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BANKING, COMMERCE AND INSURANCE COMMITTEE
October 19, 2012

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The Committee on Banking, Commerce and Insurance met at 9:00 a.m. on Friday, October 19, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public briefing on the Nebraska Department of Insurance. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: Chris Langemeier.

SENATOR PAHLS: Good morning. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, and I represent District 31 which is in the Omaha area. This meeting will be a briefing in regard to the Patient Protection and Affordable Care Act. Today we're going to hear testimony from the Department of Insurance. And if you took a look as you walked into the room, we have two other people who will be speaking to us. What I think I will begin right now since most of us are being focused, I'm going to start focusing with you, Senator. I'll let you introduce.

SENATOR SCHILZ: Ken Schilz, District 47, Ogallala.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Platte, Nance, Stanton Counties...or Platte, Colfax, Stanton Counties. (Laughter)

SENATOR PAHLS: Yeah, you better get them all.

SENATOR SCHUMACHER: I moved myself there.

SENATOR PIRSCH: Pete Pirsch, Douglas County and parts of Omaha.

SENATOR McCOY: Beau McCoy, District 39, western Douglas County.

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

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial.

SENATOR PAHLS: And I see a lot of familiar faces in the audience, but most of you do know Bill Marienau who is our counsel; and Jan Foster over there, she makes sure that we say the right words in the right places. And we have two pages today. We have a page named Paige Schreiber from Columbus and Lacey Schuler from Tekamah. And the only request I will do is make sure that you have your cell phones off and we'll proceed from there. And I'm just going to ask the committee, let's hold off on our questions today until we're finished, because some of this stuff is pretty detailed so if we can keep the meeting moving. And just for your information, we will have another briefing in several weeks from today on this same topic. Director.

BRUCE RAMGE: (Exhibit 1) Thank you. Good morning, Senator Pahls, and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge. For the record that's spelled B-r-u-c-e R-a-m-g-e. I'm the director of Insurance here to address the committee on the department's progress in the area of the health insurance exchanges. At the table with me is Martin Swanson. He's the assistant project manager...or director who provides day-to-day management of the health insurance exchange study and implementation project. Martin, if you would, please spell your name for Jan.

MARTIN SWANSON: M-a-r-t-i-n S-w-a-n-s-o-n.

BRUCE RAMGE: In an effort to get through the testimony in an efficient way, I'm hoping to answer questions at the end of my prepared testimony. Since our last briefing, the state has taken three important steps in this project: first, in a letter dated October 1, Governor Heineman provided the federal government with the state's recommendation

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of an essential health benefit package which will serve as the floor, if you will, for coverage in the state and provide a basis on which insurers can build as they develop products to serve consumers both inside and outside the insurance exchange market. I'd like to talk a bit about the federal process on the essential health benefit recommendation. It's important to start with the fact that under the Affordable Care Act, ultimately, the United States Secretary of Health and Human Services was given the job of making a decision on the essential health benefit plan. Nearly two years after passage of the act, the Secretary directed states to recommend a benchmark plan under the authority of a December 16, 2011, bulletin and subsequent question and answer documents. Ten months later, states were left to make this recommendation without regulations outlining the process with which they are expected to comply. To date, states have not been told when exactly the Secretary intends to make a final decision in this matter so that insurers can begin developing products to meet this mandate. Faced with the fact that the Secretary had not developed anything beyond bulletins and question and answer documents on the essential health benefit plans, 27 state governors--both Republican and Democrat governors, by the way--made no recommendations at all by the deadline established by the federal government. Governor Heineman's overarching consideration in making this recommendation to the federal government was a search for more affordable options for Nebraskans. Based on a review of current rate filings with the Department of Insurance, the department estimates that there would be a roughly 28 percent lower rate than if the state stuck to the options identified by Secretary Sebelius. The components of the essential health benefit package apply to the entire insurance market of our state and affect all insured health plans sold in Nebraska, not just those sold through an exchange. Setting the minimum standard higher would remove this option for Nebraskans. Again, this recommendation would be a floor for coverage. The recommendation would preserve this option for Nebraskans who like the product and allow insurers to provide products with higher benefit levels if there is a marketplace demand for those products. In conjunction with that recommendation, on Wednesday of this week, Governor Heineman sent a letter to Secretary Sebelius for her consideration while promulgating

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the expected, but long-delayed, cost-sharing reduction regulations. In his letter Governor Heineman recommended that the federal government cover the health savings plan costs in the final regulation. And those would be the costs associated with that initial \$4,000 deductible. By covering the health savings plan costs, consumers would be allowed necessary utilization for healthcare needs without exposing healthcare providers to the risk of unpaid claims. A copy of this letter is on your desk. The second step taken since we last briefed the committee in September was that a request for proposal was issued seeking a vendor to provide some of the significant services for a potential state-based exchange. This RFP includes a request for the information technology infrastructure and call center operations. If this committee or anyone wants to see a copy of the rather thick request for proposal, they can go to the Department of Administrative Services' Web site or the Department of Insurance Web site and it is posted there, together with question and answer documents and other information. That RFP is in progress currently and the department will not discuss these matters. I did, however, want to bring it to your attention. The third step taken was that the department met with our federal counterparts to undergo the so-called design review. That process involved submission of information to federal officials for their review both of the materials and of the state's process so far. That process also gives us the opportunity to waive out of certain requirements so the blueprint...and the blueprint is a document that is to be filed on November 16 if a state wishes to operate a state-based exchange or a partnership exchange. The report from CMS, or the Centers for Medicaid Services, gives the department a list of additional paperwork that needs to be generated, but commends the Nebraska exchange on its operational progress to date. A copy of that report will be available on the exchange's Facebook and Web page later today. That brings me to my last point of the testimony today before we begin to answer questions. As this project has progressed it has become more and more apparent over time that the health insurance exchange project is driven at the end of the day by federal law, federal requirements, and federal decision making. As this project moves forward, although the federal government claims that they are providing the states tremendous flexibility, this flexibility is either less than initially promised or

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flexibility between two options, one of which is completely unacceptable. Even with the state-based exchange, the federal government will be making most of the decisions with state decision making on the margins. Let me give you a few examples. First, although there was no clear statement of that principle in the Affordable Care Act, federal Medicaid officials asserted that they must grant prior approval to the request for proposal that I mentioned earlier. This specific review was completed in a timely fashion. But generally speaking, the federal bureaucracy moves slowly, and in the case of the Medicaid program, even approval of routine changes can take several months or longer. They are now looking to exert similar authority over other pending projects based on remote ties to the Medicaid program. In fact, the federal government has asserted that before we enter into a contract with an IT vendor, they would have to approve the contract. The staff of the federal agency overseeing the health insurance exchanges has seen a shift from people with insurance backgrounds to people with Medicare and Medicaid backgrounds. As the federal exchange bureaucracy matures, we are concerned that this trend will continue and the exchange program will become like most other federal programs with minimal flexibility and difficult bureaucracy. This is especially disconcerting when one considers that any substantial change, which is a term of art yet to be defined by the federal government, to a state-based exchange must be approved by the federal government. That standard requires the state to obtain formal approval of any substantial change to a state-based exchange, even one made by the Legislature. A second example of the deterioration would be that with the partnership program. When unveiled a year ago, federal officials pointed to this partnership as an opportunity for states to continue to do what they do best, oversee healthcare financing products and a distribution of those products to consumers, while allowing the federal government to take advantage of economies of scale by building the means to distribute federal subsidies for the purchase of insurance and the exchange back-office functions rather than having these developed on a 50-state basis. That partnership program has deteriorated over time as well, starting as a state-driven a la carte program unveiled initially to state legislators, and degenerated into a limited set of choices between five functions. Now, from what we've been told by our federal

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counterparts at our last meeting, we don't really have that. As a result of a legal opinion drafted by attorneys with the Obama administration and not due to a regulation or other mechanism open to public comment and not publicized in any formal way to the states, it appears that states will perform in a partnership only in an advisory role. So for example, the original formulation for navigators was that the federal government would choose the navigators and the states would manage them. When we asked if managing meant that we could terminate the navigator services if they were acting outside the scope of their authority, the answer was no. Now as a result of this legal opinion, states would not even manage them. They would report problems to the federal government, provide advice to the federal government and services to the federal government, and the federal government would make the decisions and take action. Since this has happened to the federally created partnership, we have grave doubts that over time what limited flexibility states currently enjoy will be taken away either publicly through rule-making or quietly through legal opinions that are not publicized. So the state gets to choose between bad options. There is no good choice that will preserve state authority and flexibility. There isn't a choice available that will allow decisions to be made which will implement the policy in an economically efficient way to the way that Nebraskans expect. There's no clear-cut answer. And to emphasize, again there's really no clear-cut answer to this. Sitting here today, I do not know what decision Governor Heineman will make on this. I can't speculate on the decision he will make on November 16. But I do know that, as always, he welcomes your input in this decision. If members of this committee or members of the Legislature generally have a recommendation, he wanted me to encourage you to communicate with him to discuss that recommendation. I'd be happy to answer questions.

SENATOR PAHLS: Like I said, we will...apparently, we're going to probably have another briefing on this because it seems like we still have a long ways to go. But the ironic thing about all of this is when I first started into this endeavor, it seems like forever ago, logic told me it ought to be a combination of the state and federal. And even at this point you don't know which direction to go is what you're telling me.

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BRUCE RAMGE: That's right. The flexibility that was initially promised has really deteriorated in terms of a state-federal partnership. It would be simply the state administering the federal program.

SENATOR PAHLS: So we were gamed, basically?

BRUCE RAMGE: That appears to be the case.

SENATOR PAHLS: Okay.

BRUCE RAMGE: Or opinions have changed over time.

SENATOR PAHLS: Right, and I...right, maybe I used that term too loosely. Senator Pirsch.

SENATOR PIRSCH: You mentioned, in particular, the navigator option or issue, selecting navigators.

BRUCE RAMGE: Yes.

SENATOR PIRSCH: Has that...and said that that...your understanding of that...of the state's power to make...flesh out the who and what, you know, and how has...your understanding of that has changed in the last month or two?

BRUCE RAMGE: Yes. Yes.

SENATOR PIRSCH: And could you speak to what the real-life implications then would be for those of us on the committee in terms of what is left, what is our option.

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BRUCE RAMGE: Well, with the navigator program, the state would not have the ability to choose...to start out with, to choose individuals who we know to be competent and to be able to represent the state. These individuals will be out there and they'll be a face for the state. And we would want to make certain that they're putting on a favorable and professional appearance and to be competent and knowledgeable. And we would lose that authority completely.

SENATOR PIRSCH: Do we have the ability to demand licensed representatives, or what...how far do we go?

BRUCE RAMGE: There's not full rules yet. We know that we cannot license them, not require them to be licensed. There is a possibility that we can require training.

SENATOR PIRSCH: Thank you.

SENATOR PAHLS: Senator Schilz.

SENATOR SCHILZ: Thank you, Mr. Ramge. Thanks for coming in. And Martin, thanks for coming in.

BRUCE RAMGE: You're welcome.

SENATOR SCHILZ: As we talk about the navigator, so is the...do we have a scope of what a navigator is, what a navigator does; has that been provided by the federal government? And then if not, or if so, is that also a place where flexibility is lost by the state by not being able to...

BRUCE RAMGE: To set the parameters.

SENATOR SCHILZ: Right...and to mold it into what we need to help Nebraska?

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BRUCE RAMGE: As of...no. And I know that they have provided a list of the types of organizations and individuals that a state would need to choose from for who is a navigator. And beyond that, I don't know if they...Martin would have a better understanding of...

MARTIN SWANSON: Right, Senator.

BRUCE RAMGE: ...more regulations.

MARTIN SWANSON: Correct. There has been some regulations issued on it, and they've promulgated a list. Now if it's a state-based exchange, you get to choose...you have to choose from a list that they provide to you; and you can pick two of those people or entities from that list. If it's a partnership, again the federal government has to approve or talk about, you know, essentially operating the program. You get to manage it but not really. We specifically asked in Washington, I said, well, okay, if we pick X and Y for our navigators, then we manage them, right? Well, no; we have to approve their hiring, okay? I said, what if they act outside the scope of their authority; if, let's say, they're selling insurance, what can we do? Do we terminate them immediately? The answer was, no, you have to suggest a termination to us. And this is based on a legal opinion by an attorney in the Obama administration that we...you know, we don't know who that was and can't talk to them, but that's what the information was that was imparted to us when we went to D.C., a couple weeks ago.

SENATOR SCHILZ: So even if we do come up with a scope of work that they do and then figure out their parameters, that all has to be okayed by the feds.

MARTIN SWANSON: Yeah. Even in a state-based exchange there will be some consideration depending on how the regulations fall out, once...or the interpretation of those, that what is the scope of their authority. We've made the argument you cannot

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sell, solicit, or negotiate insurance no matter what. And then the question becomes, well, can we test? The answer so far has been unofficially, yeah, you can test and register them, but you can't license them as producers. That's clear...

SENATOR SCHILZ: Right.

MARTIN SWANSON: That's clear under the regs, so.

SENATOR SCHILZ: Yes. Thank you.

SENATOR PAHLS: Bruce, I just need to get back to this because I am a little bit disheartened by the comment you made. If I were...right now, if I were in another state talking to the commissioners, just like I am you, they would actually have that same...would they have the same comments that you've said that basically the states have very little control?

BRUCE RAMGE: There's a recognition that the states have little control. But...

SENATOR PAHLS: That's the commissioners.

BRUCE RAMGE: Yeah. The opinion on what a state should do will probably vary by state depending on their own philosophies and their own situation in their state.

SENATOR PAHLS: But your overall organization that you belong to, the commissioners, you know, have they taken a...

BRUCE RAMGE: The National Association of Insurance Commissioners has recognized that there will be a great number of states who do not find it feasible to go forward. And so they've now even developed a working group to assist those states who will not be undertaking a state-based exchange, because there will be changes in

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functions and duties and requirements for all states.

SENATOR PAHLS: Okay, because I know at the end of the month, or next month, NCSL is going to be here probably presenting. Would they be presenting the same type of view, do you think? Or am I asking the...I'm being...that's an unfair question.

BRUCE RAMGE: That...yeah, I can't...I don't want to speculate on NCSL.

SENATOR PAHLS: Right. Okay.

BRUCE RAMGE: I really...that's a good question. I honestly would be interested in hearing their point of view.

SENATOR PAHLS: Okay. Thank you. Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. Director or Mr. Swanson, whoever feels comfortable taking a shot at this, let me ask a question about the navigator. Who do they report to if they don't report to the state? Do they report to somebody in the Department of Health, the regional office? Is there a national navigator commission being set up? I mean, who do they report to?

BRUCE RAMGE: Yeah, I don't believe that they've officially set up that structure yet, but it would be within a division of the U.S. Department of Health and Human Services, OCIO.

SENATOR GLOOR: Are they going to pay their salary?

BRUCE RAMGE: It would still...the salaries or the contract fees or however it's managed would have to come through the exchange. Again, the exchanges need to be self-supporting.

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SENATOR GLOOR: Then let me ask your opinion on this. The more that this gets described, and although I know your area of expertise isn't specifically Medicaid, you both have been around long enough to understand how that program works, that is supposed to be a state program. But since the feds pay a majority of the tab on that, they call the shots, very much, on Medicaid. We have some degree of control, but clearly what the federal government lays down on Medicaid operations puts them in the driver's seat. Do you see this even more onerous than the current arrangement we have as it relates to Medicaid and the operation of Medicaid as a state program?

BRUCE RAMGE: I'd view it as similar.

SENATOR GLOOR: Okay. And not more onerous, but similar.

BRUCE RAMGE: Similar, yes.

SENATOR GLOOR: Okay. Thank you. That relationship helps me.

SENATOR PAHLS: Senator Christensen.

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Director and Martin, for coming in. Can you give me another example of where the federal government has narrowed our choice in Obama's rationed care other than navigators?

BRUCE RAMGE: Well, I'll just mention one. You know, the essential health benefit, for example, that simply is a recommendation. That choice ultimately resides with the U.S. Department of Health and Human Services, Secretary Sebelius. And so, while it sounds like the states are given the flexibility to make the decision, it's really clear that a great number of the states didn't feel that they had the flexibility they needed to even warrant making a recommendation.

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SENATOR CHRISTENSEN: And it's not to say that we won't see continued more federal control and less flexibility as we go on. That would be a normal thing, wouldn't it? Whether it's been Medicaid over the years or whatever.

BRUCE RAMGE: Martin, why don't you give your opinion here.

MARTIN SWANSON: Sure. Senator, we are now awaiting hundreds of pages, maybe thousands of pages of regulation, which we even learned that the Obama administration will not release until after the election, maybe a flood of them probably, depending on how outcomes go, before November 16. With every regulation comes more restriction. But, then again, it's also needed to know what your program is going to look like. It's a dual-edged sword. But like I said, with every bit of information that comes out, it will either cost the program some more money or we will have to do something else because that's just how it works. But at least we'll have guidance. (Laugh)

SENATOR CHRISTENSEN: I guess. Thank you.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Just to clarify in my mind, we've got, as far as the exchange part of this thing is concerned, four options. We can do a state exchange; we can default to a federal exchange; we can do this kind of hybrid thing where you do something with the federal government and do a dance with them; or we can set up a regional exchange. Okay? And that's the four choices.

BRUCE RAMGE: That's correct.

SENATOR SCHUMACHER: And your comments today about things getting more and more complicated and the federal government wanting more and more authority are

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basically focused at the hybrid or the partnership hybrid exchange.

BRUCE RAMGE: Yes.

SENATOR SCHUMACHER: Okay. And to date, a dozen or so states have already implemented or are well on the way to implementing a state exchange?

BRUCE RAMGE: I believe that is correct.

MARTIN SWANSON: They've sent in letters of intent. Now that doesn't mean it's been created. No one has created an officially certified exchange as of yet.

SENATOR SCHUMACHER: Well, that can't happen until what, next October is when they're actually supposed to roll?

MARTIN SWANSON: They're supposed to roll, but they have to be in place and certified by...you know, at least the application has to be in by November 16.

SENATOR SCHUMACHER: So 12 states have gotten, at least conceptually, over the hump and are on their way without having to donate powers to the federal government under a partnership model, is that correct?

MARTIN SWANSON: Do you want me to take that?

BRUCE RAMGE: Yes, please.

MARTIN SWANSON: There are several states actually that are going to enter into a partnership. Illinois, for example, is one of those.

SENATOR SCHUMACHER: No, but how many decided we're going to do a state

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exchange, we're not going to try to dance with the federal government. We're just going to take the bull by the horns.

MARTIN SWANSON: Twelve or 13 or so.

SENATOR SCHUMACHER: Okay.

MARTIN SWANSON: They intend to anyway, Senator.

SENATOR SCHUMACHER: Okay. Of those four choices, which one are you recommending to the Governor?

BRUCE RAMGE: You know, it's real clear the Governor has mentioned a decision will not be made until after the election, and...

SENATOR SCHUMACHER: I recognize that, but...

BRUCE RAMGE: And I have not made a recommendation at this time. And again, a recommendation and decision will come next month.

SENATOR SCHUMACHER: We're coming up on just a couple of weeks to the election, and then just like eight days or a few days until the deadline. When...and you haven't made any recommendations? You don't even know what you're going to recommend to the Governor? You haven't been asked what you're recommending?

BRUCE RAMGE: We've been providing...all the information that is at our disposal that's relative to making the decision process, and as I pointed out, you know, the Governor is very clear that a decision is not going to be made until after November...

SENATOR SCHUMACHER: We recognize that, but what will you recommend based

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upon these months and months of study and analysis?

BRUCE RAMGE: Well, I'm really not prepared to discuss that before I give my final recommendation to the Governor.

SENATOR SCHUMACHER: Have you given a tentative recommendation?

BRUCE RAMGE: None. Not yet. You know, it depends on the day.

SENATOR SCHUMACHER: No recommendations at all.

BRUCE RAMGE: It depends on the day, depending on...we're still in, again, the information synthesis process and we are providing him with everything that we learn as we go through this project.

SENATOR SCHUMACHER: I see. So you're not prepared to recommend anything to us either?

BRUCE RAMGE: Not today.

SENATOR SCHUMACHER: Okay. I was paging through or looking at the last paragraph of the Governor's letter to the Secretary of Health and Human Services, and I think it needs some explanation because I'm not sure what quite it says; that he's recommending that the federal government cover the health saving plan cost as it would other subsidized health insurance plan cost in the final regulation. By funding these accounts, the federal government would reduce the cost of premium subsidy and consumers could better control their healthcare costs. Is the recommendation here that you have these high deductibles that are in this minimum or essential healthcare benefit thing; and then for what isn't deductible, the federal government write a check to the person?

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BRUCE RAMGE: Yeah, there would be numerous different ways that this could be administered and it's just similar to how they would do under a lower deductible plan, under their cost-sharing regulations. And again, they have not issued those cost-sharing regulations but to just give some examples of potential ways it could be administered. One would be simply to reimburse for the claims that have not yet hit the cost-sharing limits. Another way would be to initially fund that initial deductible amount which is usually handled through a health savings account. And then the insurer would administer that, just like they do with a typical HSA plan.

SENATOR SCHUMACHER: Well, conceptually, how is that different from just having a low deductible? I mean if the federal government, one way or the other, the system is picking it up.

BRUCE RAMGE: Okay. For the plan members who are eligible for the federal subsidies, this is an attempt to make this very similar. What the overall proposal does, Senator, is to provide flexibility for those who are not eligible for subsidies and those who wish to have a lower-cost option available for them. So it would basically give a lot more potential savings for those individuals who are either able to take care of their own deductible or feel they are healthy and don't use healthcare services. And again, this is a floor, so for those who feel that they would want a lower deductible plan, those would still be available in the marketplace.

SENATOR SCHUMACHER: So am I wrong in thinking that the cause of this whole healthcare situation is due to the rising cost of healthcare and the number of uninsured and then the cost shifting that the medical profession has got to do to try to make it all work so they can keep the doors open?

BRUCE RAMGE: Those are...

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SENATOR SCHUMACHER: Is the core cores of the problem.

BRUCE RAMGE: Those are factors, yes.

SENATOR SCHUMACHER: And so how does making a high deductible, except for maybe those few people making over, what, 400 percent of poverty, something like \$80,000 per family--not many Nebraskans in that category. How does a high deductible, and then writing a check or some kind of a credit or something else to fund that deductible, make things simpler or easier?

BRUCE RAMGE: Well, first of all...first and foremost, it makes the plans more affordable for those who choose that type of service. And those who have those types of plans tend to have lower utilization of healthcare services. The down side, what I've seen through studies is that people with these plans use less preventative services. However, the Affordable Care Act requires first-dollar coverage of many preventative services; so that alleviates that concern. A health savings account promotes wiser use of your healthcare dollars; and that, coupled with additional transparency which is coming about now--many insurers are allowing their plan members to learn more about the costs associated with specific providers and hospitals--I believe it's a win-win situation.

SENATOR SCHUMACHER: What percentage of Nebraskans now have the highly deductible insurance that qualifies for an HSA?

BRUCE RAMGE: I don't have that information. We can attempt to get that for you and let you know.

SENATOR SCHUMACHER: The fact that some people may choose a high deductible, in other words, basically become uninsured for that period and thus not be paying premiums for it, doesn't that remove money from being injected into the insurance funding system and to the extent those people aren't able to make that deductible or

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because they delay services and go to the emergency room instead of a...

BRUCE RAMGE: Well, instead of the money being injected into the healthcare system, it stays in the bank account of Nebraskans, customers. But again, they're still responsible for any services that would be used. Typically, many employers will assist in funding the HSA portion of the account. And in an authorized health savings account situation, that money can grow and could be used at retirement time for a number of uses: long-term care, for example. Or it could be used for basically any discretionary spending that the individual wants.

SENATOR SCHUMACHER: But we're basing these kind of decisions on this health savings account concept, and yet we have no idea how many people in Nebraska that affects.

BRUCE RAMGE: This concept is to preserve choice for Nebraskans.

SENATOR SCHUMACHER: But if you choose not to insure yourself and take a high deductible, that's your choice and you're going to be uninsured.

BRUCE RAMGE: And for many people that is a feasible option.

SENATOR SCHUMACHER: We don't know that number though, by percentage. We just established that.

BRUCE RAMGE: Yes.

SENATOR SCHUMACHER: Okay. And so to the extent you say I'm going to take the high deductible because it's cheaper, I'm going to remain uninsured up to \$4,000, \$8,000, \$10,000, whatever the magic number is, and then you don't pay your bill because you don't put the money aside. In fact, in order to get the health savings

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account deduction, if it stays in effect, I think you've got to have a really high deductible. But to the extent you're uninsured, then what happens, am I not correct, is that the hospital comes up short. They've got to write off the bill; they don't get paid; and they shift it onto the insured, driving the cost of that insurance up.

BRUCE RAMGE: Well, I assume people make choices based on...rational choices that fit their own particular situation. And having multiple choices would allow people to pick a plan that best suits their financial needs and their health status.

SENATOR SCHUMACHER: But if I'm paying my insurance, or my employer is paying my insurance, and somebody makes a choice to be uninsured and that somebody can't pay his bill, and that bill gets shifted over to me or my insurance company, I don't have a choice.

BRUCE RAMGE: But removing choices seems to be one of the problems and why so many people do not like Obamacare. And again, restricting choices for people's own purchase decisions just seems to fly in the face of what's right for Nebraska.

SENATOR SCHUMACHER: Under the mechanism of cost shifting that I just outlined, where is my choice to say, no, I don't want to pay extra insurance to pay for that guy who chose not to be insured? Where is my choice? I don't have a choice now.

BRUCE RAMGE: We don't know that once everyone becomes insured that medical rates will lower. There is really no...the cost...there will always be cost shifting. That happens because of multiple programs. Most people with these high deductible plans, I believe, will pay their fair share because they will make the choice based on their own financial situation. Again, those in employer plans have that deductible amount subsidized by their employers in many instances. And in those plans, the doctors, the medical providers get paid immediately. It's not even transparent to them whether it's coming from the health savings account or from the insurance plan, because it's

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administered by the insurance company.

SENATOR SCHUMACHER: I don't have any other questions.

BRUCE RAMGE: Okay. Thank you.

SENATOR McCOY: Senator Gloor.

SENATOR GLOOR: Thank you, Senator McCoy. I want to talk a little bit about infrastructure.

BRUCE RAMGE: Yes.

SENATOR GLOOR: The RFP that's been sent out, I'm assuming is for a lot of things, not just IT, but I'm specifically interested in IT. How much of that RFP relates to infrastructure that still would be useful to the state if exchanges didn't ultimately come about? And I'm not...I mean, I want this to be...I'm not trying to catch you in anything.

BRUCE RAMGE: No.

SENATOR GLOOR: But I'm specifically interested in...

BRUCE RAMGE: In other words, is there any dual purpose or use in...

SENATOR GLOOR: Yeah. I'm specifically interested in MMIS, medical management infrastructure.

BRUCE RAMGE: I would say very little. I would say very little. And again, we've not designed the RFP with those types of possibilities in mind. It's been strictly to administer the exchange. But I understand and appreciate your question, but the way it is

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established it would be exchange-related functions only. And, in fact, it would be very difficult to tag on any additional functional purposes.

SENATOR GLOOR: Well, it's my understanding that the department, not of Insurance, but of Health and Human Services,...

BRUCE RAMGE: Yes.

SENATOR GLOOR: ...is seeking to establish or upgrade their medical management information piece, and that right now there is 75 percent of that can be paid for by the federal government. That seems to me to be an important thing, at least as it relates to the state. It's been one of my personal frustrations is it's hard for us to know exactly how and where we spend our Medicaid dollars at this point in time. And so I'm trying to get a sense of whether that 75 percent match might disappear if health insurance exchanges don't ultimately materialize.

BRUCE RAMGE: I'm going to ask Martin to explain how the interface between the Medicaid eligibility-type components and the health insurance exchange component are viewed by OCIO. And if...

MARTIN SWANSON: Yeah, it's...part of the frustration that we've had with the project, Senator, is that the federal government considers Medicaid to be part of the exchange project, where we viewed working with Medicaid an exchange, a health insurance exchange as opposed to a Medicaid exchange.

SENATOR GLOOR: Sure.

MARTIN SWANSON: So when we designed the RFP, it was to build a state-based exchange which would have assessment capabilities for Medicaid to kick that over, essentially, to the Medicaid department to do enrollment evaluation...make sure that the

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folks meet the criteria to get enrolled into Medicaid but to keep Medicaid's rules in place. And then we would do our thing on the exchange side if they qualified for the subsidy and get them enrolled into a health insurance plan. That's been the vision of a state-based exchange and working with our colleagues from Medicaid.

SENATOR GLOOR: So we're saying we're, in terms of communicating, letting each department know what's happening, collaborating as much as possible, we consider that to be at a high level within what we can control, obviously?

MARTIN SWANSON: That's correct. I'll give you another kind of a live example. Let's say we build...we have to have a call center. The plan is to have folks that are at Medicaid have the ability to talk to people and warm transfer them over to the exchange if they are looking for health insurance. On our side of the aisle, anybody that may be qualified for Medicaid who happens to call our call center, we send them over to Medicaid. But both sides, at least some individuals have the capability to understand both programs, and that way we don't lose people in the transition.

SENATOR GLOOR: We've talked about the things that we can't do because the fed is so all-controlling about this, but is this not one of those things? I mean, do we have the flexibility here...

MARTIN SWANSON: We are fighting for that flexibility, to be quite honest with you, Senator. The plans that we had submitted initially, they didn't quite grasp the concept that Nebraska is trying to keep this interaction between the agencies, you know, together, but at a minimal basis, because we want to keep the programs as separate as possible. We believe that health insurance should be for health and then Medicaid goes down the Medicaid path. So we've been fighting to make sure that they get that concept, and it's been difficult. They want to review every document because they may have a Medicaid touch point. And then we have to identify what, for cost allocations, how much of this will be for Medicaid; so the funding is different. We're trying to keep that as

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distinct as possible. And that's been...we're kind of unique, I think, in that, in the United States in our process.

SENATOR GLOOR: I was just going...that was my next question. So is this under higher scrutiny because it's a horse of a different color as it relates to the way other states are approaching it?

MARTIN SWANSON: A little bit different. But other states are looking at us for the solution as well. We talked to other states and they think, well, that's an interesting concept.

SENATOR GLOOR: Okay. It is an interesting concept. Hopefully the reason the feds aren't scrutinizing it is because they're concerned that it may not be the best approach. But I'm glad to see that we're at least taking a hard look at it.

MARTIN SWANSON: It may not fit their vision.

SENATOR GLOOR: Most things we do don't fit their vision. (Laughter) Okay, thank you, Martin.

MARTIN SWANSON: Thank you, Senator.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Just a follow-up on that. As you go back and forth with the federal government with these ideas and they send responses back that aren't clear, and then you ask them something else and more responses are...is that done by correspondence?

BRUCE RAMGE: There's telephone calls. We have one specific individual who is

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assigned to us, and I assume a number of states, and they work with the exchange planning team through the meetings in D.C., and also by telephone. I assume there's occasional questions by e-mail, but primarily there are...it started out with weekly calls that included all of the states; and since about September, those weekly...each week we get a notice that that call has been cancelled.

MARTIN SWANSON: To be fair, we've had one. We've had one call in the past five, six weeks with the...

BRUCE RAMGE: With all the states.

MARTIN SWANSON: All states. The Obama administration has cancelled a majority of those calls. And so that's an opportunity where all states get to ask questions on a global level of what's going on with the exchanges, with Medicaid, with other aspects of the Affordable Care Act. Those have been simply cancelled. It's a call specific to the exchange with the head of the exchange division at CCIIO, the majority of those have been cancelled, until...probably until after the election.

SENATOR SCHUMACHER: But...so this thought that the federal government is spinning the states around is based really on no correspondence, some phone calls, some lack of phone calls. You know, do you see...well, I shouldn't say, because you wouldn't know, I guess. But there isn't such a thing as a letter saying we want to do A, B, and C, and them saying forget it; or yeah, but; or you have to do it this way? I mean, is there such correspondence?

BRUCE RAMGE: It's primarily through...again, like the gate review process and their review of the...an example would have been their review of other requests for proposal. And they work...

MARTIN SWANSON: Senator, if I may.

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BRUCE RAMGE: Go ahead, please.

MARTIN SWANSON: I might give you another example. The Governors Association and the Medicaid Directors Association, a whole bunch of folks, including us, sent a letter into Secretary Sebelius asking for an interpretation of the Supreme Court ruling because it has a direct effect on how we plan for the exchange. No response has been given to us in writing. The federal government has been really, really reluctant to issue anything in writing in a formal way.

SENATOR SCHUMACHER: But I mean, a general question, what you think of the Supreme Court ruling, is one thing. But on these specific issues where you say we would like to do it A, B, and C, that's how we would like to do it, and we'd like to put this spin on it; I would take it there's a letter that goes to somebody? Not just somebody sitting on the phone saying, golly, gee whiz, what do you think of this idea; I mean, there's a letter, right?

MARTIN SWANSON: The director referenced the gate review. They did issue a letter on that, that we posted.

SENATOR SCHUMACHER: The gate review. What is the gate review?

MARTIN SWANSON: To check our progress to see how far we've come as a state as far as our exchange goes and to see what items that we can waive out of if we did submit a blueprint on November 16 to have a state-based exchange. That way we wouldn't have to put that in our (inaudible.)

BRUCE RAMGE: That's right. And they gave...

SENATOR SCHUMACHER: But that's a state-based exchange rather than a

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partnership.

MARTIN SWANSON: That's correct.

SENATOR SCHUMACHER: Right. So the complaints about this partnership being too cumbersome and they're spinning the system, there's got to be some letters going back and forth where you say, jeez, we asked them A, B, and C, and they wouldn't answer. Is there such a letter?

BRUCE RAMGE: No, there are no letters.

MARTIN SWANSON: Not a letter, no.

SENATOR SCHUMACHER: So there's no correspondence. This is just all based on phone calls that you guys have had. Or who's having these phone calls?

BRUCE RAMGE: The gate review primarily is where the exchange planning team received the information about the partnership model.

SENATOR SCHUMACHER: And the exchange planning team is something here in Nebraska?

BRUCE RAMGE: Yes, yes, yeah, the Department of Insurance--individuals here working with the Department of Insurance.

SENATOR SCHUMACHER: And they call into some place and they got this letter back?

BRUCE RAMGE: No, no, no.

MARTIN SWANSON: No. We had to go to Washington, D.C., with our team, including

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folks from Medicaid and to have folks from the...the IT folks appear on the phone to go through a two-day process to examine where we are at as a state on our exchange, what directions we need to go. And what the answer was from them in the letter was, okay, you need to file a few more documents, which would be related to the RFP that we can't get into today, to hire a systems integrator, which we are in the process of creating an RFP to do. And then those issues would be answered. We've also hired another consultant to aid us in that endeavor. Once we get those completed, then you're yet another step closer to a state-based exchange if that's where the policymakers want us to go.

BRUCE RAMGE: Their written evaluation of that meeting is going to be posted, if not already, within the next...either today or within the next day or two on the department's Web site so that you can have an idea of what issues were covered and where their recommendations are for the state in terms of making progress.

SENATOR SCHUMACHER: When did you guys get that letter?

MARTIN SWANSON: I'm trying to think when that was, Senator. I'll have to go back and look.

SENATOR SCHUMACHER: More than a week ago?

MARTIN SWANSON: It's probably been...recently.

SENATOR SCHUMACHER: More than a week ago?

MARTIN SWANSON: I'll have to go back and look, Senator. I'm sorry.

SENATOR SCHUMACHER: So you've had it...I mean you could have had that copy for us today?

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BRUCE RAMGE: It's...it's...it will be...we'll make it available to you.

SENATOR SCHUMACHER: No, but we could have...I mean, this wasn't something that burned off the press last night. So you could have had a...just like you made a copy of this letter.

BRUCE RAMGE: If we felt it would have been desirable for the discussion, yes.

SENATOR SCHUMACHER: Well, I mean that was what we were all here kind of to do, is we heard a lot of complaints that the federal government is spinning us and they're not giving us clear answers. And here we have a letter that we could have used to evaluate some of that. And it...apparently the Xerox machine was broken.

BRUCE RAMGE: If it's not already posted, it will be today.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And thank you, Director Ramge and Mr. Swanson, for being here this morning. So if I could, and perhaps you could clarify this a little bit, this time line. So if I'm understanding correctly, the Obama administration through federal HHS and Secretary Sebelius has essentially halted any new release of rules and regulations on the exchange process in its entirety, not just a federal partnership, that model, but state-based exchange, you know, what's going to happen, obviously, with the federal exchanges or the regional, which is somewhat of a moot point at this point because no states are working on a regional exchange. And that hasn't changed since your last briefing to us, correct?

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BRUCE RAMGE: That's correct. I believe that in the past three months we have only gotten maybe one or two pieces of guidance and it's very, very tangential and, you know. Martin.

MARTIN SWANSON: Right, that's correct. From my understanding and talking with people in Washington, don't expect anything until after November 6.

SENATOR McCOY: So essentially in the letter you provided to us that came from the Governor's Office, so essentially, while they were...and just as there were rules and regulations that were missing on the essential health benefits before a determination had to be made on the first, states not only on that issue, which we've plowed that ground fairly well this morning, we're expected to make decisions without all the information needed to make a good decision. We're potentially looking at a release of thousands of pages of rules and regulations after November 6, Election Day, so probably between November 7, which would be a Wednesday, up until...at some point prior to November 16. And all of the states that haven't made a determination through a declaratory letter to the department of which direction they're going to go, are going to be expected to go through all those thousands of pages of rules and regulations in less than 10 days and make some sort of a determination about what direction their state is going to go.

BRUCE RAMGE: That's correct.

SENATOR McCOY: Well, that seems ludicrous in the highest degree to me. I don't know how...has there been any conversations as to...with the federal department of HHS as to how do you...is that November 16 deadline going to get moved? How do they expect states to go through all this information and make that kind of a determination which seems to me an incredibly crucial decision in a very, very short period of time? Has there been any discussions on the moving of the date of November 16?

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BRUCE RAMGE: The problem with them moving the date...that would be wonderful, that would be my very first request is to extend the deadlines here. The problem is, there is hard-wired into the Affordable Care Act law, a January 1 determination date that the Secretary has to make a determination that the states who are going to proceed with the state-based exchange have made sufficient progress. So it's just not a good situation.

SENATOR McCOY: So potentially Secretary Sebelius and through the Obama administration could make a determination that that November 16 date could be moved.

BRUCE RAMGE: I believe so.

SENATOR McCOY: But at the end of the day they still have to go through all 50 states, what they have...let's just say hypothetically they move that to some time between Christmas and New Year's. And they have to then...then the onus would be on them...

BRUCE RAMGE: Yes.

SENATOR McCOY: ...to process all of that information, the letters that come from all the governors, if that hasn't happened already; and then they would have to process that by January 1. Am I understanding that correctly?

BRUCE RAMGE: Yes.

MARTIN SWANSON: Yes.

SENATOR McCOY: So essentially some relief could come, albeit not a whole lot because there isn't a whole lot of number of days between November 16 and December 31 anyway. But there could be some crucial relief offered to the states from federal HHS saying, okay, we'll take responsibility for the fact that the administration through us has

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delayed any release of rules and regulations for months,...

BRUCE RAMGE: Yep.

SENATOR McCOY: ...we're going to give you some relief between now and...I'm thinking of something arbitrary. They say, you know, December 27 you have until then to submit instead of November 16 and then we'll worry about getting through this all by the first.

BRUCE RAMGE: You're making a very good point, and even though we've not made a formal request, that may be something I will do. Because I see no harm in asking for that type of relief. And whether it's granted or not, I don't know. But I have no reservations about sending a letter asking for a delay of that November 16 date.

SENATOR McCOY: Well, far be it from me to make a recommendation, Director, but it would seem to me that...

BRUCE RAMGE: No, it makes a lot of sense.

SENATOR McCOY: ...that the Association of Insurance Commissioners, as an association, perhaps might be wise or prudent to send a letter to Secretary Sebelius and request that...

BRUCE RAMGE: Yep. I agree.

SENATOR McCOY: ...and let federal HHS worry about how to process that information before the hard-wired deadline of January 1 rather than...I mean, to me, any amount of relief that we can get to go through what potentially could be thousand of pages of documents on rules and regulations from November...I mean, obviously, we're not going to get anything prior to midnight on Election Day, on November 6, I'm sure. So from

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November 7 to, you know, I assume midnight on November 16, any amount of relief there, whether it's a day or 20 days, would be I assume, from the standpoint of your department, extremely beneficial to go through all those documents.

BRUCE RAMGE: Every day we have another day to go through documents would be very useful. Martin, please.

MARTIN SWANSON: That's a great point, Senator, I think, though that date might be in regulation as well; so we'll have to comment on it or at least beg for that date to be moved, if it is, in fact, in regulation. So that's something we'll have to consider and look at.

SENATOR McCOY: So what you're telling me is that the January 1 deadline,...

MARTIN SWANSON: That's statutory.

SENATOR McCOY: ...that is statutory and hard-wired in.

MARTIN SWANSON: That's not going to be changed unless Congress acts.

SENATOR McCOY: And maybe even November 16 is?

MARTIN SWANSON: Regulation.

SENATOR McCOY: Regulation already. So that would have to be like a regulation that would be reversed, essentially, by...

MARTIN SWANSON: Right, or amended.

SENATOR McCOY: ...which could be just in the form of we've now...we're releasing a

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regulation that says that November 16 deadline for the states is now, hypothetically, whenever, whatever date, it could be prior to January 1, 2013.

MARTIN SWANSON: Correct. And one of the other things to consider too, Senator, is, for example, on the essential health benefits regulation that has not been issued, is let's just say it is issued between that time frame, there will be a public comment period, from what we understand, of 30, maybe 60 days, for people to get in what they think still needs to be in the essential health benefit package. Then the Secretary will have to take those comments under consideration. And it could be, maybe even into next year before you actually know what the final regulation looks like, past January 1. It's possible. So it's another thing to consider as well.

SENATOR McCOY: Well, and Director, I don't ask you to speculate on things that are outside your bailiwick in regards to what happens here with the department in Nebraska. But it would seem to me that a natural extension of the dialogue we just had would be that you may have a number of chief executives across the country, and there are a good number that haven't made a decision yet as to what to do for their state, may, if it's the type of a high-volume release of rules and regulations that you're describing, could just throw up their hands after November 6 and Election Day, and say, we're defaulting to the federal exchange; there's absolutely no way for us to go through this volume of rules and regulations and make an informed decision that our citizens expect. Therefore it would appear that federal HHS is steering, via what they're doing with not releasing rules and regulations, steering states in that direction. Is that an incorrect assumption to make?

BRUCE RAMGE: I believe that many will just say the time line is impractical and they will say that they won't go forward because they don't have enough time. And it's been my sense during this whole time that...it's a mixed message being sent at the federal level. They truly want the states to go on a state-based exchange, but yet they're throwing out these obstacles by not giving us information and by setting these very

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aggressive time lines. Part of that is their need to accommodate what's written into the law but yet part of it would be under their control, specifically through getting us the information we need.

SENATOR McCOY: Would it be then possible to make the assumption then that the administration, the Obama administration and federal HHS would like states to go down the path of the state-based exchange...

BRUCE RAMGE: Yeah, I believe that's (inaudible).

SENATOR McCOY: ...and figure out later that, well, actually there wasn't as much control as those states thought there was under a state-based exchange.

BRUCE RAMGE: It's possible.

SENATOR McCOY: Because it would appear, through all of our discussions and the many briefings that we've had, Director and Mr. Swanson, that the federal government never anticipated the high volume, high number of states that would either (a) choose the federal exchange or the default to that, or might go the direction of a federal partnership. I don't recall at any point during all of our multitude...plethora of briefings and meetings that we've had on this issue, I can't possibly imagine that the federal government anticipated that they would be looking at well over half the states at this point that wouldn't have made the determination to go down the road of a state-based exchange. Do they have a plan that you've talked about with them to how do we handle if this high number of states default to a federal exchange?

BRUCE RAMGE: All we have is statements that assure us that they will be ready, but we don't have any details of their plan. So that's...I wish we did, because I would love to be able to compare what can the state do versus...in comparison to the federal model, but we're not able to...

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SENATOR McCOY: And we don't have any of those determinations at this point to know.

BRUCE RAMGE: Right, that's correct.

MARTIN SWANSON: Those, Senators, are one of those regulations that have yet to be issued and probably won't be until after November 6.

SENATOR McCOY: Well, it would appear that we're in a position where we have Obamacare that was passed at the federal level, that states essentially through this deadline of November 16, governors and legislators across the country, legislatures also, are going to take responsibility and take ownership of via making a determination of which direction we're going to go, and therefore without all of the array of knowledge and statistics and data that are needed to make a crucial decision for any one of the 50 states, much less the great state of Nebraska. And therefore, we're expected...or not we, but the federal government is expecting all of us sitting at this table and tables like this across the country, because you've talked to your counterparts across the country, I know we certainly do, as well, with other legislators in other states, and we're expected to take ownership of this in some way, shape or form without the full whole host of data that is needed to make a decision like this, which I find breathtaking in many regards; and this is just a statement on my part. You know we all are involved as citizen legislators in other endeavors, and I can't imagine as a business owner making a decision that has this kind of impact or could on my business or my family budget without knowing what you haven't been given, but we haven't been given as lawmakers. It's breathtaking to me to anticipate what could happen in the way of water under the bridge, so to speak, between November 6 and November 16. That I find unimaginable that we could have gotten to this point with a massive piece of legislation like Obamacare that was passed years ago now, as it gets implemented, that we're talking about making this kind of a decision in a 10-day time period essentially.

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BRUCE RAMGE: Yes, you're absolutely right. And the problem is twofold. One, when the law was passed, the time lines put into that law were always extremely aggressive. And two, the amount of changes were just massive. Rather than tackling this in an incremental approach, it was just omnibus, throw everything into the law that could be imagined. And so it's so complex. So they're dealing not only with the tight time frames, but the complexity of the law; and that just makes it a problem with too many unknowns, just...I think the best thing that could happen at the federal level, first off, is to extend all the deadlines and put this out a year or two. But I don't see that...promise of that happening at present.

SENATOR McCOY: Thank you, Director, and thank you, Mr. Swanson.

BRUCE RAMGE: Thank you, Senator.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Am I correct in understanding that you anticipate that between November 7 and November 16 there being gobs and gobs of final regulations that come out?

MARTIN SWANSON: Senator, yes, that's the expectation anyway from what we've heard through the NAIC and other outlets.

SENATOR SCHUMACHER: And could you explain to the committee how the federal regulatory promulgation proceeding usually do this? I mean, is it always a surprise?

MARTIN SWANSON: This is not necessarily a surprise. They've been working on the...Health and Human Services have been working regulations for a number of months. But they've...they have to go up the chain of command, so to speak. They have

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to go through the Secretary herself and then up to the White House to make sure that it's issued, plus other scoring activities that they do to make sure that the Paperwork Reduction Act is taken care of....

BRUCE RAMGE: Excuse me, I'm sorry to interrupt. Then there's also the process they have to expose those, and there's a comment period before they can be finalized.

MARTIN SWANSON: In most cases. That's right.

SENATOR SCHUMACHER: But the things that we're expecting between November 7 and November 16, those are the final regulations?

MARTIN SWANSON: Not necessarily. Some of those will have to be exposed, for example, the essential health benefits regulation.

SENATOR SCHUMACHER: But the ones essential for a decision, at least a tentative decision, you anticipate between the 7th and the 16th? Have those been published? I mean, has there been preliminary publishing? Nothing has appeared in the Federal Register ?

MARTIN SWANSON: Very few of them have. And then plus you'll have other...

SENATOR SCHUMACHER: There's been no proposed regulations printed in the Federal Register on this?

MARTIN SWANSON: There's been some. But on the federal facilitated exchange, for example? No. On (inaudible) benefits? No.

BRUCE RAMGE: Cost sharing.

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MARTIN SWANSON: Cost sharing? No.

SENATOR SCHUMACHER: Are you anticipating a final regulation on that in this November 7-16 period?

MARTIN SWANSON: It could be interim final or it could be subjected to a comment period.

SENATOR SCHUMACHER: But the stuff that's going to come out as final and binding in the November 7-16 period, you're saying that has never been published in the Federal Register?

MARTIN SWANSON: Some of it has not been, Senator, that's correct.

SENATOR SCHUMACHER: So we're going to have regulations that have never been published, that there have been no comments on?

MARTIN SWANSON: It's up to the federal government. It depends if they want to do it.

SENATOR SCHUMACHER: Well, the federal government has got rules that it follows.

MARTIN SWANSON: That's correct.

SENATOR SCHUMACHER: And one of them is that regulations, before they're promulgated, have got to be put in the Federal Register and an appropriate comment period.

MARTIN SWANSON: Right.

SENATOR SCHUMACHER: And you're saying they skipped that step?

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MARTIN SWANSON: They haven't issued them, Senator.

SENATOR SCHUMACHER: But they haven't issued anything proposed. This is going to be a...the November 7-16 rules that are coming out are going to be a complete surprise. Nobody has ever seen them before.

MARTIN SWANSON: Some of them, that's correct. There's no one to issue it. For example, they have not issued an essential health benefit regulation. They have not issued cost-sharing regulations. They have not issued a regulation of a federal facilitated exchange.

SENATOR SCHUMACHER: And you're anticipating that is all to come out between the 7th and the 16th?

BRUCE RAMGE: That's speculation. They've not given us any indication.

SENATOR SCHUMACHER: Okay. But as far as the states, 12 of the states, or 14 of the states are concerned, they're beyond that point already. Somehow they've known.

BRUCE RAMGE: The ones who have decided to go forward, yes.

SENATOR SCHUMACHER: And they get a special letter, or how do they know?

MARTIN SWANSON: They took a leap of faith, Senator.

SENATOR SCHUMACHER: Okay. Let's back away just for a second and look at...take the aircraft up to a little higher altitude. If Obama is elected we're going to have to deal with what appears to be a lot of confusion and a lot of political wrangling. If he's not elected, Governor Romney tells us that it's going to be up to the states to deal with what

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everyone realizes is a big healthcare problem with rising costs and uninsured people and still trying to provide healthcare to people who are sick in this country. Governor Romney says you need to do like Massachusetts does; figure out the magic pill. And in Massachusetts we figured out something that was written by a guy named Jonathan Gruber who happened to also put together Obamacare and who happens to say they're the same thing. How...what do you suggest that...when this is dumped on our lap after the decision in the election, and we've either got to deal with the straightening out a course under Obamacare or inventing a wheel like Massachusetts did, how do we proceed down that road?

BRUCE RAMGE: Again, using the information that we've already compiled would be a good start; determining what components of what is already in the Affordable Care Act are positive and desirable, which are not, which are affordable, which are not. I believe it would require a great deal of study. We've not done that. We've not done contingency planning because our focus is always aiming for, you know, what's there and what we know at the present time. But what has been accomplished and what has been done so far is a good starting point for knowing what issues to focus on and which to study further.

SENATOR SCHUMACHER: So what framework can we look at in developing under either scenario a...since the Legislature is going to be the one where the buck is going to stop eventually,...

BRUCE RAMGE: Yes, yes.

SENATOR SCHUMACHER: ...for coming up with something that makes sense? I mean, how do you suggest we proceed? Because we're getting very close to the point where we've got to proceed.

BRUCE RAMGE: Again, I would say, look at the individual components. Start at the

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beginning and look at those immediate market reforms, which of those make sense for the marketplace; look at guaranteed issue; look at open enrollment periods; look at rate review requirements; the medical loss ratio; and study each of those components and develop a plan that is (inaudible).

SENATOR SCHUMACHER: Are we in a position, for example, that we should be drafting legislation that would say if you're a kid under 26 years old and that our insurance companies here in Nebraska should be mandated to let you be under your parent's coverage? Should...is that one?

MARTIN SWANSON: We already have that law, Senator. We have coverage up until age 30.

SENATOR SCHUMACHER: You can be under your parent's plan in Nebraska under age 30?

MARTIN SWANSON: Yes. There are certain contingencies, but yes.

SENATOR SCHUMACHER: What was that comment?

MARTIN SWANSON: There are certain contingencies under the statute.

SENATOR SCHUMACHER: What are those contingencies?

MARTIN SWANSON: Depending if you can get insurance through your employer or if you're married...if you're married.

SENATOR SCHUMACHER: So actually we're four years ahead of Obamacare there, because isn't he 26?

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MARTIN SWANSON: Yes.

BRUCE RAMGE: Yeah, on age, yes. There's...

SENATOR SCHUMACHER: What about preexisting conditions? Are we in a position to have made a societal decision up to this point that preexisting conditions should be covered? Should we be thinking about a bill that says cover preexisting conditions?

BRUCE RAMGE: Studying preexisting conditions alone, that's complicated. It needs to be reviewed in terms of the cost impact, other ways to deal with it like open enrollment periods, or...for example, in Medicare Part D, how they handle that. If you don't enroll when you become eligible, then there are subsequent penalties for (inaudible). That helps to reduce adverse selection. So preexisting and adverse selection and cost are all very interrelated issues that would have to be reviewed closely.

SENATOR SCHUMACHER: What framework do you anticipate, or can you help us with, in setting up a way to tackle that problem?

BRUCE RAMGE: Again, legislative studies would be one issue. There's actuarial input, trade association input, the Department of Insurance's expertise, public input, input from interested parties, insurers. It's all a very valid and important part of those types of studies.

SENATOR SCHUMACHER: Thank you.

BRUCE RAMGE: You're welcome.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And another question, Director, or for

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Mr. Swanson, whoever would like to take this. I want to go back to we talked earlier in regards to Governor Heineman's filing of the recommendation for an essential health benefits plan to Secretary Sebelius at federal HHS. And you had an exchange with, Director and Mr. Swanson, with Senator Schumacher over the high deductible plans, health savings account plans, and whatnot. You know, that's a choice that a good number of families and individuals in Nebraska make. Incidentally, my family, which we have our own insurance plan and we choose to have that type of accounts and affordable option for our family of six, with four kids in our house. Talk a little bit about...is it your knowledge, or can you speak to...do those types of higher deductible plans, is that...what part of...when we look at bad debt, so to speak, for hospitals across Nebraska, is that contributing, in your knowledge, to what is bad debt for hospitals, those folks that have insurance but are paying for a good chunk of that out of their pocket, or chose to, and that's a choice, and for a lot of people, including our family, it's a choice that we have made. Does that...is that a...what part of a component do you know of that is part of what is bad debt? I have a hard time believing that that is...that's a big area of bad debt for hospitals. I think those folks, by and large, choose those kind of plans and budget that into their family budgets and pay those amounts to their healthcare providers, hospitals or otherwise; and I have a hard time believing that that contributes to the bad debt. I would assume most bad debt from hospitals across Nebraska comes from those who are uninsured, who walk in the emergency room for care or otherwise. Can you speak to that a little bit?

BRUCE RAMGE: Yes. I guess I wouldn't be able to estimate, but I'd be willing to contact the Nebraska Medical Association and ask them if they have any figures. All I would be able to do is speculate at this time.

SENATOR McCOY: So it would be speculation to think that just because \$8,000 deductible, such that it is, a high deductible plan....

BRUCE RAMGE: Yes.

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SENATOR McCOY: ...is going to mean that there's going to be bad debt for hospitals across Nebraska.

BRUCE RAMGE: Yeah, no, and not necessarily. And especially when you take into effect that these high deductible plans then are eligible for health savings account. And when you couple those two features, then that's a great deal for everyone involved because the hospitals get paid through the health savings account initially until it reaches that threshold and then the insurance kicks in. But, you know, and in talking about...you mentioned affordability. And I've noticed, in just the recent weeks, articles about small employers, especially in the restaurant businesses, now have already decided that they're going to cut back hours in order to keep the threshold and number of employees down below 50 because they realize there's going to be penalties under the Obamacare law. So if the coverage becomes too unaffordable for small businesses, it's going to be a tremendous drain not only on the small businesses, but on the employees whose hours might get cut back, for example. So again, I think that having these choices available is really a good thing. You know most employers want to provide coverage for their employees and help them every way they can; but realistically, not all small businesses can afford those high premiums. By the way, private exchanges are popping up already. You can go out now on the Internet and shop, and by putting in your own demographics you'll get a list of plans and companies. And just out of curiosity I went out there and plugged in demographics for a 55-year-old man living in Omaha, slightly over his desired weight, (laughter) and the cost was significantly different. It went from around like \$740 a month for a \$1,000 deductible plan down to around \$400 a month for a \$4,000 deductible plan. So that's significant cost savings.

SENATOR McCOY: Thank you.

BRUCE RAMGE: You bet.

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SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Senator Pahls. I guess I feel an obligation to comment rather than question, but Senator McCoy and Senator Schumacher both made good points. I would say, based upon my experience, that, yes, it does affect bad debt; or if appropriate screenings have been done, charitable care fits into this same general category of unpaid bills, because people are right now going from first-dollar coverage or a much lower deductible to higher deductibles. And that seems to be the transition that people are going on as employers to try and make sure healthcare premiums are affordable for their organization and for their employees. So I do think there probably has been a shift, but how large a percentage that is of overall charitable care or bad debt, I think would be a hard number to nail down. But the challenge for us looking forward is, so what does a \$4,000 deductible mean for people who are making plan choices. And as a former provider, I'd tell you my preference would be that even a \$4,000 deductible tells me that somebody who comes in with a heart attack who has a bill of \$60,000, \$80,000, \$100,000, maybe I can't collect the \$4,000 deductible, but they have coverage for the largest chunk of that bill; and right now, they remain uninsured. So the hope, certainly, as we move forward, even with high deductibles, is that instead of it being foisted off on all other payers, it becomes part of the insurance process and part of the pool, and we get actuaries involved to help try and level that out. It's a complicated issue...

BRUCE RAMGE: Yes.

SENATOR GLOOR: ...and controversial, obviously. But give me a \$4,000 deductible over somebody who has no coverage, any day of the week; and I think ethically it puts that expense where it appropriately belongs, that is, the insurance pool rather than the cost shifting scenario that plays out right now.

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BRUCE RAMGE: Thank you.

SENATOR PAHLS: Any more questions? I want to thank you for the information you gave us.

BRUCE RAMGE: Thank you, Senator Pahls.

SENATOR PAHLS: And I am assuming that we will be meeting again.

BRUCE RAMGE: Yes.

SENATOR PAHLS: Okay. Thank you.

BRUCE RAMGE: Thank you very much. Thank you to the committee.

SENATOR PAHLS: I think we are now ready for Cameron. Anytime you're ready, Cameron.

CAMERON ARCH: (Exhibit 2) Good morning, Chairman Pahls, members of the committee. My name is Cameron Arch, for the record C-a-m-e-r-o-n A-r-c-h, and I'm the government affairs representative and registered lobbyist for Blue Cross and Blue Shield of Nebraska. Blue Cross and Blue Shield of Nebraska is one of 38 independent licensees of the overall Blue Cross and Blue Shield Association and serves over 730,000 members residing in both Nebraska and across the U.S. We thank you for the opportunity to address the committee today about the Patient Protection and Affordable Care Act's requirement for every state to have this health insurance exchange operating by 2014. Blue Cross and Blue Shield of Nebraska, as we said many times before, we renew our support today for a state-based exchange. We feel strongly that Nebraska should continue to maintain that regulatory, financial, and political control over its health insurance markets, both inside and outside the exchange. The state-based exchange

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model would allow for continuity between the on-exchange and off-exchange markets to avoid potentially duplicative and conflicting regulations that will no doubt confuse consumers purchasing insurance in the exchange. It would also give the state financial control over implementation and self-sustainability as opposed to handing the federal government the power to impose user fees on consumers and potentially businesses like us. Cost is obviously a key driver in the state's decision as to whether a state-based exchange is feasible, with technology being the most costly component of any exchange model. Given the lack of federal guidance, we are unable at this time to compare the costs of a state-based model to other models that have been presented. However, while initial costs appear to be significant, I do want to remind the committee that Nebraska still has the opportunity to apply for additional federal grants to help fund that first year, that technological build-out of an exchange. And from my research so far, all seven states that have received the level two establishment grants, that next level of funding, have received over \$50 million, some upwards of \$120 million, depending on, I assume, population. We understand that technology development and implementation will be required no matter which exchange model is chosen, and that from the little guidance that we have it appears as though no approach will be free. A state-based model would allow the state to implement the minimum exchange requirements and control the overall financial impact of an exchange. To fund the exchange beyond 2015, we've said before that we recommend amending the statute requiring carriers to contribute premium tax for Nebraska's high-risk pool and redirect this funding to support ongoing exchange solvency. To be clear, we only support the transfer of the monies that specifically support the state high-risk pool, so those that are paid out in claims, not the dollars that are currently supporting other entities receiving premium tax dollars under the statute. If not a state-based model, as we've heard this morning, the state has the option to elect a federal-state partnership exchange that gives plan management and limited, very limited from what we've heard, in-person consumer assistance functions to the state. There is a question as to whether this option includes control over that navigator program. But all other exchange functions would be performed by the federal government. It is important to remember that a partnership exchange is a

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variation of the federally facilitated exchange. And it seems to be that those responsibilities are slipping, the flexibility that was given to the states. So the U.S. Department of Health and Human Services would retain ultimate authority even over a partnership exchange. We therefore remain somewhat skeptical of this approach and would encourage the Department of Insurance to continue their discussions with the federal government for more clarity on the role that a state would play in financial management and consumer assistance under this model. Finally, we believe that a federally facilitated exchange will result in a federal takeover of the state's health insurance marketplace. Within a federal model, and I think this is important, HHS is only committed to allowing all qualified health plans to be sold on the exchange for the first year. In future years, HHS retains the right to employ what is called an active purchaser model, which would allow the federal government to negotiate with insurers, picking and choosing the certain health insurance plans for the exchange. An active purchaser model, in our opinion, would inhibit choice and competition in the marketplace, and possibly poorly serve Nebraskans. We await the presidential election, like all of you, in November to see if the federal deadlines to the exchanges will be delayed to allow more states time to implement. Blue Cross and Blue Shield of Nebraska supports a state-based exchange; and given what we know today--my comments are based on what we know today--we would tentatively consider participation in a partnership exchange. At this time because of the significant unknowns regarding that federal exchange, we cannot support this path forward. I think that there may not be a good choice, but we believe there is a better choice in choosing a state-based health insurance exchange. So thank you for your time.

SENATOR PAHLS: Thank you for coming forth, Cameron. I appreciate it. I'm glad to see you in front of the committee. Just a couple things I want to ask. The department has implied that it is hard for them to give answers because of the lack of information they're receiving from the federal level. I know your company has been very involved in this. Do you agree with that?

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CAMERON ARCH: I absolutely agree with that. I would say that they have much more information because they've been actually flying to Washington, D.C., and having these side conversations with the Department of Health and Human Services. We are only working off of what we know from rumors, from our association, as well as the formal guidance, what little has been actually released by the federal government. So, yes, I would agree with that.

SENATOR PAHLS: Okay. But you're a multistate organization. So with all the "Blues" around the United States, I'm assuming that you have the political clout to find out some information.

CAMERON ARCH: (Laugh) At this point all I know is that the association is working with HHS and they are lobbying them to try and change, at least to advocate for some of our positions in tweaking the regulations. But until we've actually seen the regulations, it's hard to have an impact on those.

SENATOR PAHLS: Okay, so you haven't seen the regulations because the Department of Insurance has not seen the regulations, for the most part, is that what...?

CAMERON ARCH: No one has seen the regulations at this point.

SENATOR PAHLS: Okay, so that's...because every once in a while people say, oh, they're holding back from us. But by listening to you, you say that's not a factor. They just don't have the information in many...

CAMERON ARCH: They just don't have the information at this time.

SENATOR PAHLS: Okay. And you are still for the state...not you; when I say you, I'm speaking about your group.

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CAMERON ARCH: Sure.

SENATOR PAHLS: State-based, that's what it's...

CAMERON ARCH: Yeah, absolutely. We are strongly in favor of a state-based exchange. I think it becomes even more...our position becomes even stronger as we hear these responsibilities that were once placed on the state within our federal-state partnership exchange are now slipping. The federal government is taking those back. And so I think the only way to maintain that regulatory, financial, political control is to choose a state-based exchange. I mean, it's not a...no choice is great at this point, but I do think it's a better choice than choosing a federal exchange or even possibly a federal-state partnership exchange. But it's hard to compare the models when, like we've said, we don't have the full information.

SENATOR PAHLS: And another question I have: Does your company promote high deductible plans? Is that...after listening to Senator Gloor, if I ran a hospital or something like that, I would want to make sure everybody had insurance and...

CAMERON ARCH: I mean, it is certainly the choice that we provide to our members. I, myself, have a high-deductible health plan that is accompanied with a health savings account because I'm relatively young and healthy at this point and don't see myself going to the hospital very much. But I'm not sure it's something that we necessarily promote, but it's a choice for our members.

SENATOR PAHLS: Okay, okay. Senator Schilz.

SENATOR SCHILZ: Thank you, Senator Pahls. Thanks for coming in today. And as I sit here and listen to everything and ask myself which direction...just having no information at all, and looking at it--this is a comment as much as a rhetorical question--but having no information at all, either the feds do it or we do it. And in my mind there's really no

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question there, is that the state needs to do it because then we can control our destiny. I mean, you've always heard it's easier to ask forgiveness than permission. And I...so as I look at it, in my opinion, to protect the citizens of Nebraska and their pocketbooks, Nebraska should be in charge of this because in that sense at least then we can control what we can control, whatever that might be. And I just don't see any other way forward if we're going to be honest with ourselves about what the best way is for Nebraska.

CAMERON ARCH: Thank you, Senator. And I think with any federal program you're going to have a federal floor. But above that federal floor there's a tremendous amount of flexibility, in our opinion, for a state-based exchange--a lot more flexibility than you would see in a federal exchange or even a federal-state partnership exchange. And so if that's what you're looking for, if you're looking for flexibility and to control our destiny, I think a state-based exchange is the only way forward.

SENATOR SCHILZ: And I guess as I sit here and I was somewhat encouraged by listening to the director and Mr. Swanson that, you know, some of the things that we're talking about and trying to implement here in Nebraska, other states and the federal government are taking a look at it and saying, hey, that's an interesting idea and the way to go about it. And, you know, I like the fact that, you know, if you take the initiative and you step forward and try and do some things, maybe there is an opportunity. But even if there isn't, even if you get shot down, I believe that it's required of us to take that step and to very seriously look at the state option to stay in control as much as we can ourselves. Thank you.

CAMERON ARCH: Yes. And if I could follow up on that, I just think that the other states, what was it, 13 to 15 states that have moved forward, at least with the letter of intent to build a state-based exchange, they are banking on flexibility. I mean, to some extent I think they're going to be able to help write the regulations because they're out in front. The federal government does not want to do this for all 50 states. And so, you know, it is a bit of a leap of faith in doing that, but if you're willing to get out in front I have to believe

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the federal government will work with you because they don't want to do it themselves.

SENATOR SCHILZ: Thank you.

SENATOR PAHLS: Senator Pirsch.

SENATOR PIRSCH: I thank you for your testimony here today. And you had related that your first preference would be that of a state-based exchange or a state-run exchange, and then a hybrid may or may not, I think your written testimony ended up being a good solution. So one of the things that I wanted to talk with you about is your comment just now that you said that what is known about the hybrid or partnership model leads you to conclude that the flexibility in that model is not as high as that which is in the state-based. Can you speak to, substantively give specifics or examples as to how our flexibility would be narrowed through the state-based, from what we do know or what you do know?

CAMERON ARCH: Me speaking to a partnership exchange and how it would be limited?

SENATOR PIRSCH: That's right, yeah.

CAMERON ARCH: Well, I do know that we would have authority over plan management and limited in-person consumer assistance. And I think that, as was said this morning, there is a question as to how much responsibility we have over the navigator program. We may have the right to actually monitor the navigators, but we're not going to have a right to choose the navigators and to finance the navigators within that federal-state partnership exchange.

SENATOR PIRSCH: Okay. Is it clear though under the state exchange that we do have greater control and active management powers over the navigators?

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CAMERON ARCH: That is my understanding given the regulations that we've seen. The department may know more to that if they've had outside discussions, but in the regulations it appears that within a state-based exchange we would have control over the navigator program.

SENATOR PIRSCH: So previous to your testimony we had the director testifying. I think...did I misinterpret his remarks that he was saying that they felt even under a state-run exchange they would not have the ability to actively even manage...in other words, their recommend...if somebody was practicing outside the scope, so to speak, they would...and they wouldn't have the ability to discipline or whatnot, they could make a recommendation to the federal government to do so? Is that your understanding? Was he speaking to the state exchange, state-run model?

CAMERON ARCH: Unfortunately, I can't substantiate those comments because I haven't been engaged in those discussions with the department, with Health and Human Services in Washington, D.C., with whom they've been speaking. And so I just don't know what that's going to look like in a state-based exchange. Given the regulations...again, I'm only going off the regulations that I've seen, and that could have changed in conversations.

SENATOR PIRSCH: Okay. I think he was referencing a recent...and I don't know if it was bulletin or a Q&A letter that came down the pike that clarified that, but you're not aware?

CAMERON ARCH: I'm not aware of that.

SENATOR PIRSCH: Okay. Thank you for...

CAMERON ARCH: Yes. Could I follow up on Senator Pirsch's comment?

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SENATOR PIRSCH: Sure, oh sure, yeah.

CAMERON ARCH: With the state partnership exchange, we're concerned about the consumer assistance portion and giving the DOI that responsibility over the navigator piece. But we're also concerned about the financial management piece that would be run by the federal government within that partnership exchange. As I said in my testimony, the federal government is going to have the ultimate authority and responsibility to ensure that our exchange is sustainable beyond 2015. And from an insurance standpoint we would much rather have the Legislature and the Department of Insurance deciding how we're going to ensure solvency for an exchange beyond 2015, rather than the federal government coming in and basically having ultimate authority to just assess tax, health insurance carriers, providers, potentially businesses, consumers as well, through either user fees or other funding mechanisms. So that's another concern that we have with the federal-state partnership exchange.

SENATOR PIRSCH: And just as a follow-up, if we made the wrong decision, say went with--in your opinion or just for the sake of argument here--and went with either a partnership model or deferred to the federal government, in your estimation is there an opportunity cost? In other words, the federal government is indicating there's certain...we'd pay an operating cost, but the federal government has a limited period in which they pay for it if we elected the state exchange or a partnership model, the infrastructure...paying for the infrastructure costs, is that right?

CAMERON ARCH: So what we would pay for the infrastructure cost?

SENATOR PIRSCH: Oh, okay, so the three...of the three models, the federal government is, per the ACA, would pay for the infrastructure setup, the programming costs, whatever, the...but with respect to the operating costs, if we were to elect to go with the state exchange or a partnership, the state is on the hook for continuing

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operating costs, correct?

CAMERON ARCH: Yeah, yeah, absolutely.

SENATOR PIRSCH: So I guess what I'm saying is, is there anything that would be usable about, if we were to originally go with the state, as you recommend here today, state-based exchange, thus making the state eligible for these infrastructure funding from the federal government. And if we have the ability to change directions two or three years down the line, five years, ten years down the line, if we found that was the wrong...didn't work out for the state of Nebraska in the way that we had hoped--right the wrong election so to speak--would there be any benefit to have gone down the path of the state-based exchange and receive the federal funding? I think there was talk of maybe some Medicaid monies or whatnot. Can you speak to that?

CAMERON ARCH: I'm not sure I can speak to that specifically, but I would say that it's going to be much harder. If we went forward with some sort of a federal exchange and then chose a state-based exchange down the road, we wouldn't have access to the federal funding that's available right now. It's my understanding that that's only available through the end of 2014. It can be used beyond that, but wouldn't have access to it. So setting up a state-based exchange later on, I think would be more problematic.

SENATOR PIRSCH: And with respect to the hybrid partnership model in terms of federal funding, do you have any clarity you can bring to that, as so as...the partnership hybrid model as opposed to the state exchange in terms of federal funding and what, you know, what that would mean to the state on an ongoing basis. Can you speak to that?

CAMERON ARCH: Sure. There will still be...and this comes from a Q&A, I think, from the federal government, so I don't know about the legal significance of that, but they have alluded to the fact that there will be federal funding available for federal-state

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partnership exchanges, as well, for those pieces that the states are going to be running, especially with the plan management function. So it will be available for a federal-state partnership exchange. I'm not really sure as to what extent.

SENATOR PIRSCH: Thank you.

SENATOR PAHLS: Senator Christensen.

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Cameron. You're nervous about a federal exchange. Are you worried that Blue Cross wouldn't be chosen as one of them providers? Do you think they'll just take one or two or three nationwide, and say this is it, and you're out if you're not in a state-based? What...I guess, do you not think they're going to accept everybody? Is that one of your concerns?

CAMERON ARCH: That is one of the concerns. And I talked about an active purchaser model like we've seen in Massachusetts and others who are considering it. That gives the power to the state--or the federal government, actually--to negotiate with insurers and just pick and choose which plans are going to be sold on the exchange. I think that's concerning to us, not necessarily that we're not going to be chosen, but that it's just not a competitive open marketplace. If the idea is to bring down overall costs and create this competitive marketplace and force carriers to compete against each other and provide better products for the consumer, the open marketplace is probably the best way to go; not something that's chosen by the federal government.

SENATOR CHRISTENSEN: I guess I struggle, I get beat up on by certain groups because I say this is going to be rationed care, it's going to be horrible. But if the government is worried about saving costs, then why would they ever limit anybody in a federal exchange? If they're honest to their word, this is for saving costs, affordable costs, as it's called the Affordable Care Act, if that is the case, why would they do what you just said? Limit the players, which would drive up the costs; not have the open

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market. Why are you concerned about that? Are you not...are you concerned they're not being up-front? Which I get that feeling from the department. I guess I don't understand how we can have affordable care and then limit our choices.

CAMERON ARCH: Well, Senator, if you look at the Affordable Care Act as a whole, they did a lot of great things for access, you know, 32 million Americans are now going to be insured under the Affordable Care Act. But they didn't do a lot to control costs. And so I think this is just another area where the federal government might think they know best; and I would say Nebraska knows best for their health insurance marketplace and we want it to be open and competitive. Those are our principles and that's what we should choose. And so I think there's a bit of fear of the unknown. The federal government, they have not been up-front and they might go back on their word. So with that in mind, you know, I think it behooves us to take control of that.

SENATOR CHRISTENSEN: With that in mind, that leads to my next concern. If you choose the state option, is there not the ability of the feds to come in and basically give you no control, no responsibility, and yet assess costs to the state?

CAMERON ARCH: You know, I have thought about that. But I think it will be much harder for them to intervene within a state-based exchange model than it would be, obviously, within a federal-state partnership exchange or a federal exchange. The federal government has a lot of power, as you know, and so, potentially, they could intervene later down the road; but I think that would make it much more difficult for them to do that if we chose a state model.

SENATOR CHRISTENSEN: Please, I'm not picking on you; I can't even tell you which side I'm on with my questions here. But with Medicaid, the state pays part of it, feds pay part, correct? What choices does the state have in that program?

CAMERON ARCH: Within Medicaid, I can't speak to that. It's outside my scope.

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SENATOR CHRISTENSEN: You know, I guess I have a son now on Medicaid, and I'd say I got no choices. I could show you all kinds of federal waste and I could give you examples of it. If I once don't take diapers for my handicapped son, they've told us they'll remove it. So I have closets full that I have to give away, burn, or whatever, because they send so many. Federal control equals federal waste. Another one in Medicaid: If I don't use so much...now I lost the term...baby-sitting that the state pays for, if I don't use all of it each month, I lose it, whether I need it or not. So I have to have people come over and baby-sit or I'm going to lose it. Federal control, federal waste; absolutely against the core of what I stand for. That's why I hate the Affordable Health Care Act, or I say limited care act. What choice...you know, you mentioned earlier in discussion with Senator Schilz, I believe it was, the choice to be state-based exchange, and you mentioned you believe with what you have and the navigator choice you'll have control in, from what you've read. And I guess my interpretation, I'm just saying off of what I've heard this morning, is that's pretty much slipping away, but I understand you probably haven't seen that. The last question: Do you see in 2015, if you take the federal exchange, so it's not guaranteed--you mentioned something earlier that something is not guaranteed past 2015--is that why you support a state-based is because of the unknown past the 2015 if you're on the fed side of it? You mentioned something, I believe, in talking to Senator Schilz that something is only guaranteed through 2015.

CAMERON ARCH: Right. So I mentioned that they've only really guaranteed that within a federal model that they'd have an open marketplace, the states chose to have an open marketplace, for the first year. So that would be an open marketplace, you know, for 2014. And then 2015 they would retain the right, or assuming they...I'm just going off of speculation, that they could shift into an active purchaser model which would allow them the ability to negotiate with insurers. And that's our fear, and a lot of it is the fear of the unknown; but, you know, it is a possibility.

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SENATOR CHRISTENSEN: Thank you. I hope I didn't seem attacking, because I didn't want to be. But this works me up because of all the waste I see on what feds do. Thank you.

CAMERON ARCH: Thank you, Senator.

SENATOR PAHLS: Thank you, Senator. Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And thank you, Mr. Arch, for being here this morning. When you talk about, in your prepared testimony, your second to last paragraph on the second page, kind of your exchange with Senator Christensen and your earlier remarks on the active purchaser model, under the federal exchange could that not also happen, what you described, the active purchaser model, through rules and regulations that we may receive after November 6--this same fear of the unknown; you know, the federal government negotiating with insurers? That could also happen under state-based exchange or a partnership exchange via rules and regulations from federal HHS, could it not?

CAMERON ARCH: It could certainly go the other way as well. But again, I think it would be more difficult to shift to a different model if we took control up-front; that's our belief. But, yes, it could go the other way as well.

SENATOR McCOY: So either, and again, I say three directions, even though there is a fourth, but for lack of any states working on a regional exchange, for all intents and purposes it's three options, so essentially that active purchaser model that you believe to be potentially an unwise direction to go for Nebraska, could happen. I mean, in other words, the fact that we would have that open marketplace isn't hard-wired or baked into the federal legislation. This could be changed, the rules and regulations, so the federal government could be going towards an active purchaser model through any model that's set up, state-based, partnership, or otherwise, correct?

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CAMERON ARCH: It's possible that that could come through future regulations. But they have said though that states do have the choice to set it up how they want, if they choose a fully state-based exchange. And so that's what we're saying that, you know, if you have the choice, you should choose an open and competitive marketplace. But yes, later down the road if all of a sudden they wanted to make every state's exchange active purchaser, I assume they would have the authority to do that.

SENATOR McCOY: So once we get past that 2015 spot on the time line, which goes back to what you referenced on the first page of your testimony that federal HHS has that ultimate authority and ultimate control. They also have that ultimate authority and ultimate control through rules and regulations that we've talked about--it could be hundreds or thousands, possibly, of pages--to say, well now, actually, you know, we talked about having states having more control over navigators in their federal partnership model, now we've decided not so much. We could also say, well, this is the direction we're going to go and here's what you have with the rules and regulations. Which to me highlights the fact that--and as you've acknowledged in your testimony--there are a whole host of unanswered questions here to know how do you even compare these three models and which direction to really go down unless we know more about what we're talking about. I mean, you're saying here yourself, you can't compare costs because we don't know what those costs are going to be to the state. So really if we can't compare costs, you really, and by extension have a hard time comparing the three models and what it means to the state. Would that be fair?

CAMERON ARCH: I think that's fair. At this time, given what we know or don't know, it is hard to compare them across the board; but we know more about a state-based exchange. And if we trust them and what they've given us as far as flexibility, a state-based exchange sounds like something that is good for Nebraska.

SENATOR McCOY: And we know more because they've given us more rules and

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regulations along that front, because as the department stated earlier, that's the direction that the federal government and the Obama administration through Obamacare would like states to go down the road of state-based exchange, therefore they've given us more rules and regulations down that avenue. It could be that they release, on November 7 or November 8 or whenever, a whole host of regulations, and all of a sudden we figure out, well, all of a sudden, a state-based exchange doesn't sound so great. I mean that is possible, correct?

CAMERON ARCH: It's possible.

SENATOR McCOY: All right, thank you.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Thank you for your testimony today. Let's just suppose that Governor Romney is elected. He gets sworn in. The minute he's sworn in, a black puff comes right out of the Statute of Liberty on top of the Capitol and the wind just blows Obamacare away. And the governor says, you know, or then the President says, you know, we've got this problem of rising healthcare costs. They've been rising higher than the rate of increase in GDP for a number of years, but insurance is running much higher than the increases in wages; we've got to do something. We also know that the number of uninsured is going up and up, plus we've got all these baby boomers coming at us that want to get on the system too. So just like we did in Massachusetts, let's let the states take the bull by the horns; and states, it's your baby. And about that time the stork flies in this room and sets a baby right down on that desk and says, there it is, it's yours. Blue Cross is a widely respected company, nonprofit company, with a great deal of experience in this area. And we sit around the table here and we say, oh, what do we feed this baby? What, under that scenario, would be Blue Cross's recommendation as to how we begin to tackle the problem?

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CAMERON ARCH: I don't know if I'm ready to speak for Blue Cross and Blue Shield today for those recommendations. But I think you have to look at the factors that Director Ramage, I think, spoke to in the previous testimony, is the increase in utilization. You have to look at how physicians, hospitals, providers are reimbursed for their services, whether it's on a fee-for-service model or on a quality-based sort of model. Trying to keep people out of the hospital, you know, and keep people insured, as you mentioned the cost shift earlier, is something we certainly have to look at. And so I don't have specific recommendations today, but those are the drivers. And if you can address the drivers, you might be able to at least mitigate the problem.

SENATOR SCHUMACHER: How do we get the number of insured up, the people in the system so that...? That seems to be a core problem. What do we do to get the number of insured up? Do we look at some type of subsidized premiums? Do we...we've got to do something. I mean, that's part of the problem that causes the cost shifting on an otherwise inefficient system that is using too much emergency room rather than preventive, cheaper facilities. Any ideas on how we do that?

CAMERON ARCH: Yeah. I mean, I'm not going to make a recommendation for Nebraska.

SENATOR SCHUMACHER: Sure. No, we're just talking.

CAMERON ARCH: But, you know, from the onset of the Affordable Care Act and how they were drafting it, the insurance industry came forward and supported guaranteed issue, getting rid of preexisting condition exclusions, so long as there was some sort of mechanism to keep people in the pool and to spread the risk across the board. And one of the ways to do that is through some sort of a penalty. And so, you know, we were in support of that, going along with guaranteed issue, community rating. We just thought there should be more teeth, you know, because \$95 a year for the initial year, as far as penalties go, is not very much, you know, and that's not going to keep people in the

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pool. But that is one of the ways that you can actually try and keep people insured is to enforce some sort of a penalty for not having insurance.

SENATOR SCHUMACHER: Along the same lines, one thing I'd like if you guys could get us a "guesstimation" on it. Let's go into the world of pretend a little bit and we say, you know, Governor Romney, thank you for delivering the baby. What would it cost us as a solution to say...go to Blue Cross and say, we're going to buy a health insurance policy from you for everybody in Nebraska. Now, what would that cost us in tax money, and what would it save the employers, the people who are buying insurance now on their own, in premium money?

CAMERON ARCH: I can look into that.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Senator Pahls. Thank you, Cameron. I appreciate you being here. Again, in our case, I think, based upon Senator Schumacher's comment, the Blues have, as an association--nationally, I think--have had a level of support for health insurance exchanges that goes well back into the '90s under a market-driven model. And I could be wrong on that, but I'd appreciate it if you'd go back and see if that's true, because, again to his question, if all of a sudden the baby is dropped in front of this state, maybe there is more that the Blues can bring to the table if we decide exchanges still make sense in some way, shape, or form, and we no longer have the support of the government. I'd also be remiss if I didn't put my oar in the water on the fact that we can talk about this all we want; some of what has to eventually happen here is we have to change the healthcare delivery system. And so my commercial comment here is we do have a pilot project through the department, through Medicaid, several pilot projects about a patient-centered medical home and the department has moved in that direction

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with some of its Medicaid managed care expansion recently, and as had the Blues and other folks who are out there, and we can talk about cutting dollars, managing dollars all we want, but at some point in time, we also have to bring into the discussion the healthcare delivery system and how we provide care and how inefficiently we often provide care with too much of a emphasis on the high end and not enough emphasis on the primary care aspect. So, I'll go back to our regular programming. Let me talk about this paragraph that relates to amending the statute relating to the premium tax that's out there; the recommendation, in fact, to recommend that we amend the statute that takes that premium dollar--and "tax" is the right term--and redirects it to the exchanges. But hypothetically, if the exchanges work the way they're supposed to, we don't need that subsidization anymore do we, or am I misunderstanding? I mean, if we're taking dollars that we now pull off the premium dollars and direct into the high-risk pool, if those exchanges are set up appropriately, why do we need those dollars? Shouldn't those dollars, in fact, be returned to the employer or the individual that is buying rather than continue to pay a tax for a system that supposedly was going to alleviate us from having to have the tax?

CAMERON ARCH: Well, if we're talking about a state-based exchange, we're responsible for the self-sustainment of it beyond 2015. And so just considering operational funds, I think the department in their original consulting report said that it would cost, I think, \$17 million a year, \$18 million a year, to operate the exchange. I don't know if those have gone up since then. But we still believe there will be costs beyond 2015, and this could be one funding mechanism for that.

SENATOR GLOOR: Well, I don't disagree with that, but it would be just, again, you know if I'm an operational officer, I'd like to know what my actual...I'd like to be responsible for my costs. I'd like to be responsible for those dollars that come in for the exchange, as opposed to also have this outside subsidization that comes in that's a carryover from the old days, for want of a different term. So, I was...you know, maybe nobody thought this through when they made this comment, but I'm not so sure that I'm

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supportive, as I understand it, of premium dollars under the old system that were taxed, now being carried over to support a new system of care that we have in place.

CAMERON ARCH: Sure, and that is one point of view. Right. And just a lot of it depends on, you know, how are we going...are there going to be user fees on consumers, on health insurers who are participating in the exchange; and how great are those user fees going to be? Is it going to be enough to keep the exchange sustainable? I mean, maybe we just look at shifting a portion of these CHIP funds toward the exchange. It's just...we don't know what the actual operational costs are going to be.

SENATOR GLOOR: Thanks.

SENATOR PAHLS: Cameron, just let me pursue that a little bit, because the high-risk dollars I know goes to those individuals to help with their insurance...to purchase their insurance. And some of those dollars go to education, some go to municipalities, some go to the counties, and some go to maybe to fire districts or something like that. So you're saying that we should keep the schools, the counties, and those into these? The money should still go to them?

CAMERON ARCH: That's right. So the dollars that are going toward...like you mentioned, education and municipalities and others, those should be kept in place and should still be funneling toward those entities.

SENATOR PAHLS: Okay. For those people who are watching us, we talk about premium taxes; how do we get that money?

CAMERON ARCH: I'm not real familiar with how that works. I know that it's based on a percentage of premiums collected and we're taxed on that. And then I assume it goes to pay out CHIP claims as it stands today, and also it goes toward those entities that we

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talked about.

SENATOR PAHLS: Okay. I'm just going to ask...Bill, would you just give us a definition of premium tax so people could understand, because we're throwing that around.

BILL MARIENAU: I think it's a tax on the gross writings. I'm going to look way in the back and see if Eric is nodding, I think. Yeah, and he just did.

SENATOR PAHLS: Okay. So where do those tax dollars come from though, that's what I'm trying to say, or the fees? Do they come from the...

BILL MARIENAU: The premium tax?

SENATOR PAHLS: Yes, the premium tax.

BILL MARIENAU: It comes from the companies.

SENATOR PAHLS: Oh, it comes from the companies.

CAMERON ARCH: Right, and it's not just health insurers. It's the insurance industry.

SENATOR PAHLS: So, no, that's what I'm saying is. So see, it's another form of tax and I've argued with the past director at times. If we have this excess tax, maybe we ought to be cutting back instead of throwing that money into the General Fund. This is my little soap box right now. Let's...if we're serious about cutting taxes in the state of Nebraska, we always talk about property tax, income tax, things like that; and I've argued on the floor that maybe we ought to take a look at our premium taxes and give those back to whomever, because...you can still see I have a burr under my saddle when we are cutting back several years ago, the Appropriation Committee kept going into this premium tax to give money, but we couldn't take any money out of the corn checkoff

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fees because of the power of the different groups. The insurance companies and those companies were not knocking on the doors, where the other groups they were. And that's just...I'm on my soap box right now. But if these taxes...maybe we ought to take a look at them. Maybe if we have that much to put back into our General Fund, maybe we ought to take a look at those and say, if we're serious about this, now I'm speaking to all those insurance agents and whomever out there, is something to think about, something to lobby in the future. That's just my little thing. (Laughter) Because I've argued it on the floor, guys. The banks have state charters and they have federal charters in the state of Nebraska. There are banks that are state charters and federal. Do you believe...is that one reason why insurance companies are so intent on making this a state-based because they're afraid somewhere along the line we're looking at federal insurance. Is that one of the purposes?

CAMERON ARCH: I don't know about federal insurance, but we are concerned about some consistency in the regulatory environments. A federal exchange could look a lot different as far as regulations go than the outside market which we just believe...and it's a possibility. We just believe that that could potentially confuse consumers. You don't know who you're actually answering to when you have a complaint or a concern. Are you answering to the Department of Insurance here in Nebraska or Health and Human Services in Washington, D.C., who is operating the hot line?

SENATOR PAHLS: Right. Well, in the Blues, each state is its own separate...?

CAMERON ARCH: It's not each state, but it's 38 different licensees; some are more regional.

SENATOR PAHLS: Okay. Okay. Thank you. Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Chairman Pahls. Just a follow-up on that. When you say the 38 different states, are they all...I mean, do they take their premiums,

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throw it in a common pool, and then distribute it out? Or is every state kind of a self-entity? Nebraska premiums go to Nebraska, pay out.

CAMERON ARCH: I can only speak for Nebraska, but we are a Nebraska-based company and premiums, you know. Well, there are some members that we have across the U.S. because their principal place of business, the place that they work for, is headquartered here; but yes, just Nebraska.

SENATOR SCHUMACHER: So basically, each...at least for Nebraska's sake, it's a self-contained statistical and operational kind of thing.

CAMERON ARCH: That's right.

SENATOR SCHUMACHER: And would there be any efficiencies and any stability gathered if, say, those 30-some states did it all as one entity and you didn't have to run 38 little casinos, and you could just run one?

CAMERON ARCH: You're talking about dissolving the Blue Cross Blue Shield Association?

SENATOR SCHUMACHER: No, I'm...I mean, what if you all could work together? I mean would there be efficiencies gained?

CAMERON ARCH: I don't know. Possibly.

SENATOR SCHUMACHER: Okay. All right. Thank you.

SENATOR PAHLS: Thank you for your testimony. We appreciate it.

CAMERON ARCH: Thank you.

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SENATOR PAHLS: Senator Mines. Sort of deja vu.

MICK MINES: It is deja vu. Good morning, Chairman Pahls, members of the Banking, Commerce and Insurance Committee. My name is Mick Mines, M-i-c-k M-i-n-e-s, and I'm a registered lobbyist for the Nebraska Insurance and Financial Advisors, and I'm here today representing the Health Care Alliance. And the Health Care Alliance is a nonprofit group of 53 businesses, healthcare provider associations, insurance carriers, and individuals from across Nebraska that believe in the establishment of a health-based health insurance exchange. The alliance's primary goals are to engage, educate, and recruit members to become part of this statewide effort to advocate the establishment of a state-based exchange in Nebraska and the many benefits of retaining state authority over the exchange. Throughout the course of many, many hearings, you've heard numerous testifiers present their arguments in favor of a state-based exchange and in opposition to a federally facilitated exchange. The alliance is strongly in favor of a state-based exchange. Today I'd like to talk specifically about our concerns related to a federal-state partnership or a hybrid exchange model. Originally, a federal-state partnership exchange divided the exchange into five core functions: plan management, in-person consumer assistance, eligibility, enrollment, and financial management. Under this model the state would have the option to run the plan management and/or in-person consumer assistance functions while the federal government would run the rest. States choosing to run plan management would have control over certifying qualified health plans to be sold on the exchange. They would also be responsible for ongoing plan monitoring and oversight. For states choosing to run the in-person consumer assistance function, they would support the navigator program established by the federal government and develop an in-person assister program, that's a-s-s-i-s-t-e-r, not "a sister" program, for consumers that is distinct from the navigator program. Both of these operational functions would certainly be run by state entities with the assistance of local agents. And I believe local agents that are on the ground throughout the state are a valuable piece because they have knowledge of

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the local needs and well-established relationships in their communities. However, while we believe this is better than defaulting to the federal facilitated exchange, the alliance is still concerned by the lack of flexibility and state input available in a federal-state partner exchange. I think most importantly, within a partnership exchange, the federal government would control financial management of the exchange. This includes how the subsidies and premium dollars flow. But more troubling is the ability to determine how an exchange is financed beyond 2015 when federal grant money is no longer available. Loss of the financial management function is disconcerting because the federal government would have the authority and responsibility to find exchange funding, and that may result in additional fees assessed to Nebraska individuals, businesses, healthcare insurers, and healthcare providers. By choosing a partnership exchange, Nebraska would forfeit the ability to provide input into how its exchange is financed for years to come. The Department of Insurance currently regulates the state's insurance broker and agent community through certification and training. This is done in an effort to protect consumers. Similarly, the department should have the right to choose and certify the navigators certifying Nebraska's exchange consumers. Losing this traditional regulatory function could potentially place Nebraska consumers at risk. The healthcare industry in Nebraska, including the members of the Health Care Alliance and the Nebraska Association of Insurance and Financial Advisors, are committed to bringing down overall health costs through a health insurance exchange that is implemented properly. We envision an open marketplace where individuals and families can choose from an array of plans and cost-sharing options. Unfortunately, within a federal-state partnership or federal-facilitated model there's no guarantee that an open marketplace will be under the federal government's watch. Only a state-based exchange in conjunction with local insurance agents can provide an assurance that Nebraskans receive the best available health coverage. In conclusion, a federal-state partnership exchange is essentially a federally facilitated exchange. According to recent guidance, the federal government has ultimate authority over partnership exchange, even over those functions given to the state, thereby reserving the right to take back any and all of those functions. The only sure way to avoid federal intervention into

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Nebraska's healthcare system is to build a state-based exchange. Although a better alternative to a federally facilitated exchange, a partnership exchange is also deeply flawed. The Nebraska Health Care Alliance supports the establishment of a state-based exchange and respectfully asks the state to take these concerns under consideration when choosing an exchange model. And with that I'll close and answer any questions.

SENATOR PAHLS: So it's state-based or nothing?

MICK MINES: Our association believes that local control, local oversight by the department, is in the best interest of all Nebraskans. So that would be a state-based exchange.

SENATOR PAHLS: Okay. Senator Pirsch.

SENATOR PIRSCH: Director Ramage referenced a recent distribution, and I don't know if it was a Q&A or a bulletin that shed light and led him to believe his prior assumptions that the state would be given quite a bit of flexibility in terms of regulating or managing the navigator program was now suspect. And so...are you familiar with this recent (inaudible)?

MICK MINES: No. In fact, that was news to us--and not unexpected. I believe that if, in fact, that Nebraska has little choice in the navigator, there will be an opportunity, or we hope there will be an opportunity for what's called the assister. And the assister is not...it's mentioned but it is not defined yet what their duties and responsibilities will be. Certainly the agents in the field have local contact; they can explain insurance to those that need explanation. The assister, we're not certain what might happen with that defined involvement in the process. We certainly hope, and that's all we can do at this point is hope, that the navigator is under the oversight of the department and not the federal government.

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SENATOR PIRSCH: And does that...in your analysis, the control the state would exercise with...and there's a distinction between the assister and the navigator that if the state were to run its own exchange, that they would have a greater control over that, the (inaudible).

MICK MINES: Absolutely. We believe that to be true, yes.

SENATOR PIRSCH: Okay, thank you.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Senator Pahls. Mick, is there concern that the navigator might gravitate more toward somebody that is a clinician, as opposed to somebody who is more knowledgeable in the insurance realm?

MICK MINES: Again, the association represents all: hospitals, insurers, and independent insurance agents. I think the concern, generally, is that a federal navigator isn't necessarily going to provide Nebraskans with the choices that we believe to be correct as a state. We believe that it will be a federal model, and that federal model likely will not fit all of Nebraska. So whether it's insurance or healthcare or any of the aspects of an exchange, we believe that done locally, done in Nebraska, is a better option for Nebraskans than a federal model.

SENATOR GLOOR: So you want it to take on a local color.

MICK MINES: Absolutely.

SENATOR GLOOR: Regardless of what that color may be, it needs to have that local input or that state...

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MICK MINES: Absolutely. Yeah, we think it's critical.

SENATOR GLOOR: Okay, thank you.

SENATOR PAHLS: Mick, I know you're speaking to...you're representing the National Association of Insurance and Financial Advisors today, but how many people...how many different groups are within the overall group?

MICK MINES: Within the alliance?

SENATOR PAHLS: Yes, the alliance.

MICK MINES: Fifty-three, and that includes every...I'd read you the list, but you've been here all day.

SENATOR PAHLS: No, no, but just give us a few...

MICK MINES: For instance, the hospital in Chadron; Alegent; Blue Cross Blue Shield; the Nebraska physicians association; the Nebraska Nurses Association; so it's a broad, broad range of people that are interested in ensuring Nebraskans have choices that are about Nebraska.

SENATOR PAHLS: So by looking at the total group, actually it's a pretty powerful group of individuals.

MICK MINES: Absolutely, absolutely.

SENATOR PAHLS: And the Legislature and the Governor should be listening to those individuals. I'm assuming if we're...

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MICK MINES: I think he is. Yes, he is.

SENATOR PAHLS: Okay. Okay. Senator Pirsch.

SENATOR PIRSCH: And I appreciate your, again, testimony here today. I thought I might follow up to a question that we had asked at earlier times, and it seemed like...you know, this whole thing is very fluid and dynamic in terms of understanding the mandates of the regulations in the Affordable Care Act. And have we, since we last met as a committee, do we have a better understanding about the expectation of ongoing operating costs the state would incur either, you know, in ballpark terms, either doing a partnership or a state-based or a state-run exchange?

MICK MINES: From our members' perspective, I don't believe we do. I think Blue Cross Blue Shield has a better handle than anyone; they live it every single day. We're at the mercy...we are the last folks in line that are going to hear what the regulations are and how much it's going to cost. I think we need to pay attention to the department, they are first in line, and certainly the Governor. But your jobs are going to be...you're going to have to hit hard and hit quick because it sounds like those regulations will come down fast and we're all going to have to make decisions.

SENATOR PIRSCH: Thank you.

SENATOR PAHLS: Senator Schilz.

SENATOR SCHILZ: Thank you, Senator Pahls. Mick, good morning and thanks for coming in.

MICK MINES: Good morning.

SENATOR SCHILZ: And we've talked about the lack of information and we've talked

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about the lack of the rules and regulations. Has your organization or conglomeration, or whatever you want to call it, have they done any analysis that would say, yes, we're for a state-based exchange unless this happens? Has any of that...have those conversations gone on?

MICK MINES: Not to my knowledge, Senator. The organization was assembled with the one single thought, and that is, we need to have a Nebraska-representative exchange. We're relying on, again, on you and the Department of Insurance and the Governor to make the right decision for Nebraskans. We simply believe that a local exchange makes the most sense.

SENATOR SCHILZ: Thank you.

MICK MINES: Thanks.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Mr. Chairman.

MICK MINES: Senator.

SENATOR SCHUMACHER: Mick, right now, it looks like there's a 50-50 chance that the governor of Massachusetts will be elected president. And let's take him at his word that on day one all this goes away. That leaves us with increasing healthcare costs still a reality. It also leaves us with a number of uninsured going up, whether they don't have insurance at all or have higher and higher deductibles that don't functionally cover them for a lot of things. And we're then, at this committee, at the state level--because that seems to be the indication where the monkey would come to play--are asked to solve the problem. How does the alliance that you're a part of, how do the mechanisms roll out so that we begin to rationally approach this on a state basis and solve those

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fundamental underlying problems of increasing healthcare cost and the increasing number of uninsured?

MICK MINES: Well, I think you've heard...Senator, you've heard several other people address similar questions. And I think that the solution is so broad that I could only imagine what we might ask this committee and the Governor to do, and the Legislature. I think if the scenario, in fact, plays out that Governor Romney--and this is speculation if Governor Romney is elected--I would speculate that we're too deep into Obamacare now to at one swipe of the pen wash it away. And I believe that--and this is my personal belief--I believe there are some elements that, in fact, will be good for the...whether it's portability or any other...I think there are some good qualities. However, I believe that you're going to be faced with...if given that scenario, I think you're going to be faced with dealing with exactly what you said: increasing uninsured, the rate of healthcare increasing, and what does Nebraska as a state do. But we should make that decision; that shouldn't be a federal decision on our behalf.

SENATOR SCHUMACHER: Thank you.

MICK MINES: Thank you.

SENATOR PAHLS: After I listen to you and I listened to the director, it seems to me...let's say it's state-based. It's going to be so federally controlled that it may be state-based like a mask.

MICK MINES: Perhaps. Perhaps.

SENATOR PAHLS: But still we'd have the local control for some of this.

MICK MINES: You know, however this plays out, I believe it's in all of our interests that we keep and capture as much control as we can. By simply forfeiting the responsibility

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to the federal government to run the exchange, the navigation portion, your options are dramatically limited. And moving forward I simply believe that Nebraska, holding on to any piece of this process as much as possible, is in our best interest.

SENATOR PAHLS: Okay. It sounds like a hybrid. No, no, just...

MICK MINES: You're going right back to the hybrid, aren't you.

SENATOR PAHLS: I see no more questions. Thank you for your testimony.

MICK MINES: Thank you.

SENATOR PAHLS: And just to let you know, I know we will be having another meeting such as this, but I can assure you it will not be before November 16. And with Thanksgiving coming, it probably will be the first week, as I see, of December; and we'll have the department in front of us again. Thank you.