those individuals from 100 to 138 percent, even if your state doesn't expand Medicaid, would be eligible for subsidies on the exchanges, or is that...is that an issue or not an issue?

BRUCE RAMGE: I don't believe it's an issue for the 100 percent and above because of the way the law was written. It anticipated that some individuals would still be buying



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insurance through the exchange. And I wish I had Martin Swanson here with me this morning because he is the one who has really delved into the law here.

SENATOR PIRSCH: Yeah. Well, and there's no doubt that it would be an...and maybe when...and this is just a question I'll pose for the long term, if I get him to get back to me.

BRUCE RAMGE: Okay.

SENATOR PIRSCH: There's no doubt that they can get on the exchange, they can purchase. We're talking specifically about the subsidy aspect and how Congress and through the ACA chose to craft that language. And did they...is it broad enough now that it is mandatory, I'm sorry, that it's permissive rather than mandatory that there is a legal basis to say we...that the HHS, federal HHS, can allow for subsidization of those people?

BRUCE RAMGE: Mike has some information to shed on that.

MIKE SCIULLO: Yeah.

BRUCE RAMGE: And if it's not enough we'll be happy to get you more information.

SENATOR PIRSCH: Okay. Wonderful.

MIKE SCIULLO: So the Affordable Care Act defines an applicable taxpayer for the purposes of receiving an advance payment tax credit and cost-sharing reductions as clearly defined as 100 to 400 percent of the federal poverty level. But in order to be eligible to receive that advance payment of the tax credit, you cannot have access to Medicaid. So in that chart that I showed you earlier, you have to go through that step where you can see if they have other minimum essential coverage. So in absence of

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having that, people 100 to 130 percent...

SENATOR PIRSCH: Um-hum.

MIKE SCIULLO: ...would be eligible for the exchange tax credit. But if they had Medicaid, then they would not be eligible. And that's where the distinction lies.

SENATOR PIRSCH: So you're saying the way they've crafted the language, it's not an issue is what I hear you saying,...

MIKE SCIULLO: Correct.

SENATOR PIRSCH: ...that it's broad enough to capture those people. I just wanted to check on that. Somebody had risen an issue. The navigators, what do you see their...the types of questions that they'll be fielding, their role? Obviously they cannot recommend, get to the ultimate question, like enroll in the silver plan or whatever. What are the type of everyday questions that are going...are envisioned for this type of occupation? And where is their value?

BRUCE RAMGE: I think their value is going to be to reaching out to hard-to-reach segments of the population, people who have difficulty, you know, with making these types of decisions independently. So I believe that there is going to be a lot of specialization to reach specific needs out there in the marketplace. For example, people who might have language barriers, perhaps you could find a navigator who has good translation skills and so on. So I believe that there is a good use to help expand the availability of coverage just by reaching out and educating.

SENATOR PIRSCH: So definitely a proactive job aspect to go out and find individual...could you comment how...what forms of...you know, how they would do that? And then once they find these individuals through the means that you'll explain,

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what do they do then? What's their job duty?

BRUCE RAMGE: You know, I think, you know, first of all there would be through the use of the normal media channels, you know, newspapers, televisions, through community-based organizations, through, you know, just through healthcare facilities, through churches, through other types of, really, organizations that are in touch with individuals throughout the various communities.

SENATOR PIRSCH: Okay. And what message then will they bring as they go out into the communities, say, I'm a navigator, you should be aware...

BRUCE RAMGE: Yeah. You should be aware of the services out there.

SENATOR PIRSCH: ...if you don't have healthcare insurance...

BRUCE RAMGE: And if you have questions, here's how to...

SENATOR PIRSCH: It's mostly to get them into the knowledge that there is a system there and to...

BRUCE RAMGE: That's...yes.

SENATOR PIRSCH: Okay.

BRUCE RAMGE: Yes, how to find help.

SENATOR PIRSCH: Okay, thank you.

SENATOR PAHLS: Senator Schumacher.

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SENATOR SCHUMACHER: When the ACA was initially set up, it presumed that all states would participate in a Medicare...or Medicaid expansion, and the court threw a wrinkle into that. The court used the language that the...it was important that the states be able to opt out. Does that mean that we are in until we pass a law saying we're out on Medicaid expansion?

BRUCE RAMGE: On Medicaid expansion?

SENATOR SCHUMACHER: Yeah.

BRUCE RAMGE: I was under the impression that the state has to opt in, not opt out. But we'll follow up with you. That's a legal question, and I'm not an attorney.

SENATOR SCHUMACHER: I think somewhere in there, there may be language that says opt out. Now whether that language means opt out or opt in or opt, who knows? But, I mean...

BRUCE RAMGE: I will ask our legal staff to look into that.

SENATOR SCHUMACHER: Yeah, that would be something to look at: Do we have to do something to stay out?

BRUCE RAMGE: ...to opt out. That's a very good question.

SENATOR PAHLS: Seeing no more questions, are there any wrap-up ideas you'd like to toss back to us?

BRUCE RAMGE: I believe we've covered the ground pretty well this morning. So again, we look forward to our next briefing. And we're...continue to plan and design and move the process forward to keep our options open.

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SENATOR PAHLS: See you. Thank you. Appreciate your information today.

BRUCE RAMGE: Thank you, Senator Pahls.

SENATOR PAHLS: Yeah, yeah.

MIKE SCIULLO: Thank you very much.

SENATOR GLOOR: Thank you.

SENATOR PAHLS: Now we have invited three individuals to speak to us. I'm going to ask them to speak in terms of...think in terms of three to five minutes. And if you see me wave like...because I don't want to use the lights. If you see me wave like that, that means you should be wrapping it up. So, Mark, we'll have you spell your name as usual.

MARK INTERMILL: (Exhibit 2) Sure. Good morning, Senators. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l. I have a long statement that I'm going to skip to the last page of,...

SENATOR PAHLS: Okay.

MARK INTERMILL: ...which are the two recommendations that we would like to have you consider as we work towards developing both the exchanges and improving the access to healthcare coverage in Nebraska. So if we just skip to page 5, first we would recommend that Nebraska participate in the Medicaid expansion. And our understanding is that Nebraska would have to opt in to the Medicaid expansion, that we...based on the Supreme Court decision that changed the basic nature of the ACA, in that respect the state would need to take proactive action to participate in that program. One of the things that...the very last page I would draw your attention to. We have...and

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this was my attempt to try to understand the premiums within the exchange and also how they relate to the Medicaid expansion. And if you go down to the very bottom section, what I've done is try to identify different family incomes and then the size of the household and look at what the premiums would be in the exchange for those households. And also the NTC indicates that tax credits would not be available for those individuals. So if you look at a family of four with \$18,000, they would be below 100 percent of poverty. They would not be able to receive any tax credits in the exchange. Really, their only option for coverage would be the Medicaid expansion. They could get coverage. As was pointed out, they could get coverage through the exchange but without any sort of tax credits or subsidy. At the other end of the scale over 400 percent of poverty would also not be eligible for the tax credit, so those are what the NTC represents. We think that this...as the ACA was designed, the Medicaid expansion was intended to be the safety net below the levels at which the tax credits applied. And for AARP, this really affects a lot of people in the 50 to 64 age group. Childless adults are really the ones who benefit from the Medicaid expansion. And those individuals who would have incomes below 100 percent of poverty would not be eligible for those credits. The other recommendation, back on page 5, has to do with the exchanges and some of our recommendations. And if you would just go to the next page after page 5, we have listed some of our key issues for health insurance exchanges. Basically we think that the exchanges need to provide consumer value. And I think the fourth bullet point of establishing systems for ongoing monitoring, evaluation, and enforcement to ensure high performance of participating plans gets at that issue of having adequate networks for those individuals who are part of the...are purchasing coverage through the exchange. We also...a lot of the points here are related to access. We need to make sure that individuals who need coverage have access and are able to get that coverage through the exchange. So you will see things such as things like offering a manageable number of plans. At AARP we have seen, in Medicare Part D, the expansion of Medicare to provide drug coverage is through private insurance plans. At the outset I think we had close to 50 plans that we started with. The only way that you could sort of sort through those was through a computer program. It was quite confusing. And I think

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we still have a number of plans, but people have kind of figured out what to look for. But at the outset it was very confusing for consumers. So I think having a limited number of high-quality plans would be something that we would recommend. The other thing related to access is the seamlessness of the system. We may have some individuals, especially at that...around that 100 to 138 percent of poverty level, who would qualify for both Medicaid or tax credits in the exchange. Those individuals need to have an ability to easily move from one type of program to the other. And especially at that 138, if you move from 130 to 140 percent of poverty, you're going to...you're potentially moved from Medicaid to exchange coverage. There needs to be a simple way to do that. We have mentioned governance in this document. And basically what we're looking at is to make sure that the governance of the exchange takes into account the needs of consumers. Sometimes perception is reality. And if consumers believe that this exchange is acting in their best interest, they're going to be more likely to participate. And as was mentioned previously, one of the measures by which we'll judge this exchange is what proportion of people do we get into healthcare coverage, which leads to the chart right after the page, which is the number of uninsured in Nebraska in 2008 and 2010. We did see a substantial increase in those numbers in that two-year period, a 12 percent growth in the number of people who were uninsured. This is the type of performance measure by which the exchange and the Medicaid expansion, if we go that route, will be measured. We'll need to address these and try to reduce those numbers. You can see that the individuals...that the income group that have the greatest growth was the under 138 percent of poverty group. So those individuals who might qualify for the expanded Medicaid was the group that has both the highest numbers of uninsured and the fastest growth. In the age groups it was the 50 to 64 age group that had the fastest growth in the number of uninsured. Again, job losses in that age group, when you lose your job you lose your coverage, so I think that is partly attributable to that. So those are our two recommendations having to do with some of the principles that we believe need to be incorporated in terms of what we look at when we develop the exchange. And also we would recommend that the state, the Legislature, look favorably upon pursuing the Medicaid expansion.

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SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And thank you for your testimony this morning, Mr. Intermill. I appreciate your handout. I also appreciate the information you provided to us on this committee, I think it was last week or earlier this week, on this issue. And I want to go over, I guess, what would be page 6, "AARP's Key Issues for Health Insurance Exchanges." And when I asked if you'd expand, please, a little bit on...it appears the only...I guess it would be in that first paragraph of page 6 that you reference state health insurance exchanges. Everywhere else, I think, in your handout you reference just the exchange in a generic sense. Are you advocating then for a state exchange? Am I to understand that from this?

MARK INTERMILL: You will note that the date was February of 2011. And there was an assumption at that point that they would be...there would be state exchanges. So as far as what we're advocating, we're not advocating one direction or the other. I think we have learned...we're learning more about the partnership or the hybrid model that I think one of the things that...the essential parts of the exchange is that it be efficient. And there's certain elements of the hybrid that are attractive to me in that regard. I do believe there are certain things that the state Insurance Department does very well. And those are the two things that would be the state responsibility in the hybrid. And then if we were able to, you know, the information technology piece may be something that might be done more efficiently if it were done on behalf of a number of states. So AARP doesn't have a position on this, but just...and this is me speaking. I think there could be some attractive elements to the hybrid model. The one thing I did hear this morning was that the partnership may restrict options for financing operations of the exchange. And I'd want to look into that a little bit more to see what that actually means in terms of what options we could pursue for financing the exchange.

SENATOR McCOY: Well, then if I'm understanding you correctly with the caveat of what



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you just mentioned on financing, would it be correct to say that your organization's key issues for health insurance exchanges might possibly be able to be satisfied under a state exchange, based upon what you're hearing this morning, possibly a partnership or hybrid exchange. Is that correct?

MARK INTERMILL: I think...yeah. Our basic positions are that the exchange be consumer friendly, that it...and it provide value for consumers and access. You know, those are the basic elements that we're looking for in an exchange. So I do believe those could be met by other than a state exchange.

SENATOR McCOY: And then to go back to a previous topic that you touched on, and if you could I'd like you to expand a little bit on it. On page 5 that you referenced that you began your remarks on, the Medicaid expansion component of this, in paragraph 3 you talk about that...and again, I don't know if this is a more current statement than the 2011 statement. I assume this is more current.

MARK INTERMILL: This is more...yeah.

SENATOR McCOY: But you recognize there being an associated cost to state government after the first three years of the Medicaid expansion. If you would expand, Mr. Intermill, on...you note that there would be...you believe that there would be...your organization believes there would be options for financing the Medicaid expansion. What options do you perceive those to be?

MARK INTERMILL: We're currently looking at a model of what...how we might finance both the Medicaid expansion and the operation of the exchange and looking at options for being able to do that under the following criteria of not increasing tax rates and not relying on General Fund expenditures kind of within the existing revenue structure. We're not done with that yet. But one of the things with the operations of the exchange, our principle is that we need to look at a broad-based source of revenue for the

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exchange. It shouldn't just specifically be targeted towards those individuals who are buying coverage within the exchange. Just as the CHIP program relies on a premium tax on everybody to try to address the needs of those who have a preexisting condition and can't get coverage through the market, we think the premium tax makes sense to be able to operate the exchange. So that's one of the areas we're looking at. We're also looking at what additional premiums might be sold that aren't being currently sold in the state of Nebraska. We expect that there will be and that those will generate additional premium tax revenue above the amount that we're currently providing. I think we provide about \$25 million to the CHIP program now out of maybe \$40 million collected, and the rest goes to the General Fund and education. So we'd want to protect that \$15 million that currently doesn't go to healthcare, health insurance, but look at what options we might have to be able to make a recommendation to this committee and others about how we could finance those two items without increasing tax rates.

SENATOR McCOY: And I appreciate that. And you go on to say that there will be options for financing the Medicaid expansion that will avoid the necessity of cutting other state services or raising tax rates. Do I take that to mean that you recognize that there will be a necessary cutting of state services without implementation of the options that you just talked about that you're working on?

MARK INTERMILL: We recognize there is a concern that we would...that there may be a necessity to cut services or raise taxes. What we're trying to do is identify a means for financing both of these initiatives without doing that. So that's...and we're not there yet. But that's really what we're trying to do, is to try to find a way that we would be able to make a recommendation for that type of financing that doesn't do either of those things, cut services or increase rates.

SENATOR McCOY: Thank you.

MARK INTERMILL: It's a goal at this point.

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SENATOR McCOY: Sure. Well, I know...I'll speak for myself, but I assume the other members of the committee would agree that we...I personally would be very intrigued, as you explore further, what those options may be because I believe that the potential of affecting everything that we do as a state within our state budget and how this may affect that is a very large concern, to say the least.

MARK INTERMILL: Absolutely.

SENATOR McCOY: And I would be very interested as you explore what other options are out there and being apprised of those as we go along this process.

MARK INTERMILL: Okay, great. Will do.

SENATOR McCOY: Thank you.

SENATOR PAHLS: I'd like to just do a...deal a little bit with the premium tax. You...I mean, we understand some of that goes to CHIP.

MARK INTERMILL: Uh-huh.

SENATOR PAHLS: So you're saying that basically hands off the rest of the premium tax that goes to education, the counties, and to cities and fire districts?

MARK INTERMILL: That's what...that's the premise that I'm proceeding on is that we would only address that portion that is financing CHIP.

SENATOR PAHLS: ...currently being used for CHIP, which is the Comprehensive Health...

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MARK INTERMILL: Yeah, right.

SENATOR PAHLS: Okay, but to leave the other remaining...

MARK INTERMILL: Yeah, as is.

SENATOR PAHLS: Okay, okay. Thank you. Senator Pirsch.

SENATOR PIRSCH: Thank you, Mark. And I appreciate your testimony here today. And I was hoping...it sounds like from your testimony thus far that you have actually taken a look at generalized type of numbers. That might prove helpful for me because at the end of the day, as we're looking at our various options, we look at the cost of each option, then we look at the various benefit, which could include state flexibility in decision making and whatnot. So we have a federal, the partnership, and then the state on one other end of the spectrum. When we're talking about totally state-run exchange, the way that the system is structured under the ACA is such that they'll pay if you decide to immediately...states immediately let us know, we'll go ahead and pay for the creation of the, you know, the structure but then turn it over to you. The ongoing operating cost would be what the state uniquely would be facing going forward, right?

MARK INTERMILL: Um-hum. Right.

SENATOR PIRSCH: So do we have any good estimates of, going forward in out years, what...and there's various scenarios. So obviously if this is a federal-run exchange, they bear all the costs and that's not our worry. So really on the other two categories, what are we looking at in...so that we have a better understanding of what our options are, how much would it be going forward with the partnership and the state run?

MARK INTERMILL: In the partnership, I don't know.

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SENATOR PIRSCH: Okay.

MARK INTERMILL: The state-funded...the information I'm looking at is the report that was done for the Department of Insurance by HMA that estimated the cost of the ongoing operation of the exchange, and they had included a high estimate and a low estimate based on the numbers of policies that were sold in the exchange. Now I think another thing I heard today was that that estimate might be going up, so...and that's one of the biggest challenges in this is trying to figure out how many policies will be sold in the exchange, because that just plays havoc with assumptions. So that's...

SENATOR PIRSCH: Yeah. But can you...and I know there's a high estimate, low estimate, and both estimates may be rising as time goes on. Tell me, in the...will it rise over time? Will there be variance as to, say, between, let's see, 2015 and 2020? Would that...would there be an expected rise in the cost or lowering? Or would it stay pretty constant, do we expect, over the passage of time?

MARK INTERMILL: And I'm trying to recall the tables from the report. And I can provide that.

SENATOR PIRSCH: I know. I would put you on the spot. I'm sorry about that.

MARK INTERMILL: But I think there was phase-in where it went up to a level and then stabilized.

SENATOR PIRSCH: Yeah. Okay.

MARK INTERMILL: You know, we expect that costs would increase with inflation. But...

SENATOR PIRSCH: Okay. And can you give us a ballpark? Let's take just the high estimate as it stood before...in this report before. I know expectations are that they're

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going to go...even the high estimate was too low. But what was the high estimate? Do you know rough...?

MARK INTERMILL: I believe it was around \$12 million a year.

SENATOR PIRSCH: Twelve million a year, okay. And of that, did it break it down to component costs...

MARK INTERMILL: It...yeah.

SENATOR PIRSCH: ...such that we would be able to...even though they, you know, they didn't give specific partnership numbers, that we know that IT will be carved off from that if we choose to enter a partnership paradigm.

MARK INTERMILL: Um-hum. Yeah.

SENATOR PIRSCH: How much of that \$12 million is attributable percentagewise to IT and other activities the federal government would assume, should we partner?

MARK INTERMILL: Yeah. They...it was detailed at that level. I don't recall...

SENATOR PIRSCH: It was detailed.

MARK INTERMILL: ...what those were, but we can certainly provide that to you.

SENATOR PIRSCH: Yeah, that would be very, I think, extremely helpful to the committee and to me personally as we go forward then.

MARK INTERMILL: Okay. Okay.

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SENATOR PIRSCH: Thank you.

MARK INTERMILL: Sure.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: A couple quick questions: First of all, to the extent that we would look at...well, let me back up. Feds pick up 100 percent of a Medicaid expansion for three years.

MARK INTERMILL: Three. Um-hum.

SENATOR SCHUMACHER: And then it drops to 90 percent, and we're worried about where we're going to get the 10 percent from unless the feds change the numbers.

MARK INTERMILL: Um-hum.

SENATOR SCHUMACHER: But assuming those are the numbers, what...you're suggesting that that 10 percent be picked up off of a premium tax of some kind?

MARK INTERMILL: If...and going back to if the exchange costs \$12 million a year to operate and if we have \$25 million of premium tax that we're currently putting into CHIP, that would provide some funds within that \$25 million that we could apply towards the Medicaid expansion, which also has the effect of reducing the number of uninsured, reducing the amount of cost shifting. So there is some...a public good that's served by pursuing the Medicaid expansion other than just providing coverage. So that would be one of the places that we would look for that additional funding for the Medicaid expansion. There...I am not far enough along on some of the other things to try to be able to explain them to you today. But as soon as we do make some progress we'll be happy to share.

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SENATOR SCHUMACHER: But in that general theoretical framework then, what we're basically looking at some type of a regressive tax because if I'm in a high-income category I'm going to pay a smaller percentage of my money for...on premium; if I'm in a low-income category, I'm going to pay more. So we're really shifting from a progressive income tax thing to a regressive quasi-sales-tax thing.

MARK INTERMILL: That's a fair point.

SENATOR SCHUMACHER: Okay. And then just along that line, let's just say we decide to impose an "inputs tax" on medical inputs. Okay? So the medical cost of a...that you pay your bill on is jacked up because of this input tax that is being passed through. Will the federal government, under your understanding...and I don't expect you to have this on the tip of your tongue, but it's something that crossed my mind as we're talking here. We jack up med cost by 5 percent on an inputs tax, will the federal government pick up 95 percent of the 5 percent?

MARK INTERMILL: That's an interesting question, too, and it crossed my mind even with the premium tax. If we are...have the federal government picking up 98 percent of an insurance premium in an exchange, are they going to be willing to pay the tax on that? And I haven't got the answer to that question. I assume it would be similar to the one that you're posing though.

SENATOR SCHUMACHER: Or on a similar point, if we tax medical services subject to a 5.5 percent sales tax, will the federal government give us 90 percent of our tax as part of our 10 percent that we owe?

MARK INTERMILL: Those are the types of things we're looking at, so.

SENATOR SCHUMACHER: Okay, thank you.



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SENATOR PAHLS: Seeing no more questions, thank you for your testimony.

MARK INTERMILL: Thank you.

SENATOR PAHLS: Good morning, Jennifer.

JENNIFER CARTER: Good morning.

SENATOR PAHLS: I'd like to say about five minutes, then you can see that questions will be asked. So let's (inaudible)...okay.

JENNIFER CARTER: (Exhibit 3) Sure. Great. Good morning, Chairman Pahls and members of the committee. I'm sorry, I'm very low. I feel like I look like a five-year-old. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r. I'm the director of the Healthcare Access Program and the director of public policy at Nebraska Appleseed. We really appreciate the opportunity to come here today and speak to you about the implementation of the Affordable Care Act. For us, the focus has always been and continues to be on the consumer, the everyday Nebraskan who is going to use this exchange for the first time, maybe access healthcare really for the first time. So our focus is on the 217,000 Nebraskans that remain uninsured today and those that are still struggling to afford coverage. As a result, we have been really supportive and continue to be supportive of efforts to create a state-based exchange. We have appreciated being part of discussions that several senators have stood up with a broad array of stakeholders, we put out a "Statement of Principles" several years ago, and we have participated in interim study processes because we do think that the benefit of a state-based exchange is that, you know, we might be able to tailor it to meet some of the unique needs in Nebraska. Having said that, we are not at all opposed to a federally facilitated or a partnership exchange. And I think the partnership exchange has become something that seems more and more attractive. And really because we will work with

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whatever agency ends up creating the exchange, our focus is really: Does it have consumers as its main focus and as its priority? Does it improve access and affordability to care? And is there a meaningful opportunity for consumers to participate in the decision-making process of the exchange? So...and we have a few other points with regard to the exchange and the Medicaid expansion possibility, which we are also supportive of. With regard to sustainability of the health insurance exchange, I think it's been discussed here, there are several options under the law, even trying to do revenue-generating Web-site ads, assessments on consumers and insurers. And our main concern is that consumers essentially don't get charged twice to participate in the exchange, because our understanding is if there is an assessment on insurers or continues to be, that they are able to pass that along in premiums. And so we'd like that to be, any pass-through, to be reasonable, and if there is an assessment on consumers to getting in the front door, that that's reasonable as well. Because if we make it cost-prohibitive to participate in the exchange, then I think we have defeated the purpose. We're going to have more people uninsured. It's going to make everything more expensive for everyone in the broader market. Second, we really continue to believe that the exchange should have an independent governing board that includes consumers. I think we think this is important for a couple of reasons. One, we've seen from our experience in ACCESSNebraska that consumer input is really critical to understanding if these processes are working for consumers. And I think having consumers as part of the oversight of the exchange will really help as it goes along, and as we continue to make decisions in the future, know that it is actually working for consumers. And the state has flexibility under the ACA to determine term limits and build in accountability and limits on the jurisdiction of the board, which I think can help make that helpful and complementary to all the work that the Department of Insurance can do and leveraging their expertise in the administration of the exchange. I did want to also speak about this option under the ACA to expand coverage in what has essentially become a new Medicaid program. We are extremely supportive of this and really hope that Nebraska takes up this option and thinks...we think it's critically important.

Estimates are that 90,000 Nebraskans could benefit from this new program, which we

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think is obviously very significant. A few...to Senator Schumacher's question, our reading of the law and the national partners that we work with is I think consistent with what you were describing, that it really is now an opt in. The Medicaid piece actually is still law. In the ACA, what they...the only thing that was struck down was the penalty. So essentially there is still a requirement that states do it. But since there's no penalty, there is essentially...an opt in is necessary in order to do it. Separately, we understand that yesterday an official from CMS made a statement that they are not likely to allow partial expansions, at least not when it's 100 percent federally funded, so that the state would have to opt to 138 or not. I think part of that is, especially when it's 100 percent federally funded, it costs about \$3,000 more a person to give a refundable tax credit to buy private insurance than it does to cover somebody under Medicaid. So it's actually, from a taxpayer perspective, it's more expensive to cover somebody through the exchange and private insurance than it would be under the Medicaid expansion. And so my guess is that's part of the reasoning. So I think it's going to, at least in the first three years when it's 100 percent federally funded, it appears that it will be, you know, you go to 138 or not. And one other thing I wanted to mention is it's our understanding that the "No Wrong Door" policy, nothing in the Supreme Court decision changed that. And so our hope is that whoever sets up the exchange in Nebraska, that that is still a key goal so that somebody who comes in really is kind of coming in and applying once. And if they happen to be eligible for Medicaid because, as I think was described, they will have to be assessed for their Medicaid eligibility just to determine if they're eligible for tax credits, that at the very least we are...and my understanding is that I think this is what the Department of Insurance is looking at. They're prompted to complete the Medicaid application. That gets shared with HHS just so that somebody isn't then walking away, if this was their only time off of work or whatever, and having to go down the block and go to HHS to apply, that there is some way of data sharing, doing as much as we can to make that seamless for somebody. And also to make that work and to make that seamlessness work, we have to update our Medicaid IT system, which I know we've been talking about for years. Since November of 2010, a 90 percent match from the federal government has been available to update our MMIS system, and it used to be a

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50 percent match. My understanding is the state hasn't taken advantage of that yet, so we would encourage the Legislature to maybe look at that. And we've continued to ask the department about that and...but I think it's something that the state may look to pursue. In terms of essential health benefits, I don't have that in my testimony. But when it was mentioned I just wanted to mention one thing is our understanding is that when a benchmark is chosen, insurers who are determining their benefits off the benchmark can sort of substitute different levels. They can balance the ten essential health benefits in a different way as long as the actuarial value is the same. And we would just like to have a better understanding of who is going to determine, when an insurer comes in, who is going to determine, oh, yes, your plan meets the actuarial value of the benchmark, and what does that process look like, how transparent is it, I think, in the first place. And then separately, are we going to monitor how these plans are working for consumers as we go forward? Is that balance of benefits really valuable for their premium dollar or not? And some like I understand will get determined by the market. But some of that I think would be helpful to consumers to know and to really understand the difference between the kind of...the balance they have struck and the benefits as they shop for coverage in the exchange. So that's mainly the points we'd like to make today. I'm happy to answer any questions.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And thank you, Ms. Carter, for being here this morning, for your testimony. If I'm understanding correctly your first part of your remarks, when you released your "Statement of Principles" for Nebraska exchange about a year ago, based upon your understanding not only from this morning but elsewhere, would a...of the three potential models being the state exchange, a federal partnership hybrid exchange, and a federally facilitated exchange, do all three of those options satisfy your "Statement of Principles"?

JENNIFER CARTER: You know, that's a good point. I didn't go back and look. But I

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think they would because I think it was just...really we were just coming at that from what's going to work best for consumers. And I think because any version of an exchange would still have to meet...that was really based on what we understood the law required. And so any version of an exchange I think would have to meet those requirements. So, you know, from that perspective I think the principles would apply in any of those places, and we're kind of willing to work with whatever this...whichever direction the state decides to go in.

SENATOR McCOY: And you mentioned 217,000 Nebraskans are currently without health insurance. And then when you talked later in your remarks about the Medicaid expansion, you talked about how that would cover 90,000 Nebraskans.

JENNIFER CARTER: Um-hum.

SENATOR McCOY: Can you kind of explain so we're clear, and I'm sure it's helpful to everyone, how those two numbers work together?

JENNIFER CARTER: And I may have to get back to you because I know Robert Wood Johnson did a more...drilled down a little bit more in terms of how many Nebraskans under 100 percent, how many under 138 would be eligible, and I believe broke it down by who was currently uninsured and who might have insurance. The vast majority of that 90,000 are in the 217,000 number. They are currently uninsured Nebraskans. And that's partially because they are...might be the childless adult category that is really going to be the main beneficiaries or one of the main beneficiaries--parents will be in Nebraska as well--of the expansion. But I could try to get you more specific numbers in terms of are all 90,000 currently uninsured, or are some of them receiving coverage now but would get more affordable coverage, obviously, under Medicaid.

SENATOR McCOY: I would greatly appreciate that.

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JENNIFER CARTER: Sure.

SENATOR McCOY: I think that would be helpful to kind of drill down and better understand the breakdown of...

JENNIFER CARTER: Yeah.

SENATOR McCOY: ...because, you know, we...depending on who you talk to and depending on the study you look at, report, whatnot, sometimes these numbers can fluctuate.

JENNIFER CARTER: Yeah.

SENATOR McCOY: And I think it's helpful to know what comprises these numbers and how that affects the discussion that we're talking about.

JENNIFER CARTER: Yeah.

SENATOR McCOY: On page 2 of your prepared testimony you talk about, over the paragraph, the sustainability of a health insurance exchange. And I would assume that you're talking about in the macro sense, the general sense of a health insurance exchange...

JENNIFER CARTER: Right.

SENATOR McCOY: ...basically under any of the...well, it would probably be applicable less to a federal facilitated one.

JENNIFER CARTER: Um-hum.

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SENATOR McCOY: But clearly you're talking about in the general sense, correct?

JENNIFER CARTER: Right, exactly, yeah.

SENATOR McCOY: Okay. Now am I to understand when you talk about Nebraska's exchange could be funded by Web-site ads, assessments on insurers and consumers, are we to assume when you say assessment, is that another word for a tax? Is that what you're looking at? Or how do you define assessment?

JENNIFER CARTER: And I don't know if there is a particular definition in the regs that would change that. But I think we were...our understanding...would that be continuing the premium tax that Mr. Intermill described and using some of those funds? And would this be sort of an entry fee? I don't exactly know. I think that's part of what would need to be decided. If you're a consumer and you're coming into the exchange, is there...how does that get worked into your utilization of that tool essentially? So I think we were not thinking of it as like a tax that's on your IRS form but some sort of fee that might be necessary to enter the exchange.

SENATOR McCOY: ...as something that would be required, obviously, not voluntary.

JENNIFER CARTER: Right, right.

SENATOR McCOY: Okay.

JENNIFER CARTER: That's my understanding of the option anyway, so yeah.

SENATOR McCOY: Thank you.

SENATOR PAHLS: I have a question. And I know this is something that's very important to you, this independent governing board.

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JENNIFER CARTER: Yeah.

SENATOR PAHLS: They would deal with taxes or fees, am I correct?

JENNIFER CARTER: I think, you know, for example, some of the bills that were here last session I think tried to lay out what the jurisdiction of the governing board would be. And I apologize because I did not refresh my memory on that exactly. But I think to some extent we conceptualize this as an oversight role. I mean, definitely we think that there are some key decisions that maybe should be made by a governing board to the extent they might affect consumers. But in some ways I think it's having consumers at the table to be able to understand is it really working for Nebraskans.

SENATOR PAHLS: Right.

JENNIFER CARTER: And when we're deciding how many plans are in the exchange, does that have an effect on consumers or not? And having them at the table and being able to be a part of those conversations we think is really important. And a representative, you know, is really important.

SENATOR PAHLS: But when you use the word independent I see that outside of...and this is a question I think the Governor even posed to you,...

JENNIFER CARTER: Um-hum. Right. Yeah.

SENATOR PAHLS: ...that if you're making decisions that really will have a financial impact on all the citizens.

JENNIFER CARTER: Um-hum.



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SENATOR PAHLS: And I thought he had a pretty good comment by saying he was elected and the Legislature is elected...or, well, they are elected by the people.

JENNIFER CARTER: Right. Um-hum. My understanding is some states have set up their boards even if the agents...if an agency is doing a lot of the administration of the exchange that the board is kind of, sort of within the agency but independent at the same time. I guess my thought there is I think there are ways to build accountability into a governing board through term limits. In the same...I guess I don't necessarily see the difference maybe, is more the point, between housing it solely in the Department of Insurance, where there are also no elected officials, and having an independent governing board without elected officials. Either way, whoever is appointing those folks is the elected official who could essentially be held accountable under, you know, the Governor's point. And so I guess we think it's worth having the discussion about how we could make a board accountable so that consumers can really be part of the decision-making process. And part of that is our concern is will an advisory board, if it's just an advisory board, will their input really be utilized? What kind of influence can an advisory board really have? And I think we were hoping for something that's a little stronger than that.

SENATOR PAHLS: Okay. So, I mean, you may go to the direction of an advisory board if it really had...

JENNIFER CARTER: ...some teeth maybe.

SENATOR PAHLS: ...some teeth, because I think when you're outside of the rest of the government, I think that's...

JENNIFER CARTER: Um-hum.

SENATOR PAHLS: I have some qualms about that, you know, myself. Okay, thank you.

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Senator Pirsch.

SENATOR PIRSCH: Thank you for your testimony.

JENNIFER CARTER: Sure.

SENATOR PIRSCH: I'm just going to piggyback on some of the things you said to maybe pick your brain. Maybe you have knowledge of the answer, maybe you don't. But has there been any clear guidance by...coming out of Washington HHS with respect to Medicaid expansion? Right? So we know that should you opt to expand fully that you'll be able to participate at a 90 percent level and cost the state 10 percent and...or you can do nothing. But is there something...is there any direction with respect to less than expanding to that full level?

JENNIFER CARTER: To 130?

SENATOR PIRSCH: Would the federal government participate at a 90 percent level?

JENNIFER CARTER: My...so this is just from statements, not any official guidance that came out but statements that we understand Cindy Mann, who is a director at CMS, made yesterday is that...I think her statements were...indicated that the CMS is leaning towards not allowing a partial expansion, at least during the three years while the federal government pays 100 percent for those newly eligibles, so that a state would really at this point have to be choosing to go to 138 or not.

SENATOR PIRSCH: Okay. It's all or nothing.

JENNIFER CARTER: And then after that, when it's...when the federal government's share is reduced to 90 percent, there was some indication that maybe then that would be revisited. But at this point they seem to be indicating that they would only go to 138,

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which if you look at sort of the Medicaid laws and how waivers work, and it's much more consistent to say you're either going to 138 or you're not, and I think especially when it's federally funded at that...for those three years.

SENATOR PIRSCH: Okay. And so that was Cindy Mann who made that,...

JENNIFER CARTER: Cindy Mann is her name. Yeah.

SENATOR PIRSCH: ...and it was pretty explicit that that's the direction, for at least the three-year term, that they were going to help?

JENNIFER CARTER: That, yeah, it was the...yeah, it was sort of an indication of that's the direction that they're going and that...I think it may have even gone so far as to say they didn't expect any further guidance, that the states are kind of in the position they're in based on the law and the Supreme Court decision, so.

SENATOR PIRSCH: Right. And just to...and utilize also your knowledge of this if you know the answer. But again, you know, I think our position here in making a decision as to what the appropriate--on this committee, I mean--health insurance exchange...

JENNIFER CARTER: Um-hum.

SENATOR PIRSCH: And obviously if the federal government does it themselves, we don't have to worry. But with respect to the two then remaining, do you...is that the figure that you concur with somewhere, that the high side used to be \$12 million ongoing cost for the state to pick up and may be inching up, as time goes on, that estimate?

JENNIFER CARTER: Um-hum.

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SENATOR PIRSCH: And under the...so that would be a total state-run exchange, right, that the...

JENNIFER CARTER: That's my understanding from...

SENATOR PIRSCH: Okay.

JENNIFER CARTER: Yeah. And I mean I understand it's...

SENATOR PIRSCH: Um-hum.

JENNIFER CARTER: ...difficult to predict. And I think what we have to work with is...

SENATOR PIRSCH: Um-hum.

JENNIFER CARTER: ...the experts that were hired with the State Planning Grant money.

SENATOR PIRSCH: Right, right.

JENNIFER CARTER: And I think, you know, we would say...probably want to make the most conservative estimate you can in terms of what the cost is so that we really try and make sure we were covering it, so yeah.

SENATOR PIRSCH: I agree. Yeah, you don't want to underestimate things because that will turn...

JENNIFER CARTER: Right. Exactly.

SENATOR PIRSCH: ...if you're going to undertake a big project like that. So if you...so if

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we were to go to a joint partnership there are certain responsibilities and costs that will be borne by the federal government. Do you...can you give us a clue, do you have a clue as to either...in terms of percentagewise? Obviously, IT would be one such category, we're told here today.

JENNIFER CARTER: Um-hum.

SENATOR PIRSCH: And we're told that that's a meaningful expense. But do you have an idea of what that would equivocate out to in terms of percent, all these categories that would fall to the federal government in terms of their expenditures, not ours?

JENNIFER CARTER: Um-hum.

SENATOR PIRSCH: Do you have an understanding of what, you know, that percentage would be or...?

JENNIFER CARTER: No. Unfortunately I don't. And I don't know if that's something that the folks we have...that the state has already talked to would be able to, you know,...

SENATOR PIRSCH: Um-hum. Okay.

JENNIFER CARTER: ...give based on now looking in maybe a different direction of thinking about a partnership. But it's not...that's not sort of an expertise that we have.

SENATOR PIRSCH: Um-hum.

JENNIFER CARTER: And I'm not like Mark. Yeah.

SENATOR PIRSCH: Oh, sure. And I didn't mean to (inaudible)...your group isn't...

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JENNIFER CARTER: Oh, no. But I actually haven't even heard that...yeah.

SENATOR PIRSCH: But I know you're very active in the issue.

JENNIFER CARTER: Absolutely. Right. No, I...yeah.

SENATOR PIRSCH: And so I didn't know if it would be maybe a different story if you're talking about, you know, the remaining costs being \$2 million out of the \$12 million...

JENNIFER CARTER: Right. Oh, I see. Yeah.

SENATOR PIRSCH: ...or the remaining cost, you know, that only \$1 million out of the \$12 (million) was carved off from the federal government.

JENNIFER CARTER: Right. Yeah.

SENATOR PIRSCH: So that, I mean, we have to flesh that out to make an appropriate decision. The other...

JENNIFER CARTER: Yeah. And I don't know if that can be fleshed out from the existing reports or not, you know, how the...I'd have to look back at how the costs were broken out, and that's something that can be done.

SENATOR PIRSCH: Sure. Oh, sure. Well, yeah. And I don't know if that information is readily ascertainable by anybody. But that's something that's on my mind at least.

JENNIFER CARTER: Yeah.

SENATOR PIRSCH: And the other part of that also is what responsibility, what greater flexibility in decision making would the state pick up in terms of the going with the option

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of partnership?

JENNIFER CARTER: Um-hum. Right.

SENATOR PIRSCH: That's why I'm interested, just kind of signaling my intent going forward here through the beginning of the year, is what advantages exist with going to a partnership as opposed to a...I'm sorry, with the full-on state-run as opposed to a partnership.

JENNIFER CARTER: Yeah.

SENATOR PIRSCH: So thank you very much for your testimony.

JENNIFER CARTER: Sure. Okay.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: A couple questions: If I'm understanding the numbers right, there are 217,000 Nebraskans without insurance coverage.

JENNIFER CARTER: Yes.

SENATOR SCHUMACHER: Does that number reflect the number that may have coverage but unrealistically high deductibles?

JENNIFER CARTER: I don't believe so. I think it's just not...no coverage at all.

SENATOR SCHUMACHER: Okay. And then if there was a Medicaid expansion, about 90,000 of those would be picked up in that program.

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JENNIFER CARTER: Yes.

SENATOR SCHUMACHER: The 127,000 missing people, where are they? Are they just electing not to have insurance or...?

JENNIFER CARTER: My guess is they fall somewhere in there. I actually don't know what the poverty level breakdown is of the remainder. But my guess is that...I mean, certainly I'm sure some of them are just choosing not to have insurance. I think the vast majority of our uninsured, at least from past years, tend to be families that don't make as much income. So my guess is they are not offered employer-sponsored coverage or help from their employer to afford coverage, and it's just not really realistically affordable. And so I believe those would be families that might be eligible for tax credits that may make it more affordable for them under the exchange.

SENATOR SCHUMACHER: And they would be...pay this penalty thing if they didn't, at least to some degree.

JENNIFER CARTER: Right, right.

SENATOR SCHUMACHER: To the cost of the...our 10 percent for the 90,000 people that would be brought on, any guesstimate on how much of a check we'd have to write each year?

JENNIFER CARTER: These numbers, which are consistent with also some national studies, are from a new University of Nebraska Medical Center Report. And I apologize because I think it is at my seat and not here, but they did estimate out the costs per year until, I think, about 2020. And I'm more than happy to get that report to you, so.

SENATOR SCHUMACHER: And that would be having to come out of the state \$2 million.



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JENNIFER CARTER: Right. Once we start going to 97 and 95 percent, as it scales down to 90 percent, they estimated the costs.

SENATOR SCHUMACHER: But it was that report from the Medical Center that would be a good authoritative figure on that?

JENNIFER CARTER: Yes. Yeah, yeah.

SENATOR SCHUMACHER: Okay. And finally, if I understood you correctly, that you folks had kind of determined that a state would have to opt in to the Medicaid expansion because functionally there's no penalty for not doing it under the law.

JENNIFER CARTER: Right.

SENATOR SCHUMACHER: Has anybody looked at research whether or not, if a state is obligated under the law but chooses not to do it because there is no penalty, whether or not a private cause of action would lie against the state...

JENNIFER CARTER: That's interesting.

SENATOR SCHUMACHER: ...for not doing what it's required to do under the law and, thus, the state has to pick up your medical bill?

JENNIFER CARTER: That is interesting. We have not looked at that, no. I think the general sense is that this has become optional. I also don't know even if...say it wasn't optional. I think...I wonder if under our own laws would we need some affirmative piece just to make clear we are participating in this new program? And so we've just kind of been operating under that assumption. But no, we haven't actually looked at it, so.

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SENATOR SCHUMACHER: That question is kind of a warning to law school students who may be taking the law school exam next year.

JENNIFER CARTER: Yeah, exactly.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And a couple follow up questions to that: Out of that 217,000 Nebraskan figure, does that include any of the illegal alien population in the state of Nebraska, do you know?

JENNIFER CARTER: I don't know because I think the census doesn't...I don't know that...these are census numbers. And actually...I think actually the census came up with numbers just yesterday. So these were the most current numbers we had when this was written. But they came out yesterday, so this 217,000 might be adjusted just slightly. And we can get you those numbers. But my understanding is it's just the way they collect the information, I don't think they make that distinction. So it's possible that some are included in that number.

SENATOR McCOY: Okay. And then I want to talk just a moment more because I think there was some good dialogue earlier on what you have in page 2 of your testimony on the independent governing board concept. And I think the analogy that you used a few moments ago is a fair one, that...I think you posed the thought that what's the difference kind of between an unelected, either hired or appointed, departmental or agency staffing decision-making process, vis-a-vis the...an independent governing board that's outside the government, so to speak. I guess if you could expand a little more on that because I would also, to use Senator Pahls's words, have qualms or at least have concerns along those lines because that may be true. However, as we all know, we hold confirmation hearings for directors and for commissioners.

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JENNIFER CARTER: Um-hum. Right.

SENATOR McCOY: So do you anticipate or have you talked about--it's certainly not mentioned in your testimony--that an independent governing board would have to come before applicable committees for confirmation hearings much the same way that, you know, we have a multitude of commissions and boards that we have under the purview of the Legislature? Because to me that's the difference in...

JENNIFER CARTER: Um-hum. Right. Yeah.

SENATOR McCOY: ...and maybe you could expand a little more on what you said, on that analogy that you used, the difference being here in the Legislature, our branch of the government, we do have an influence over, at least some, over the...

JENNIFER CARTER: Um-hum. Right.

SENATOR McCOY: ...at least some members of state agencies. So perhaps you'd care to expand a little more on that.

JENNIFER CARTER: Sure. No. I mean, I think that's a great example of a way in which you can make the independent governing board maybe satisfy any accountability concerns. I don't know that we ever...that it's conceptualized, and certainly we at Appleseed didn't conceptualize it, as kind of a completely independent, outside of any scope of government board but one that could work either within the existing agency or as a board, as many of the other boards in the state are set up. So I think that would be perfectly reasonable to have confirmation hearings and to set it up in ways that the Legislature felt like they had some, you know, role in that board, I think. And I think we...there would need to be some legislation to figure out what the jurisdiction of this board is, how are they appointed, all of that, so.

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SENATOR McCOY: Thank you.

SENATOR PAHLS: Are you still on Channel 10?

JENNIFER CARTER: I don't think it's run for a while. I don't know; I'll have to ask Mark (phonetic).

SENATOR PAHLS: Well, I noticed last night they had something...somebody from the national...or from the federal government talking about this.

JENNIFER CARTER: Oh.

SENATOR PAHLS: I didn't know whether you are partly responsible for that.

JENNIFER CARTER: No, I...no, I was not, so.

SENATOR PAHLS: It was a pretty detailed program about the healthcare.

JENNIFER CARTER: Oh, great. Great.

SENATOR PAHLS: So that's an advertisement for somebody that wants to learn a little bit more about it. I see no more questions, so I thank you for your testimony.

JENNIFER CARTER: Good. Thank you very much.

SENATOR PAHLS: Kathy.

KATHY HOELL: Thank you, Jennifer.

JENNIFER CARTER: Sure.

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SENATOR PAHLS: Thank you.

KATHY HOELL: (Exhibit 4) Thank you for inviting us to testify today. My name is Kathy Hoell, K-a-t-h-y H-o-e-l-l. And I am testifying as the past-president of the Arc of Nebraska and a current member of the governmental affairs committee. I'm also a disability rights advocate, and I'm employed by the Statewide Independent Living Council. Anyway, I have handed out a recent article that came out from the Arc of U.S. And one of the things it does do is make recommendations on how habilitation should be defined. And I remember earlier that they were still looking at guidance, that they are suggesting the way Medicaid defines habilitation. Based on that 217,000 number, we are estimating that there is about 5,000 to 7,000 people with disabilities in Nebraska that are uninsured. And then there is a number that do have private insurance, however, private insurance for the most part does not provide the disability related therapies and services that people need. There are mainly just two points that we want to really get into. We really don't care what kind of exchange you go with as long as it provides us services that we need. Habilitation, rehabilitation, mental health, and substance abuse, since they're all included in the essential health benefits, I'm not really going to go there. But one of our concerns is in the most recent report of The State of the States in Developmental Disabilities, Nebraska ranks 49th in family support. That's a really atrocious number. Anecdotally, we know of, going around the state--and we have 13 chapters of the Arc within the state--family is just not able to access the types of services they need, or they're unaware of what services are available. Often services that would be beneficial to the family are not offered because the person they are working with is unaware of the program outside of their own specific little area of work. Unsupported and undersupported families are left to find their own assistance if there is any available. If assistance is unavailable or sporadic, families' needs go unmet. Unmet needs of young children create greater, more costly needs in the future. These children become adults with disabilities with greater problems. All this is really due to a lack of communication and information sharing. Greater cost efficiencies is savings efficiencies,

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and better outcomes for families and children with disabilities could result when there is more coordination. The opportunity to create exchanges that work towards this goal is one step that we can take. And one of the things that we had thought of...I know they have not defined the role of the navigator. So maybe this is something the navigators could help do is to provide this communication about what services are available. Another area of concern, we are supporters of the Medicaid expansion because we think a lot of people with disabilities would fall between that 100 and 138 percent. However, there are some programs in Medicaid that are...that have become available under the Affordable Care Act that our state has not taken advantage of. One is the Community First Choice Option, and this would allow anybody who is at risk of institutionalization...and institutions are being defined as hospitals, nursing homes, intermediate care facilities for people with intellectual and developmental disabilities, and psychiatric institutions. So if they're at any risk for institutionalization, they would receive home...possible to receive home and community-based services and attendant services and supports. Now if states go with this option, your federal medical assistance percentage, the FMAP, goes up by 6 percent. Another option would be the state plan Home and Community-Based Option, and this would allow people to get services without having to go to a waiver. It would make it easier for individuals to qualify. And the state could actually target certain populations because we are not addressing autism, which is a very prevalent issue in this country right now. Anyway, another issue is Money Follows the Person, which Nebraska has...does do, but it's a grant program to get people that are in institutions back into home and community-based services. Home and community-based services cost, on the average, 50 percent less than being in an institution. However, Nebraska has not done very well with Money Follows the Person, and that is mainly because of restrictions that they have applied to the program, not stuff that the federal government did. And the final one I'm going to mention is Balancing Incentive Payments Program, and this is also a grant program that would allow states to try to control their long-term care budget. As they bring it down, if they bring it down between 25 and 50 percent, they would increase the FMAP by 2 percent. If they bring it below 25 percent of...25 percent isn't...for institutions, it would...then the FMAP would

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go up to 70...to 5 percent. Anyway, these are just some provisions included in the Affordable Care Act that we really think would benefit people with disabilities. And we would like to encourage you to make this as efficient as possible, so that all people with disabilities and their families are included. Thank you.

SENATOR PAHLS: I want to thank you for your testimony. I appreciate the literature because there are some issues here that I had not thought of. And the idea of having navigators help individuals I think is a plus, to make sure everybody knows what is available to them. So I appreciate that.

KATHY HOELL: Yes.

SENATOR PAHLS: Do I see any questions? Again, well, I want to thank you. And, like I say, this is good information for us. And I will make sure...we have some people in the Department of Insurance are here; I'll make sure they get this. Thank you.

KATHY HOELL: Okay. Thank you very much.

SENATOR PAHLS: Thank you. Thank you for your attendance at the meeting today.