[LB36 LB51 LB179 LB274]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, January 26, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB36, LB51, LB179, and LB274. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and Norm Wallman. Senators absent: None.

SENATOR CAMPBELL: (Recorder malfunction)...to the committee hearings for the Health and Human Services Committee. We have a small but mighty audience today I hope. I would first like to introduce the members of the committee. I am Kathy Campbell. I serve the 25th Legislative District, which is south and east Lincoln and wraps up north, kind of curves around. And I'll go to my far right and start with Senator Bloomfield.

SENATOR BLOOMFIELD: I'm Dave Bloomfield from District 17 up in the northeast part of the state.

SENATOR COOK: I'm Tanya Cook from Legislative District 13, which is east and northeast Omaha and Douglas County.

SENATOR WALLMAN: Senator Norm Wallman, District 30, south of Lincoln to the Kansas border.

SENATOR GLOOR: Senator Mike Gloor, District 35 which is Grand Island.

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

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

SENATOR CAMPBELL: And to my far left is Diane Johnson, the committee clerk. And then our two pages are Ayisha--you want to wave, Ayisha--and Crystal. And joining us is Senator Krist, also from Omaha. I'm going to take care of a few housekeeping, although most of the people in the room probably know the rules as we state them. I'd certainly like you to silence all of your cell phones and make sure that anything that you have is not disturbing to the hearing or to your neighbors. Testifiers should have 12 copies of their testimony, and we do not, as a rule, make the copies, but the pages will certainly help you find a place where you can. We ask that you sign in only if you're going to testify, and there are sign-in sheets on both sides of the room. We do use a light system: five minutes, and then four will go by and there will be a yellow, and then there will be a red. And the red is when you're going to look up and I'm going to go, time, time. Please begin your testimony by stating your full name and spelling your last name for us. And with those, we will open the hearings this afternoon with LB36.

Senator Harms, great to have you with us and would you please open on LB36?

SENATOR HARMS: Thank you, Senator Campbell and colleagues. My name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District. First, Senator Campbell, thank you for giving me the opportunity to come and visit with you about LB36. Senator Campbell, this is a simple bill which extends the rights we gave communities three years ago as to whether or not they would like to fluoridate their water. Currently, the statutes 71-3305 provides that any city or village with a population of 1,000 or more must add fluoride to their water unless there is enough naturally occurring fluoride that meets the regulation that's set by the Department of Health and Human Services. These cities and villages were given by law two years in which to vote whether or not they wanted to adopt this kind of an ordinance to prohibit the addition of fluoride to their water supply in their city or their village, and this voting period expired on June 2010. So my concern here is for the rights of the citizens who live in cities or villages which will reach the population of 1,000 after June 1, 2010, and that's what brings me here. These citizens should be given the same right, the same opportunity as the previous citizens did to decide whether or not they want to add fluoride to their water. LB36 simply allows any city which reaches a population of 1,000 to put this issue on the ballot to be voted upon at the next statewide general election after the population of the village or the city has reached a thousand or more. And that's basically the outline, Senator Campbell, of this bill. So this is a simple one. I would be happy to answer any questions that you might have. [LB36]

SENATOR CAMPBELL: Okay. Senators, any questions that you might have? Senator Gloor. [LB36]

SENATOR GLOOR: Thank you, Chairman Campbell. Senator Harms, thank you for this bill. I'm curious as to...well, and I've just been handed this, this may be an answer to my question. But were you approached by specific cities and communities or...? [LB36]

SENATOR HARMS: Actually I do have a city here. I have a city mayor here who will testify about that they've now reached a thousand, maybe 1,200 people now, and they'd like to have the right to at least choose whether or not they want to have that fluoride or not. And where I live, Senator Gloor, that's kind of a controversial issue, and it's important to be able to give them the right to be able to do that. It's kind of interesting that, you know, Scottsbluff and Gering are just completely split just the opposite with each other and their neighbors. So for our community I think it's very important to be able to give them that opportunity. [LB36]

SENATOR GLOOR: Okay. Thank you, Senator Harms. [LB36]

SENATOR CAMPBELL: Senator Krist. [LB36]

SENATOR KRIST: Thank you, Madam Chair. Is this a continuation? I haven't read word for word, but the vision here is that any time you reach a thousand, then you have the appropriate amount... [LB36]

SENATOR HARMS: Then the people can vote on it. Um-hum. [LB36]

SENATOR KRIST: Okay. [LB36]

SENATOR HARMS: So it's not just for the city of Terrytown which would be class legislation, it's for everyone. So when you reach a thousand, then they have that opportunity by law to do this. [LB36]

SENATOR KRIST: Good. Thank you. [LB36]

SENATOR HARMS: We're excited that we have people...we have a city growing in western Nebraska, so. [LB36]

SENATOR KRIST: Absolutely. Thank you. [LB36]

SENATOR CAMPBELL: Any other questions from the senators? Thank you, Senator. Oh, I'm sorry, Senator Cook. I didn't see your hand. [LB36]

SENATOR COOK: Thank you, Madam Chair. [LB36]

SENATOR CAMPBELL: You're welcome. [LB36]

SENATOR COOK: Senator Harms, can you explain a little bit more about what the issue related to the controversy? Is it the fluoride or is it the cost? [LB36]

SENATOR HARMS: No, it's the fluoride. Well, actually to be honest with you it's both. It's the cost of doing it, but the real issue was with one of our communities is the simple fact that they just don't trust the fluoride, they don't trust the research, they don't believe in the research, and that's just a divided issue. So some people feel that it's good and other people feel that it's bad. And I think to really put it in the proper perspective, they ought to have the right to decide themselves. We shouldn't force them to have to do that if they don't want to do it, so. And that was the issue we battled three years ago. It was a tough battle. In fact, I was kind of caught in between of what to do with that aspect, and I told them that if they needed my vote I would give it to them, of the people that were...my colleagues, and they needed my vote so I gave it to them. But the reason for that was is that they had the right to vote or the people still had the right to vote for it. [LB36]

SENATOR COOK: Okay. [LB36]

SENATOR HARMS: So did I answer your question or did I talk around it? The longer I... [LB36]

SENATOR COOK: Yes. I guess it's just for me personally kind of surprising to hear that... [LB36]

SENATOR HARMS: Yeah. [LB36]

SENATOR COOK: ...opinion still is out there. [LB36]

SENATOR HARMS: Yeah, they are. There are a lot of them. [LB36]

SENATOR COOK: All right. [LB36]

SENATOR HARMS: So. [LB36]

SENATOR CAMPBELL: Any other questions? Senator Harms, do you think it was just an oversight in the original bill that the deadline was put there, I suppose, making the assumption that most communities would have voted by then? But at least it would give...it's an equity issue I'm assuming from the communities. [LB36]

SENATOR HARMS: Um-hum. That's correct. I think it just was an oversight. You know, there was so many other issues, you remember, that we were battling. Well, Senator Howard, you remember that (laugh). There were just so many other issues that we had to deal with. I don't think they wanted to add anything else to that bill. We got it through and they just wanted to move it on. Now we have people now that are, like I said, their cities are starting to grow maybe a little bit and they'd like the right to be able to choose. [LB36]

SENATOR CAMPBELL: This was one of the last if not the last bill that was debated that session. Is that correct? [LB36]

SENATOR HARMS: I think it was pretty close. [LB36]

SENATOR CAMPBELL: Senator Howard. [LB36]

SENATOR HOWARD: Well, and I'll just support you with what you're saying is that was very contentious and cost was a big factor because they said the equipment would be pretty pricey to put it into a small town. But can you just tell me how this will mesh with...my memory of it was that they could vote to opt out. Would this be the same...if it were on the ballot there, it would be the same basic premise they could vote out of doing it? [LB36]

SENATOR HARMS: No, this would be just for them to opt in, to be able to decide whether they want to have it or not have it. [LB36]

SENATOR HOWARD: So basically it would probably be worded if you would...do you support fluoridation in your city water? [LB36]

SENATOR HARMS: Um-hum. Right. [LB36]

SENATOR HOWARD: Okay. [LB36]

SENATOR HARMS: See the controversy I think, if you remember right, we were getting correspondence from people who were dentists that said it was good, dentists that said it wasn't good; there was research said it was, research said it wasn't. And all of us were kind of caught in the middle. [LB36]

SENATOR HOWARD: Sure. Well, and that's really true. Those of us from the east side of the state that's had fluoride in the water since the fifties think that's a good thing, and the people in western Nebraska are trying to look at it critically, you know, are weighing it out basically. [LB36]

SENATOR HARMS: Well, some of that is not just western Nebraska, I think it's just rural Nebraska's views. They're pretty independent in their thinking. [LB36]

SENATOR CAMPBELL: Senator Bloomfield. [LB36]

SENATOR BLOOMFIELD: Senator Howard (sic), just to familiarize me a little bit with current law, once a city of over 10,000 opts out, votes...or over 1,000 opts not to have fluoride, do they have to vote on that again or is that a permanent...? [LB36]

SENATOR HARMS: No, that's there. I don't think that...I think once they're in, they're in as I understand it. Is that correct? And I think that this is just to opt into once you reach a thousand. [LB36]

SENATOR BLOOMFIELD: Like the city of Wayne up there that I don't know if they're fluoridated or not, but if they are not now, do they have to vote again in a given period of time to stay out or once they're out, they're out? [LB36]

SENATOR HARMS: I think once they're out, they're out. I think...I don't know. That's something you guys, you would have to check. I don't know for sure, Senator Bloomfield. [LB36]

SENATOR BLOOMFIELD: Okay. Thank you. [LB36]

SENATOR HARMS: It's a good question but I don't know what the answer to it is. [LB36]

SENATOR CAMPBELL: There may be someone in the hearing room who will testify to that history. [LB36]

SENATOR HARMS: Sure. [LB36]

SENATOR CAMPBELL: Any other questions? Senator Harms, will you be staying for closing [LB36]

SENATOR HARMS: Yes, I will. Thank you. [LB36]

SENATOR CAMPBELL: Okay. Thank you very much. We'll take the first proponent of LB36. Good afternoon, sir. [LB36]

KENT GREENWALT: (Exhibit 1) Good afternoon, everyone. My name is Kent Greenwalt, G-r-e-e-n-w-a-l-t. I am the first mayor of the city of Terrytown. I was elected to the mayor deal a little over four years ago. I'm in my second term right now, and I commend all of you for the work that you do down here. In my little city, I realize how much of a problem it can be and a challenge and you all have a big one this year, I can see that. I appreciate very much having the chance to talk to you and I won't take a lot of your time. But we had e-mailed a letter to all of you, and I don't know...I think, Senator Gloor, you said you just got the thing, so I don't know if you've had a chance to read it. But I'm going to read it. It's real short: We are writing in support of Senator Harms's LB36 to allow the constituents of municipalities a voice in determining the fluoridation of the city's water supply. The original bill did not include a provision for voter approval of a nonfluoridation option after June 1, 2010. Senator Harms's bill incorporates this in LB36, brings this all together and, Senator Harms, thank you very much for doing that. In addition to the health aspects of fluoridation, the issue is economics. Terrytown will be faced with buying $10,000 worth of equipment to put the stuff into the water, and then our engineers have told us it'll take another $10,000 per year to run it and buy the product and so forth. The annual operation cost...well, that is the $10,000. We highly recommend the state allow the residents of any city that has a population of over 1,000 residents after June 1, 2010, the opportunity to make their own fluoridation decision. As stated in the bill, it would allow us to bring this up to a vote which would certainly be swell. And I just learned this the other day, and I'll let you know where we are kind of in this issue. We had a meeting, and I did not get to it, about ten years ago. There was quite a few people of our...there was just a village at that point, that were at a meeting and they had a show of hands after they discussed this, whether they supported it or not, and they did not support putting it in. So I'll just leave that at that point. And I will say that the guys that we have working in Terrytown that control our waters have told

me that our natural fluoride in our water is awfully close to whatever that regulation is that we're supposed to be at. But I appreciate very much allowing me to say that. And, Senator Harms, again I appreciate letting me do this and bringing that about. And if there's any questions that you have from me I'll be glad to answer them. [LB36]

SENATOR CAMPBELL: Thank you, Mr. Mayor. Questions for the Mayor? Seeing none, than you very much for coming forward and for serving your community. [LB36]

KENT GREENWALT: Thank you very much. [LB36]

SENATOR CAMPBELL: Other proponents on LB36? Anyone else wishing to testify in favor? Next, we'll take opponent testimony. Good afternoon. [LB36]

DAVID O'DOHERTY: (Exhibit 2) Good afternoon, Senators. My name is David O'Doherty, O-'-D-o-h-e-r-t-y. I'm the executive director of the Nebraska Dental Association. And we appreciate Senator Harms's work on this bill and we also appreciate Senator Harms's support of LB245 in 2007 when we were involved with this issue. One of the mistakes we believe we made was to actually put the opt-out provision in the bill itself, because at that same time or similar time Senator Johnson also had a very controversial bill, so to speak, was the smoking bill, and he chose not to put the opt-out provision in. And in retrospect we wish we had not put the opt-out provision in. The NDA has long advocated for the Nebraskans to have the best possible oral health. Dentistry has succeeded in preventing disease better than any other area of health. Water fluoridation is one of our most potent weapons in disease prevention, and we want as many people as possible to have the benefits of this simple, safe, inexpensive, and proven healthcare measure. The Centers for Disease Control and Prevention also reports that Medicaid dental programs reduce their costs by up to 50 percent in fluoridated communities. I just want to explain some of the information that I passed out to you. This is a map of Nebraska and the cities that voted for it. It's kind of...the yellow text, highlighted text of communities that voted against it, and the communities that already have fluoride either naturally occurring or they put it in their water. The next two documents are two studies that were done. One was in 2000 by the state of Texas and the other one was in 2005 by the state of Colorado comparing the reduced dental cost, especially within their Medicaid programs, with fluoridated communities. The CDC has actually estimated that for every dollar spent, $80 is saved in dental costs. And one of the comments I wanted to reply to is, the mayor cited an annual cost of $10,000 for once the system is in place. When we were going through this, the department of...department of who, the state of Nebraska--sorry--actually went through every community that was affected by this bill and estimated their cost. And for a community of that size--1,000 to 3,000--the annual cost is probably about that, between $1,000 and $3,000. So we know that wells take about $5,000 to retrofit, and we know that cost is a concern. The good news is, every state has access to public health grants that they can apply that money to public health measures, and the one I printed off for you is Florida.

Florida has chosen to direct some of that money to help water fluoridation in their communities. Nebraska could choose to do that. There are only about three communities of under 1,000 that are growing at a rate that they might hit a thousand. Most of the communities under a thousand are actually declining. So what we are actually...the reason I'm giving all of this information, not just because of this bill, because we were informed by a couple of senators in this current session that they would like the Nebraska Dental Association to reintroduce the bill without an opt-out provision. So we would actually see your vote on this bill as what this committee feels about that happening. Be happy to take any questions. [LB36]

SENATOR CAMPBELL: Questions for Mr. O'Doherty? Senator Krist. [LB36]

SENATOR KRIST: Just a quick one. Did the federal...didn't Food and Drug just come out with a new fluoride level? [LB36]

DAVID O'DOHERTY: HHS, they're proposing to adjust the levels. They used to...if you look at a map, it started at .7 down in the southern states and it goes all the way to 1.2 in the northern states. They believed that because you lived in a warmer climate you would drink more water, therefore, you wouldn't need as much in the water. Well, they've found out that most people live in conditioned spaces and they don't necessarily drink more water in a heated community. Plus, they're looking at other sources of fluoride--toothpaste, applications--so they've adjusted it down...not really down, actually it's just all come to .7. So they're still supporting water fluoridation, just at a constant rate for all the states. [LB36]

SENATOR CAMPBELL: Okay. [LB36]

SENATOR KRIST: Thank you. [LB36]

SENATOR CAMPBELL: Senator Gloor. [LB36]

SENATOR GLOOR: Thank you for being here, Mr. O'Doherty. Mayor Greenwalt made mention of the fact that the naturally occurring fluoridation is pretty close to what would be recommended to go into the water system. Do you know anything...and I understand this legislation isn't just about Terrytown, but do you know anything about their specific fluoride...? [LB36]

DAVID O'DOHERTY: Terrytown specifically? [LB36]

SENATOR GLOOR: Yeah. [LB36]

DAVID O'DOHERTY: I don't. If I had...I could probably tell you while I'm here, this on top, it's called "My Water's Fluoride" the CDC puts out. You can just click on your state

and click on your county and look at all of the...I could tell you that in like ten minutes, not right now, what their naturally occurring is. But looking at the...you know, I think it's interesting, you look at the map and our southwest communities have a lot of naturally occurring fluoride already at the levels that they need to hit, and there's a few pockets up on the northeast also. [LB36]

SENATOR GLOOR: Okay. Thank you. [LB36]

DAVID O'DOHERTY: I would imagine...I'm sorry, I would imagine since Gering already has .5 that that's probably close to that since they're right next to Gering. [LB36]

SENATOR GLOOR: Very close. [LB36]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. O'Doherty, for coming today. [LB36]

DAVID O'DOHERTY: Thank you. [LB36]

SENATOR CAMPBELL: Anyone else in the hearing room who wishes to testify in opposition to LB36? Anyone who would like to provide neutral testimony on LB36? Seeing no one, Senator Harms, would you like to close? [LB36]

SENATOR HARMS: Senator Campbell, thank you very much for allowing me to close. I would just say that I believe very strongly that people should have the right and the opportunity to decide whether they want the fluoride or not. And if you get a thousand population base, you should have the chance to choose just as they did when we first put this bill in. So I would encourage you to bring it out and support that. Now we both know that when we do this that it opens the door for a lot of other things. I worry about that because we had such a battle to get it. But on the other hand I think that for where I live, I think that it's important for our citizens to have their opportunity of choice. So thank you very much. Appreciate it. [LB36]

SENATOR CAMPBELL: Senator Krist. [LB36]

SENATOR KRIST: Would you say you're in favor of local control and the citizens making their mind up? [LB36]

SENATOR HARMS: Absolutely right. [LB36]

SENATOR KRIST: Thank you very much. [LB36]

SENATOR HARMS: You're absolutely right. [LB36]

SENATOR CAMPBELL: Any other comments or questions? Thank you, Senator Harms, for being with us today. [LB36]

SENATOR HARMS: Thank you very much. Appreciate it. [LB36]

SENATOR CAMPBELL: And we will close the hearing on LB36, and move to LB51. Senator Krist has a bill requiring health clinics to have patient transfer agreements. Welcome, Senator Krist. [LB36]

SENATOR KRIST: (Exhibit 3) Thank you, Senator Campbell. Fellow members of the Health and Human Services Committee, let me just say that I'm thrilled to be here, and I'm learning a lot. I like to start off my introductions by telling you how much things will cost, so if you'll notice the fiscal note on this one is $2,000 and it comes out of the cash fund. And it would be a change, obviously, to the regulations that would take that, and that's their estimate. For the record, my name is Bob Krist, K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha. I appear before you today in an introduction of support of LB51. It is a bill that I have been working extensively on with my staff during the interim. At its core, it's patient safety, patient health, and patient protection. LB51 requires a health clinic, prior to being licensed under the Health Care Facility Licensure Act, to have a patient transfer agreement in effect with a local hospital. The patient transfer agreement must include that hospitals will accept patients covered by Medicare, provide emergency room services, and allow clinical privileges for physicians performing surgery at the clinic. There is an amendment that I would like to pass out, please. I'll speak to that in just one second. The agreement also must include procedures for appropriate transfer of patients' continuity of care and support for maintaining emergency capacity including on-call coverage. Regarding the clinical privileges for physicians hospitals will allow, I want to offer the amendment that you see which has the support of the state hospital association and our major hospital representatives. The intention of the bill is to make sure that physicians at health clinics are credentialed at the hospital in the event there is a need to use hospital services. The language of LB51, as introduced, however, implied that hospitals would be required to credential a physician. That is not my intent. Language of the amendment makes it clear that the hospital still has the ability to determine the criteria for credentialing and has the ability to accept or reject a physician based on that criteria. You always learn much when your bill is looked at by someone who really knows what they're doing. Going back to an overview of the primary components of the bill. The department will adopt and promulgate rules and regulations for the patient transfer agreement requirements, and as a minimum requirement, the hospital must have reasonable distance parameters, emergency room services and hospital capacity. And I want to make special note of Section 2 of the bill, and there you will specifically exempt in there...we specifically would exempt public health clinics operated by the department or any county, city-county, or multicounty health department from the requirement of needing a patient transfer agreement. I think that's self-explanatory. People visiting

government-run public health clinics visit them to either receive educational materials or perhaps a vaccination, not to undergo surgical procedures or profound procedures. Please understand, we as a state, and when we provide a license to a health clinic to open its doors, our state has put its stamp of approval on the facility. In our licensure process, the state should be concerned about more than mere physical plant concerns; namely, heating, ventilation systems, air conditioning, etcetera, which are part of the certification process. The state has responsibility to ensure the patient protection, patient safety, and patient health including the continuity of care in the event of an unfortunate accident are paramount concerns...my paramount concerns...and reviewed during the licensing process. Requiring health clinics to have active transfer agreements with a local hospital will ensure the continuity of care is in place for the patients. I've been asked why I have brought this forward. I would tell you that there are many examples of health clinics or facilities where we in the state of Nebraska have had issues. I would cite a situation that happened in Fremont where a doctor operating in an oncology setting resulted in cases of hepatitis throughout the community. I think this goes a long way to solving some of those issues. I would say that there was a, in the press, "botched abortion," that happened in a Planned Parenthood facility, that there were no patient transfer agreements in place, and the settlement was undisclosed; but she almost lost her life. I believe that this goes a long way to making sure that each patient that goes into a licensed and certified health clinic is treated with the utmost care and the concern for the patient is at the top of the list. I want to thank the committee for considering and your support of LB51. This legislation is extremely important to me. I would entertain any questions, and I will stay to close. [LB51]

SENATOR CAMPBELL: Sure. Senator Wallman. [LB51]

SENATOR WALLMAN: Thank you, Chairman Campbell. Welcome, Bob, in the hot seat. You know, and I appreciate what you're trying to do here. I've had people in certain hospitals that wanted out and get in a different hospital, and they got transferred eventually. But do you think we ought to grade hospitals like California infectious...you know, infections? How many people get infections and stuff like that? You know, they grade their hospitals. [LB51]

SENATOR KRIST: No, I think that's already in place. I think the licensure and certification, and maybe Senator Gloor can talk to the...how we maintain the quality of our hospital facilities. This speaks to a very small portion of health clinics. On the code, it's either a PFC...it is either a PHC, Public Health Clinic, or an HC...health clinic...H license only, that comes from the state of Nebraska roster of health clinics. By the way, all of these...it was published on the 28th of April, 2010, and all of these licenses run out on February 28, 2011, so they'll have to be renewed. It's a good time to talk about this kind of thing. And I'll give you an example in Omaha. Dr. Popp, who's well known as a cosmetic surgeon, has in place agreements. He has hospital privileges. He understands that if something goes wrong, he doesn't want to hesitate. He wants to call (inaudible)

and put it in, and put the patient in the best position and move them on to a facility. So I don't think this has anything to do with grading the facility. I think it is instilling at all levels the same demand on the quality of care and patient protection and patient safety that we would ask for out of a hospital. I hope that answers your question. [LB51]

SENATOR WALLMAN: Thank you. [LB51]

SENATOR KRIST: Thank you, sir. [LB51]

SENATOR CAMPBELL: Senator Gloor. [LB51]

SENATOR GLOOR: Thank you, Chairman Campbell. Senator Krist, thank you for introducing this and pointing out the importance of something like this to ensure patient safety issues. I'm sure someone will correct me if I'm wrong, somebody who's going to provide testimony, but I believe Medicare and Medicaid currently require transfer agreements just because of the safety issues. So as you already said, we're really talking about a very small subset of clinics. I'm still not sure about terminology, and this is the sort of thing that we can clearly sit down and work on between now and when this bill advances. But right now I think under statute, that health clinics relates to either ambulatory surgery centers or public health clinics, and you've exempted the public health clinics and wisely so. We may only be talking about ambulatory surgery centers, and that may be even then too narrow a definition for what you're trying to accomplish, so... [LB51]

SENATOR KRIST: This actually...if I could interrupt, this only applies basically to 19 facilities across the state. [LB51]

SENATOR GLOOR: Yeah, that doesn't surprise me, although your concern would be if it continued to grow... [LB51]

SENATOR KRIST: Yes, sir. [LB51]

SENATOR GLOOR: ...I will tell you that my real concern had to do with what you're trying to address with this amendment, and having not had a chance to digest it yet. I got to thinking of a case where we had a provider at my hospital who, because of quality concerns, had their privileges restricted. And their response was to go out and do their own ambulatory surgery center. I would hate to have them have been allowed under this statute, if passed, to be able automatically to come back and say, you got to let me back in with privileges, because now I'm running my own facility, and there's a transfer agreement. I don't think that's going to happen now under this. But that's an example of some of the concerns of why tightening it up made sense. This is...still have a lot of questions about it, but I know what you're trying to attempt to do, and I think it's well founded in that, and we'll see how the discussion goes. [LB51]

SENATOR KRIST: I think there will be testimony following that will address your specific questions. [LB51]

SENATOR GLOOR: Thank you. [LB51]

SENATOR CAMPBELL: Other questions? Senator Cook. [LB51]

SENATOR COOK: Thank you, Madam Chair. I guess my understanding was that if it was...a patient found himself or herself in an emergent situation, that the hospital must accept them for service. Is that not what the federal law rules and regs stipulate with or without insurance, with or without privileges from that particular practitioner? [LB51]

SENATOR KRIST: The hospital...if your question is, if there is a hospital with an emergency room, and you present yourself for treatment, can they refuse you? Yeah, the answer is no. [LB51]

SENATOR COOK: Okay. What if you're presented by someone else for treatment, and the answer is no? [LB51]

SENATOR KRIST: And therein lies the issue. [LB51]

SENATOR COOK: Okay. [LB51]

SENATOR KRIST: If there's no patient transfer agreement, and the patient has an issue at a health clinic, it has not been without a patient transfer agreement in place, it has not been an automatic. It has been, "please, transfer me to the facility," or, "there's something wrong with me." And without going...I'd love in Exec to share what I think is less than desirable public information about a couple of the issues that have happened where a patient has asked and been refused, and then called their own ambulance to come and pick them up. [LB51]

SENATOR COOK: Um-hum. [LB51]

SENATOR KRIST: That's the situation I'm addressing, and it gets pretty graphic, and it's...it...so, but I appreciate your question. [LB51]

SENATOR COOK: Okay. All right. All right. I have another question. Should I keep going or? [LB51]

SENATOR CAMPBELL: Absolutely. [LB51]

SENATOR COOK: All right, why, thank you. Senator Krist and everybody else in the

room is much too polite to mention that my face is swollen from having an allergic reaction to some medication. So when I thought about this, well, okay, let's say, and I go to the county public whatever, and I'm going to Timbukthree and I've gotten an inoculation to go there, why are they exempted? What if I get an allergic reaction to my special shot that I need to go for my well-deserved and adventurous trip to Timbukthree? Why are they exempted? [LB51]

SENATOR KRIST: (Laugh) You know, I don't want to go down that road, but it (laughter) does deserve... [LB51]

SENATOR COOK: But I want to go down the road to the airport to Timbukthree (laughter). [LB51]

SENATOR KRIST: We need to find the answer to that question. The public health facilities and counties, I'm assuming, under our study during the interim period. We were informed that those facilities already have transfer agreements in place, because they have a Medicare, Medicaid branch, and that's why they would not be included. And I do not want to be the source of that information, but I think that information is correct. We'll find out, though. [LB51]

SENATOR COOK: All right. One more, please. [LB51]

SENATOR CAMPBELL: Absolutely. [LB51]

SENATOR COOK: It's harder to talk with extra face (laughter). [LB51]

SENATOR CAMPBELL: You're doing just swell. [LB51]

SENATOR COOK: Why, thank you. [LB51]

SENATOR KRIST: Swell, being the operative. Oh, sorry (laughter). [LB51]

SENATOR COOK: I guess I would just ask and maybe this will come up in Executive Committee. You mentioned there are 19 facilities that this would impact across the state. I'd love to see which ones those are. [LB51]

SENATOR KRIST: I will provide you a list. I'm not sure I made copies of those, but I will provide you a list of those 19. [LB51]

SENATOR COOK: All right, thank you. [LB51]

SENATOR KRIST: Thank you, ma'am. [LB51]

SENATOR CAMPBELL: My apologies, Senator Cook. It's just the mischievous old English teacher in me that just couldn't resist. [LB51]

SENATOR COOK: It was perfect. [LB51]

SENATOR CAMPBELL: Any other questions for Senator Krist? Thank you very much. You'll be here for closing, I know. [LB51]

SENATOR KRIST: Yes, ma'am. Thank you. [LB51]

SENATOR CAMPBELL: Those wishing to speak in support of LB51? [LB51]

BRUCE RIEKER: (Exhibit 4) Chairman Campbell, members of the committee, my name is Bruce Rieker. That's R-i-e-k-e-r, and I'm vice president of advocacy for the Nebraska Hospital Association. It is my pleasure to be here. We, on behalf of the Nebraska Hospital Association and the 86 hospitals that we serve statewide, we are in support of LB51 with the amendment, as suggested by Senator Krist. I'm not going to reiterate to you the second paragraph in my testimony. It just recapsulates what is in the original bill, but in the third paragraph of my written testimony, as Senator Krist had put in his amendment, this is just how it would read with that language where it says, "and shall allow qualified physicians performing surgery at the health clinic clinical privileges pursuant to Section 71-2048.01 of the existing statutes. The rest of that paragraph spells out or states what that statute says. And what it says is that a hospital required to be licensed shall not deny clinical privileges to physicians or surgeons and other licensed practitioners solely by reason of that license held by the practitioner. But what we think is important from a hospital perspective is for us to be able to maintain quality and ensure patient safety as Senator Krist had explained. In the reason for the amendment, it says that each such hospital shall establish reasonable standards and procedures to be applied when considering and acting upon an application for medical staff membership and privileges. Once an application is determined to be complete, we have 120 days to inform the applicant whether or not that membership and those privileges would be accepted by the hospital. What this allows us to do is maintain the quality and integrity of the services that we provide rather than as the original legislation was written that mandated that we accept or give them privileges. So we think that the bill, as introduced with the amendment, is very important to protect patient safety. Patient transfer agreements are important, and for those reasons, we support LB51. [LB51]

SENATOR CAMPBELL: Questions for Mr. Rieker? Mr. Rieker, I have a question. Senator Krist indicated that he thought that there were counted 19 facilities that this would...that that classification would entail. Do you concur with that number or approximately that number? [LB51]

BRUCE RIEKER: I don't know. I'm not aware of which facilities there are that do not have these patient transfer agreements, but whether they're...whether it's those 19 or other health clinics, in order to be licensed, it is prudent practice in the delivery of healthcare that those patient transfer agreements be in place. So for those that are under the radar, so to speak, this is a good thing to do, but I don't have a number. [LB51]

SENATOR CAMPBELL: Okay. Senator Cook. [LB51]

SENATOR COOK: How difficult is it to procure a patient transfer agreement among the...when we see the 19? What's that process and...? [LB51]

BRUCE RIEKER: Well, the process, as I understand it, Senator, is that under what would be proposed here or what happens already in practices that one facility approaches another one with regard to establishing these transfer agreements, what the scope of practice would be required, if there would be such things as on-call duty required, and other...basically, the scope of what practice would...or what procedures and practices would be required from both entities? I'm not aware of a standard transfer agreement that one size fits all. I think that it depends on each different facility, and what sort of business relationship they would deem or desire to enter into. But it would be a contractual relationship between both parties. [LB51]

SENATOR COOK: Thank you. [LB51]

SENATOR CAMPBELL: Any other follow-up questions? Sorry. Senator Gloor. [LB51]

SENATOR GLOOR: Thank you, Senator Campbell. You know, I'm just sitting here thinking that this may even have a stronger quality outcome than we realize, looking at the intent of the legislation; that being, if there's a clinic that's unable to get a transfer agreement. In all likelihood, it's because there is some profound concern by an institution that they don't do a good job there. And they may be told no by a dozen different facilities, in which case their inability to get a transfer agreement would be very limiting on their scope of business. But that is another issue to probably talk about, because it would appear to me if you can't get a transfer agreement, you have to shut down. And I hadn't thought about it to that extent, but another note to make as we talk about this further. I'm asking kind of whether your read might be the same as mine, if you think about it in the context of requiring it is a good thing. But, if it's unable to be obtained, what's the outcome of that? [LB51]

BRUCE RIEKER: We would agree wholeheartedly, Senator. As we've discussed this over the last few days with our policy development committee and our board of directors, one of the consequences of this would raise the level of patient safety and care, because the industry could help police itself in making sure that, you know, the

highest standard of care is provided, and hospitals would be able to determine whether or not somebody has the competency in another clinic or practice to meet the standards at that hospital as well. [LB51]

SENATOR GLOOR: Yeah, I think we'll have to think about this, because somebody at some point in time might also out of desperation bring up anticompetitive behavior as an issue here. And so, we'd hate for that to be one of the things that smudges the commonsense built into this. I'll make a note on that. [LB51]

BRUCE RIEKER: Um-hum. [LB51]

SENATOR CAMPBELL: It would seem to be that it will be important for us to look at, if the number is 19. But what exactly the hospitals and the location of those hospitals, because I'm sitting here thinking, and you may be limiting...you want the patient safety to be there, but how does this ensure...and in the rural areas of the state, if you're running into problems? [LB51]

BRUCE RIEKER: Well,... [LB51]

SENATOR CAMPBELL: And I'm...I mean, obviously, you want that patient safety to be no matter where it is in the state of Nebraska. But it would seem to me that one of the things we will have to look at is those 19 facilities. [LB51]

BRUCE RIEKER: I agree with you, Senator, and as not only from that perspective, but as I have read, reread, and discussed this legislation with many of our hospital executives, there is one word that causes concern in the rural areas, and that's where it says, local hospital. That one, I think that we need to take a close examination of what that means, and maybe it should just be stricken. It says, with a licensed hospital in Nebraska. That's part of an open-ended conversation that our board has had, but... [LB51]

SENATOR CAMPBELL: I'm just trying to think of some example in the state where a community might have a clinic,... [LB51]

BRUCE RIEKER: Um-hum. [LB51]

SENATOR CAMPBELL: ...but it may not have what would be described as a community hospital. [LB51]

BRUCE RIEKER: Right. [LB51]

SENATOR CAMPBELL: Would that be accurate from that standpoint? [LB51]

BRUCE RIEKER: Well, I'll give you probably the most...I think that would be accurate, but let's take Valentine and North Platte. I mean, there's 200 miles between them. What's local? So...and it depends on the level of care that could be provided, because we have hospitals, and we have critical access hospitals, and then we have referral hospitals that have higher levels of care that they can provide simply because they have more specialties available. [LB51]

SENATOR CAMPBELL: We certainly looked at a number of those issues last year when we debated and discussed LB599...499? [LB51]

BRUCE RIEKER: LB999? [LB51]

SENATOR CAMPBELL: LB999, thank you. [LB51]

BRUCE RIEKER: Yeah. I'll never forget it (laugh). [LB51]

SENATOR CAMPBELL: How quickly we forget, huh, (laughter) oh, when you're having fun. But there were a number of those issues that came into play, and we also discussed a little bit of some...of these issues this summer when we talked about national healthcare, because you raised some of those issues for us. [LB51]

BRUCE RIEKER: Right. [LB51]

SENATOR CAMPBELL: Other questions or comments from the senators? Thank you, Mr. Rieker. [LB51]

BRUCE RIEKER: You bet. [LB51]

SENATOR CAMPBELL: Others in the hearing room wishing to testify in favor of LB51? Good afternoon. [LB51]

KIM ROBAK: Senator Campbell and members of the committee, my name is Kim Robak, R-o-b-a-k. I'm here today on behalf of Madonna Rehabilitation Hospital, and I wanted to address specifically the amendment that is before this committee with regard to LB51. And when the bill first came out, as we all do, we sent the bill out to a number of our clients and got feedback that LB51 implied from a hospital's perspective that a hospital would have to credential a physician. And we want to thank Senator Krist, because when we raised this with him, he immediately said, oh, no, that's not the intent. The intent is that the hospitals still have the opportunity to be able to credential based on the criteria of the hospital. So Senator Krist worked with us, and the language that's before you is language that is appropriate language, I think. Mr. Rieker mentioned that from the hospital association perspective, but in visiting with other hospitals across the state, they are also appreciative of Senator Krist working with us. That still allows the

hospital the opportunity to be able to determine the criteria and to determine whether or not a specific physician meets those criteria under LB51. And so with that proposed amendment, Madonna supports the bill with that language. I'd be happy to answer any questions. [LB51]

SENATOR CAMPBELL: Questions that you might have? Senator Gloor. [LB51]

SENATOR GLOOR: Thank you, Chairman Campbell, and thank you for your input, Ms. Robak. You heard my comment about anticompetitive behavior. Can you see that we might (inaudible)... [LB51]

KIM ROBAK: I did hear, but could you repeat, because I wasn't sure if I understood? [LB51]

SENATOR GLOOR: Well, my concern would be that under this...if enacted, that it would seem to me that if you can't comply with getting transfer agreement, then your license is at risk. If your license is at risk, your business is at risk. If your business is at risk, you're going to be scrambling to find ways to counteract this, and I would think someone would run screaming, saying this is anticompetitive behavior. I'm being froze out of the market for business reasons. I'm trying to think through all the ramifications. Understand that I'm supportive of the concept even more so when I see the type of subset we're talking about here which is very small and very specific to certain areas, but. [LB51]

KIM ROBAK: And I understand the potential for that happening, and, in fact, I'm aware that there were lawsuits that have been filed in the past in a situation a little bit different than this, but where somebody had been frozen out of the market and brought a lawsuit with regard to a local Lincoln hospital, and so it's not far-fetched, but it would seem to meet...well, ultimately, the case was dismissed in appellate court as not being at a competitive. But I can certainly see that that argument could be brought, and so, obviously, you'd want to make sure that that didn't occur. [LB51]

SENATOR GLOOR: Yeah, we would want nice, tight legislation here that protects, I think, as much as possible that happening. Anyway, I appreciate your input on that perspective. [LB51]

KIM ROBAK: Thank you, Senator. [LB51]

SENATOR CAMPBELL: Any other questions? Senator Howard. [LB51]

SENATOR HOWARD: Well, this is kind of a...I mean, I'm a fish out of water on this (laugh), so you'll have to help me, Kim. If I am following this, this health providing facility would have to have an agreement with a hospital, whether it's the closest or...a hospital. But, if for some reason, the hospital didn't accept or didn't want to give clinical privileges

to the doctor that was running the clinic, would that mean...well, it'd mean a couple of things probably, that the clinic maybe wasn't...maybe had problems or the doctor had questionable behaviors. I'm thinking of up in Fremont. Would that...do you see that as ultimately being good or would that be detrimental too? [LB51]

KIM ROBAK: And I can only speak from this...I can only speak from the perspective of the hospital. I can't speak from the perspective of the health clinic. [LB51]

SENATOR HOWARD: Okay. [LB51]

KIM ROBAK: But from the hospital's perspective, to credential a physician, there are specific criteria that are based on patient safety. And the idea is, anybody they credential should meet those specific criteria. So from that hospital's perspective, they would want all of their credentialed employees to meet those standards. I can imagine from the health clinic's perspective, that they might have a different viewpoint. But if someone were coming into the hospital, they would certainly want to meet those criteria. And I may not be answering your question. I just think it comes from a... [LB51]

SENATOR HOWARD: No. It helps me to better understand how it works. And there was another part of that I was going to ask you. Oh, if the hospital credentials that physician, does that mean that physician has hospital privileges? Is that the same thing? [LB51]

KIM ROBAK: I believe it's the same thing, but I'm looking at Senator Campbell (laughter) who serves on hospital board... [LB51]

SENATOR CAMPBELL: Oh, dangerous (laugh). [LB51]

SENATOR HOWARD: (Laugh) Yeah, I don't know the terminology, so I don't know if that... [LB51]

KIM ROBAK: But I believe that is the same. I believe it's the same thing, Senator. It would depend on how you were credentialed. Actually, Senator Gloor would have a better perspective than either one, than me. [LB51]

SENATOR CAMPBELL: Yeah. [LB51]

SENATOR GLOOR: (Inaudible) credentials. [LB51]

SENATOR CAMPBELL: I'll let Senator Gloor answer that question. [LB51]

SENATOR GLOOR: Well, privileges are a subset of credentials. [LB51]

KIM ROBAK: Okay. [LB51]

SENATOR GLOOR: Credentials means that you have the ability to take care of patients within the hospital. Privileges would define and what exactly can you do? Like an obstetrician would not...might be credentialed, but their privileges would clearly define what they could do as an obstetrician, not brain surgery, not cancer treatment, but the subset you would expect an obstetrician to do with those credentials... [LB51]

SENATOR HOWARD: In that particular hospital? [LB51]

SENATOR GLOOR: Yeah. [LB51]

SENATOR HOWARD: Okay. Thank you. [LB51]

KIM ROBAK: Okay. Thank you (laugh). I learned a lot. [LB51]

SENATOR HOWARD: Thanks all the way around (laugh). [LB51]

SENATOR CAMPBELL: And, Senator Howard, the process and all of the different criteria may be different in each hospital. It depends on how they set up the credentials, and the credentialing goes all the way to the board of directors and the board of trustees. [LB51]

KIM ROBAK: That's correct. [LB51]

SENATOR HOWARD: So that leads to the question, if for whatever reason, take the Fremont case...the Fremont that would be Dodge County Hospital didn't allow that clinic individual to have privileges. I suppose he could go to Methodist Hospital in Omaha and get accepted, and then, of course, that's quite a transfer for a patient. [LB51]

KIM ROBAK: It's possible that you might be credentialed in one hospital and not another. And, so again, that's why each of the individual hospitals want to be able to have that opportunity to determine. [LB51]

SENATOR HOWARD: Interesting. Thank you. [LB51]

KIM ROBAK: Okay. Thank you. [LB51]

SENATOR CAMPBELL: Okay. Thank you. Also wishing to testify in favor of LB51? Good afternoon. [LB51]

AL RISKOWSKI: (Exhibit 5) My name is Al Riskowski, R-i-s-k-o-w-s-k-i. I'm executive director of Nebraska Family Council. This bill typically is a little bit outside of where we would testify on behalf of. We typically work for traditional family values, but what

brought me here, more than anything, I was surprised to learn that this type of legislation wasn't already in place. And listening to the conversation made me just cut to why I'm here...a little bit of experience. Prior to becoming executive director of Nebraska Family Council, which I've been there about ten years, I was a minister for over 25 years. And one of my early pastorate was in Chappell, Nebraska. While in Chappell, I was also...you're very involved as a minister, and so I was also an EMT, and while I was there, Dr. Pham came and opened up a clinic in Chappell. The nearest hospital is 30 miles away, Sidney. When Dr. Pham came, it just seemed...I mean, there was no debate whatsoever. Immediately, what was set up was a plan in case something happened in the clinic or in the community with us on the EMT staff to make a smooth transition for Dr. Pham to Sidney hospital in case of an emergency. And when I learned that this was not necessarily required of communities or clinics, I thought, I was just...I was really surprised about that, because it just seems commonsense that if you have a clinic in some small community or wherever it is, to have some sort of plan of action with the nearest hospital is only commonsense in regard to patient care. So that's basically why I'm here today, just hoping that Health and Human Services will see this as simply a simple step which seems like every clinic should already have in place. But I'm surprised they don't, apparently, and hope that you will move this forward for consideration by the full Legislature. [LB51]

SENATOR CAMPBELL: Okay. Questions that the senators have? I think they're looking at your testimony. Any questions? Thank you for coming today. [LB51]

AL RISKOWSKI: Thank you. [LB51]

SENATOR CAMPBELL: Next testifier in favor of the bill? We will next go to those in the hearing room who would like to testify in opposition to LB51? Those opposed to LB51? Those who would like to provide testimony in a neutral position? No neutral position? Senator Krist, would you like to close on your bill? [LB51]

SENATOR KRIST: I would very briefly. As I said, I owe a great deal to my staff and a few others who helped me during the interim period, trying to put this legislation together. As way of explanation for the handout which we semi got copied the right way, eventually, that is all extracted out of this book which I will bring to committee, and I can get copies of, and you may already have which is the state of Nebraska roster of health clinics. And the extracted clinics are those that fall into those I talked to you before on HFC or...in those two categories, HC or PHC. With that, I will tell you that I think it is extremely important for patient safety, patient care, in our health, in our communities, to make sure that we as a state, we as a Legislature, do our best job to make sure that when someone walks into one of those clinics, that they have the best opportunity to provide quality care. There will be some things, I'm sure, we need to talk about and work out, but I appreciate you hearing, and I appreciate your comments. Thank you. [LB51]

SENATOR CAMPBELL: Senator Gloor. [LB51]

SENATOR GLOOR: I just want to make one final comment, so that we don't forget this and that is, I'm concerned that the department's use of the term, health clinics, is more generic in nature and not necessarily a match to statute. So we want to make sure that we look at that closely, so that we accomplish what we're trying to do here. Thank you. [LB51]

SENATOR KRIST: Absolutely, and I will go to the record and say...and I can provide names. HHS came in today and talked to me on licensure and certification, and so if there's any of those questions, I'd be happy to provide that background. I'll have to ask your questions and go, you know, but I'll get them for you. [LB51]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Krist. [LB51]

SENATOR KRIST: Thank you, ma'am. (See also Exhibit 6) [LB51]

SENATOR CAMPBELL: (See also Exhibit 7) With that, we will close the hearing on LB51 and proceed to LB179, so I'll open the hearing. Senator Krist is also the sponsor, to change pharmacy provisions. [LB51]

SENATOR KRIST: (Exhibits 8 and 9) Thank you, Madam Chair. Fellow members of the Health and Human Services Committee, for the record my name is Bob Krist, I spell K-r-i-s-t. And I represent the 10th Legislative District in Omaha. And I just about caught myself doing it again, to give you Kelo-Romeo-India-Sierra-Tango. (Laugh) But as I have always tried to do, fiscal note on this one you'll see is zero which is always a good thing in today's environment. I appear before you today in introduction and support of LB179, a bill I introduced on behalf of the Nebraska Pharmacists Association. I am not qualified to make these kinds of things, but they brought it to me and I think it makes sense. An amendment that has been drafted and is being shared with you because I'm going to do it right...the amendment has been drafted and is being passed out now from the Department of Health and Human Services regarding two provisions of LB179. And I will review these provisions. Section 1 on page 6 of the bill strikes language currently in the Uniform Controlled Substance Act. Currently, when a pharmacist fills and dispenses a Schedule II controlled substance, the pharmacist who fills the prescription must sign and date on the face of the prescription. This requirement, in essence, cancels the prescription. This provision is not required by federal law. The reason the NPA is removing the language is to prepare for electronic prescribing of controlled substances which is currently being considered by the Federal Drug Enforcement Agency. By removing this unnecessary language, pharmacies in Nebraska will be ready to accept electronically prescribed controlled substance prescriptions once they are allowed by the DEA. There are several folks behind me, I know at least one, probably

two, that would like to speak to the technical side of this. And I, as Senator Withem said yesterday in committee, I have just expended the entire knowledge that I have on this subject, so I will (laughter)...but I do have a letter from the Nebraska Board of Pharmacies signed by Kevin Borcher that supports the effort. So with that, I will be here to close. [LB179]

SENATOR CAMPBELL: We've all been in those shoes, trust me. Questions for Senator Krist on the knowledge that he has? (Laugh) Senator Howard. [LB179]

SENATOR HOWARD: Well, I just want to make sure I understand what you want to do. You want to take out the requirement that the date of filling the prescription and the signature of the practitioner filling...the pharmacist filling it? [LB179]

SENATOR KRIST: Yes, ma'am. When he actually has a written script and writes across the front of it in terms he basically cancels the prescription and it is part of our process. [LB179]

SENATOR HOWARD: Why would we want to take out the date that the prescription was filled? (Laugh) I mean, that's kind of helpful information, I don't... [LB179]

SENATOR KRIST: It was very well explained to me and I would hope that it will be explained to you. That's, as I said, but thank you. [LB179]

SENATOR HOWARD: But it made sense at the time. [LB179]

SENATOR KRIST: Oh, it made perfect sense. But, you know,... [LB179]

SENATOR HOWARD: Okay, thank you. [LB179]

SENATOR KRIST: ...it's like speaking for your wife, I don't want to do that. [LB179]

SENATOR CAMPBELL: Thank you, Senator Krist. [LB179]

SENATOR KRIST: Thank you. [LB179]

SENATOR CAMPBELL: Those wishing to testify in support of LB179. Good afternoon. [LB179]

JONI COVER: (Exhibits 10 and 11) Good afternoon, Senator Campbell, members of the committee. My name is Joni Cover, it's J-o-n-i C-o-v-e-r. I'm the executive vice president of the Nebraska Pharmacists Association and I'm here to testify in support of LB179. I'd like to say thank you Senator Krist for introducing this bill for us. The Pharmacists Association periodically introduces cleanup type of bills and this is one of those that

we're bringing forward. Let me answer your question first and then I'll give you the background on the other two provisions that are also included in the bill. We are not trying to remove the signature or the date of the prescriber. Once the prescription...when a Schedule II controlled substance is dispensed in a pharmacy it has to be done on a piece of paper. You can't electronically prescribe from or you can't fill from an electronic prescription. So the prescription comes into the pharmacy, it has the physician's signature and it has the date. What happens after the pharmacist fills is they make a slash across it and then the pharmacist signs and dates that they are the ones who filled it and it was filled on this day. [LB179]

SENATOR HOWARD: The script. [LB179]

JONI COVER: The script, exactly. So that is the provision that we're trying to get rid of is that action by the pharmacist in order to allow us then to, once the DEA says we're good to go, we can now accept controlled substance prescriptions. But if we have that requirement in statute it will prohibit us because the current language that's being considered by the DEA under electronic prescribing of controlled substances doesn't allow for paper, it has to be completely electronic. And since this is not a federal law requirement, we decided that it would be best so that we are ready to go when the DEA finally says you're ready to go, we remove the language. So that's the reason that that's coming out. We're not taking out any part of the legal requirements of a prescription, just the action that the pharmacist has to fulfill in their dispensing. Does that kind of make sense? [LB179]

SENATOR HOWARD: Well, the question I would have, and we're kind of getting our questions out of order here, but is that, when would that...the way this is written would that occur at the time that the pharmacy switches over to the electronic... [LB179]

JONI COVER: Yes, well, no it would be now, it would be now so we wouldn't have to do requirement now. And... [LB179]

SENATOR HOWARD: So even though you're still operating with paper, you want to take out the requirement now. [LB179]

JONI COVER: Right. [LB179]

SENATOR HOWARD: Why don't you put it in to take it...that it would remain in place until such a time as it is electronic? [LB179]

JONI COVER: We could do that. But since it's not something that is required under federal law under the Controlled Substances Act, we just decided to eliminate it. And I will tell you that there's many other states that are looking into doing the same exact thing, so. [LB179]

SENATOR HOWARD: Has any state done that yet? [LB179]

JONI COVER: Yeah, there have been some. And I was going to bring you a list of those who no longer have it as a requirement and I forgot to do that. So I will get that information to you if you would like it. [LB179]

SENATOR HOWARD: Yeah. I just have some concerns about are we doing something prematurely that maybe we should do in a timely fashion. [LB179]

JONI COVER: I personally don't think so because it's just another step that a pharmacist goes through when they fill the prescription. And they still have to then take the piece of paper and file it in their filing system which is required. So... [LB179]

SENATOR HOWARD: But there must have been a reason behind that, as to why that was put in initially. [LB179]

JONI COVER: I believe it was because that way there would be any...less likely that the prescription would somehow end up back in the hands of the patient. I would have to ask those folks who I represent exactly why we do that. I don't know really the whole history behind that. But it's not a necessary requirement. We want to be ready to do electronic prescribing, and so we just thought it would be best to take it out. [LB179]

SENATOR CAMPBELL: Other questions for Ms. Cover? [LB179]

JONI COVER: There's two other...I realize my time is up, but I'm sorry, I have... [LB179]

SENATOR CAMPBELL: That's all right. No, we asked questions. That's quite all right, you go ahead. [LB179]

JONI COVER: Okay. Well, the other two provisions in the bill that I thought I ought to touch on briefly, one is to add a definition of drug sample. That term is not currently defined in the Pharmacy Practice Act. This committee has had a few issues about what a drug sample is. And so we decided to add it. We worked with the drug manufacturers on a compromise definition. And if you look up the federal definition of a drug sample you'll see this language. So we pulled it from federal law. And I believe that the...I can't speak for them, but I believe that they were okay with the language. The last thing it does is it allows for--and this is the amendment that I'm talking about, I'm not talking about the actual bill--the other thing the amendment does is to add a provision to clarify when a pharmacist can reciprocate their license into the state of Nebraska. Currently, our language is addresses a pharmacist's licensure by examination. But it does not address a pharmacist's licensure by reciprocity. And we are one of the few if not the only state that has such a cumbersome process. And so to clarify, we added this

language. It's somewhat similar to the language that was in our practice act prior to the passage of the Uniform Credentialing Act. So we had language we liked in the Uniform Licensure law, and then the Uniform Credentialing Act came along. And basically, we missed...we didn't catch it. So we're trying to go back and fix. So now we have clear language of when a pharmacist wants to be initially licensed or a score transfer when they want to be licensed by reciprocity. So that was our attempt. I will tell you that we had a discussion about this issue at the Board of Pharmacy meeting on Monday, and we worked with the department on this language. So I believe that they are, again I cannot speak for them, but I believe that they were comfortable with this amendment. So with that, I will stop talking. [LB179]

SENATOR CAMPBELL: (Exhibit 9) We do have a letter of support from the Nebraska Board of Pharmacy. [LB179]

JONI COVER: Okay, okay. [LB179]

SENATOR CAMPBELL: Senator Gloor. [LB179]

SENATOR GLOOR: Thank you, Senator Campbell. Joni, haven't there been some recent rules or regs at a national level that relate to the use of sample medicines within clinics of some kind? [LB179]

JONI COVER: I just am vaguely familiar with some of those. I guess our point isn't to interfere with the use of drug samples, it's just to define exactly what a drug sample is, so... [LB179]

SENATOR GLOOR: Well, what is the...I have a concern that we don't restrict the use of samples when it comes to helping people who are...that may be their only way of getting medications. [LB179]

JONI COVER: Right, right. [LB179]

SENATOR GLOOR: So, you know, my underlying concern here is let's make sure for those people who might survive literally on drug samples we're not making it harder for them to get drug samples. But what is the benefit of doing this labeling? I mean, are we making sure that it's... [LB179]

JONI COVER: It's required under federal law. And we don't put the label on, the label comes from the manufacturer. So when you get a drug sample from your doctor it says drug sample, not for sale or professional use only, not for sale. That labeling comes from the manufacturer. So that's how you identify that it's a drug sample is that it says professional sample or drug sample or whatever on the container that it comes to you from the physician. So we're not...we're not at all trying to address who can give them or

how they're given, it's just when you see this container and it says professional sample, not for sale or similar words you know it's a drug sample. [LB179]

SENATOR GLOOR: So I think maybe you answered my first question which is this is already required federally. We're just changing state statute to be in compliance that samples need to be clearly defined as samples. [LB179]

JONI COVER: We are just adding a definition of drug sample in our state statute because there currently is not one in the practice act. There is one in the Wholesale Drug Distributors Act, but there's not one in the Pharmacy Practice Act. [LB179]

SENATOR GLOOR: But in practice, suppliers of samples are already probably having that labeling on there. [LB179]

JONI COVER: Um-hum, right, yeah. This isn't...this is not a new labeling...absolutely not. [LB179]

SENATOR GLOOR: Okay. When it changed... [LB179]

JONI COVER: It just...the only thing it changes is one page of the Pharmacy Practice Act to add a definition. So that's all it does. [LB179]

SENATOR GLOOR: Got it. [LB179]

SENATOR CAMPBELL: Senator Howard. [LB179]

SENATOR HOWARD: Thank you. I'm still trying to process this...the prescription, the written prescription. If you'll bear with me so that I can... [LB179]

JONI COVER: Okay, that's fine. [LB179]

SENATOR HOWARD: ...have a clear picture of it. Pharmacies generally operate with more than one pharmacist or typically operate with more than one pharmacist that work there. [LB179]

JONI COVER: Um-hum. [LB179]

SENATOR HOWARD: I'm thinking Walgreens or and sometimes even operate with pharmacists that move from location to location. They don't necessarily have one particular store. In those cases wouldn't it be important to know who had filled the prescription? [LB179]

JONI COVER: They have a log that they complete every day of who fills the

prescriptions in the pharmacies. So they already know that. [LB179]

SENATOR HOWARD: Well, then what is the need for having the notation on the script? I'm still trying to sort this out. Why was that put in? I don't really think that it was put in place so that if for some reason the script is handed back to the patient that they don't use it or something. Why would you give it back if that was the case? (Laugh) [LB179]

JONI COVER: I don't know. I really honestly don't know the history behind that. I just know that that is the standard practice in pharmacies across the country. It's not a federal law requirement. I've actually asked the same question, why do you do this if it's not something that's required under federal law under the Controlled Substances Act? And I'm not sure I clearly understand how it was put in place either. [LB179]

SENATOR HOWARD: Well, it would seem like some sort of verification. [LB179]

JONI COVER: The best answer I can... [LB179]

SENATOR HOWARD: I can understand if they filled out a ledger or put it in the computer in some fashion so that it is traceable as to who did fill that prescription in case there was an error,... [LB179]

JONI COVER: Right. [LB179]

SENATOR HOWARD: ...in case something, God forbid, should be wrong. [LB179]

JONI COVER: Right. And they have that mechanism to do that. It's just really this is just an act of, I guess, cancelling the prescription. So the prescription is no good after it gets that little across and then it goes into the file. [LB179]

SENATOR HOWARD: How long has that been going on? How long has that been the practice? [LB179]

JONI COVER: I have no idea. I'm guessing it's been a long time, so. [LB179]

SENATOR HOWARD: A long time. [LB179]

JONI COVER: I could shoot and just shoot a number out, but I (laugh) don't have any idea if I'd be close. [LB179]

SENATOR HOWARD: I'd rather actually know the truth. [LB179]

JONI COVER: So, Senator Howard, I promise I will find out all those...answer all those questions. And I will get back to you because I don't know the answer. [LB179]

SENATOR HOWARD: Okay. I will count on you to do that. [LB179]

JONI COVER: Longer than I've been around at the Pharmacists Association, so. [LB179]

SENATOR HOWARD: But now you want to discontinue it. [LB179]

JONI COVER: Now we want to discontinue it. [LB179]

SENATOR HOWARD: Thank you. [LB179]

JONI COVER: You're welcome. [LB179]

SENATOR CAMPBELL: Any other questions? And I do want to note for the record that we received the support, as I said, from the Nebraska Board of Pharmacy and it did include comments with regard to the amendment. [LB179]

JONI COVER: Okay, perfect. And I also handed to... [LB179]

SENATOR CAMPBELL: And a letter from Creighton. [LB179]

JONI COVER: Right, Dr. or Ron Hospodka was going to be here to testify on this bill. This is an issue that's very important, the reciprocity issue is very important to both of our school and our College of Pharmacy. And he was unable to attend today. So he did offer that letter and I hope you'll have a chance to read it. [LB179]

SENATOR CAMPBELL: Excellent. Thank you very much. [LB179]

JONI COVER: You're welcome. [LB179]

SENATOR CAMPBELL: Anyone else in the hearing room who wishes to testify in favor? [LB179]

BILL MUELLER: Senator Campbell, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Pharmaceutical Research Manufacturers of America and we support LB179. As Ms. Cover told you, we suggested to her that they use the federal definition of a drug sample. Joni has shown me the language. I've not seen the amendment. I trust her if she says that that's in the amendment. We support it. We'll read it between now and General File. (Laugh) But it does make sense to use the federal definition in state statute so that it's not a different requirement in Nebraska than it is in any other state in the country. And we appreciate the cooperation of the Pharmacists Association. [LB179]

SENATOR CAMPBELL: Questions for Mr. Mueller? Thank you very much. [LB179]

BILL MUELLER: Thank you. [LB179]

SENATOR CAMPBELL: Anyone else in the hearing room to testify in favor? Good afternoon. [LB179]

KATHY SIEFKEN: Good afternoon, Chairman Campbell and members of the committee. My name is Kathy Siefken, S-i-e-f-k-e-n, and I am the executive director of the Nebraska Grocery Industry Association and we have pharmacies in many of our grocery stores. It's one of those added areas that most of the new stores have. We are here in support of this legislation. We have found that it's very difficult to hire pharmacists to man those pharmacies sometimes. We have several counties throughout the state that don't even have a pharmacy in them. And so anytime we can make it a little bit easier and more inviting for pharmacists to become licensed in this state or qualified people move to this state, we would be in support of that. If you have any questions, I'd be happy to try to answer them. [LB179]

SENATOR CAMPBELL: Questions for Ms. Siefken? Thank you very much. [LB179]

KATHY SIEFKEN: Thank you. [LB179]

SENATOR CAMPBELL: Anyone else to testify in favor of LB179? Anyone in the hearing room to testify in opposition to LB179? Opposition? Anyone here to provide neutral testimony? We're not big on opposition and neutral today, are we? With that, we'll go to the closing of LB179. And, Senator Krist, it sounds to me like you're doing just fine on the amount of information you have. [LB179]

SENATOR KRIST: We owe you several answers and we will get back to you. Just to protect my own integrity, when this was brought to me I made several phone calls and read some of the...some of my friends pharmacists. Does it make sense? Absolutely. I sat and listened to the dialogue in terms of posturing ourself to move forward. If they don't change language now, they'll have to change at a later date. And I think it's a very forward-looking effort to try to do that. But we will answer the questions that need to be asked, obviously, before Exec. Thank you very much. Thanks for hearing my two bills today. [LB179]

SENATOR CAMPBELL: Thank you, Senator Krist. With that, we'll close the hearing on LB179 and move to LB274, Senator Gloor's bill on...to change the provisions relating to the return of dispensed drugs and devices. [LB179]

SENATOR GLOOR: Thank you, Senator Campbell, fellow committee members. I am

Mike Gloor, G-l-o-o-r, and this falls under the category as a bill of even though I've been in the industry for a while, this was one of those ah-ha's for me. You mean we don't do this, this makes sense. So hopefully you'll agree with me; or if not, we'll have some dialogue about it. For years the commonly accepted method of disposing unwanted or leftover prescription drugs was to flush them down the toilet, very sophisticated approach. That applied not only to our homes but also pharmacies, hospitals. Now that concentrations of certain drugs are being found in rivers and water sources used for drinking water, an alternative form of disposal is the preferred method and that method is incineration. A nationwide drug disposal program has been created whereby pharmacies can obtain a container, much like the Sharps containers that are seen in hospitals, public rest rooms sometimes for disposal of insulin needles is an example. But these containers would be used to house prescription drugs. The drug goes in, doesn't come out of the container until it's been shipped off to be incinerated at a licensed medical incinerator. However, to enable pharmacies in Nebraska to tap into this program, some small changes in state law are necessary. The Pharmacy Practice Act currently states the drugs may be returned to the dispensing pharmacy, and the dispensing pharmacy only, for immediate disposal. LB274 proposes the change of language from, "dispensing pharmacy for immediate disposal," to, "May be collected in a pharmacy for disposal." In other words, drugs could be taken to any pharmacy for collection and disposal, not just to the one that's dispensed the medication. And when you consider how much mail order medication goes around, you can understand, as an example, why this might be of benefit. There are other reasons a drug could be surrendered for collection and disposal, that won't change--defect, recall. The language is reworded a bit in the bill, but the effect remains the same. None of these drugs, of course, can be returned for saleable inventory. In the case of long-term care facilities, drugs can be returned for credit and possible redispensing under the currently established standard. LB274, therefore, does three additional things: It allows a pharmacy to charge a fee for drug collection and disposal. It does some housekeeping in the statute by changing the reference to "calculated expiration date" in the statute from six months to one year to be consistent with other portions of the Nebraska Pharmacy Practice Act. The calculated expiration date is the time a drug is good for after being taken out of the manufacturer's bottle and dispensed to a patient. LB274 allows pharmacist immunity from civil or criminal liability or professional disciplinary actions for injury, death, or loss to persons or property relating to the collection of drugs for disposal as long as reasonable care is exercised. I'd call that sort of a good-Samaritan approach towards this. I've been approached to consider an amendment that would also exempt manufacturers from this, and I know the reason for the amendment is were there some sort of unforeseen outcome that was negative here, the deep-pockets theory of trying to follow this all the way back to the manufacturers. But I didn't get a copy of the amendment until late in the process. Until I have a chance to really look at that thoroughly, I'm not going to introduce that at this point in time. I'd be glad to answer any specific questions. I know that there will be some other testifiers too. [LB274]

SENATOR CAMPBELL: Questions from the senators? Senator Bloomfield. [LB274]

SENATOR BLOOMFIELD: We discussed this at one other time but not this particular aspect of it. I can only assume that they have to keep these returned drugs someplace where nobody can possibly get to them. [LB274]

SENATOR GLOOR: Yeah. My understanding is for the most part they'll be kept behind the counter someplace where somebody can't easily scoop them up and take off running with them. That's...and someone else will probably also address that question that comes from behind me. [LB274]

SENATOR BLOOMFIELD: And the container will probably be locked so they can't get into it,... [LB274]

SENATOR GLOOR: Yeah. [LB274]

SENATOR BLOOMFIELD: ...scoop them out if nobody is there at the moment. [LB274]

SENATOR GLOOR: Yeah. I think the Sharps container example that was used is a good one, and that is what goes in can't come out very easily, so you're not seeing people who dip in. And I would expect, from what I understand, these containers will be the same way. [LB274]

SENATOR CAMPBELL: Other questions? Senator Gloor, I have one question. In the part of the bill that deals with that drugs can be turned back by long-term care facilities, would there be any other facilities--and I have to say here I'm thinking of jails--that would be able to turn back who have bubble-pack drugs? [LB274]

SENATOR GLOOR: Yeah. [LB274]

SENATOR GLOOR: There's actually a provision under the current statutes that talks about correctional facilities. [LB274]

SENATOR CAMPBELL: Good. [LB274]

SENATOR GLOOR: I think we've...I think that's built under the Pharmacy Practice Act, and there was also somewhere in here, I think, a reference to that. The issue with long-term care facilities frankly is because for the patients involved, that's home. [LB274]

SENATOR CAMPBELL: I see. [LB274]

SENATOR GLOOR: And so you're not really going outside the facility. It might go down to a patient's room and from there find its way back to the pharmacy that is part of that facility. So that's one of the reasons that's separate. [LB274]

SENATOR CAMPBELL: Thank you. Thank you for clarifying. Senator Howard. [LB274]

SENATOR HOWARD: Senator Gloor, and you talked about this for just a minute, but is there anything in the bill that specifies that these containers, these boxes, if you will, are going to be locked? [LB274]

SENATOR GLOOR: No, there isn't. But I would say my comfort level is, and someone who has seen one of these might know better, is this is a national program, and if the medical and the companies who are involved in doing incineration are probably also concerned about liability, I'm sure that these will be containers that are very secure so stuff isn't dropping out of them and that people can't reach in and pull them out. It isn't as if there will be dozens and dozens of mayonnaise screw-top bottles scattered around. [LB274]

SENATOR HOWARD: Well,... [LB274]

SENATOR GLOOR: And maybe I'm being somewhat facetious, but... [LB274]

SENATOR HOWARD: Yeah, and I'm not making light of this. The reason I ask is because in the containers that you see that syringes are disposed of in, they are locked. And just in one day having a conversation with Dr. Schaefer, she explained to me that one of the reasons that they're locked is because medical individuals would remove those syringes and use the remainder of the medications themselves,... [LB274]

SENATOR GLOOR: Sure. [LB274]

SENATOR HOWARD: ...which if it can happen in that situation, it can happen in a pharmacy. And I would really suggest that there some wording in there to include a lock. [LB274]

SENATOR GLOOR: Well, I think that can be considered. Remember that really all we're changing in this law or the important part that we're changing is, currently pharmacies can take these drugs back and have been taking them back and disposing of them. And if you have an unscrupulous pharmacist, currently they could be, "thank you, I'll get rid of these," and then not. What we're allowing for now is that instead of having to take them back to the pharmacy you got it from, you can take it to any pharmacy that has one of these containers. And so there is probably a limit to the amount of protection we can provide when we've got an unscrupulous pharmacist. [LB274]

SENATOR HOWARD: And I do appreciate that and I wouldn't so much as put it in the terms of being unscrupulous as sometimes people are addicted and that overrides your scruples. Like I say, I had no idea until Dr. Schaefer told me that, and it was an eyeopener for me. So when I hear things like this, I'm a lot more aware of what the consequence is. [LB274]

SENATOR GLOOR: I understand. Thank you. [LB274]

SENATOR CAMPBELL: Any other questions? And I assume you'll be here for closing. [LB274]

SENATOR GLOOR: Yes. [LB274]

SENATOR CAMPBELL: Those wishing to testify in favor of LB274. [LB274]

JONI COVER: (Exhibit 12) Senator Campbell, members of the Health Committee, my name is Joni Cover, J-o-n-i C-o-v-e-r. I'm the executive vice president of the Nebraska Pharmacists Association. I'm here in support of LB274, and I'd like to thank Senator Gloor for introducing this legislation and for many of you for cosponsoring our legislation. Over the past few years, consumers of prescription medications have been told that disposing of unused or unwanted medications by flushing them is not an environmentally friendly thing to do. While it's not illegal to flush them and there really aren't any laws or rules or regs that tell us how we are supposed to dispose of them, pharmacists and others have been developing some best practices about the proper disposal of medication. I handed out...I asked the page to hand out a bookmark to you. The Nebraska Pharmacists Association, in conjunction with the Lancaster County Health Department and a whole litany of other people, put together a program called Nebraska MEDS to educate consumers on the proper disposal of medications. So I just thought I would share that piece of...little bookmark with you, and there is a Web site that can give you more information. Last year, a nationwide program called the Sharps Take-Away program was introduced to community pharmacies by the National Community Pharmacists Association. Pharmacies could purchase tamper-resistant, environmentally-friendly containers to place in pharmacies to provide a place for consumers to dispose of their unused or unwanted medications. When those containers were full, the containers were simply shipped to Texas to a medical incinerator to be destroyed. LB274 will allow a pharmacist to offer ongoing take-back programs and to participate in a program, such as the Take-Away program, and assist consumers in safely and in an environmentally-friendly way, dispose of unused medications, with the exception of controlled substances because we are not allowed to take back controlled substances, so consumers will still have to dispose of them on their own. Again, that is something that the DEA is looking at, and hopefully they will change their minds and allow us to also assist with that disposal as well. It allows...LB274 allows pharmacies to charge a fee to help pay for the cost of the disposal program. It's not a mandatory fee,

and I know that a few of the pharmacies that are doing this are not charging a fee, so we left it up to the pharmacies. Of course nothing in the Pharmacy Practice Act is ever as simple as just removing a couple of words, so we did a reworking of the entire statute. A couple of things I want to point out, the long-term care language was already in there and we just sort of reworded it a little bit. We did make a change in the reference to "calculated expiration date." What's currently in statute is six months. We changed that to a year. That is consistent with all of the other "calculated expiration date" references throughout the Practice Act. In addition, we also added some immunity language which is the same immunity language that can be found in the correctional facility's drug return legislation, which I know you just asked about. There is a bill that allows community...or correctional facilities to also have this kind of program. And it's actually...in the back part of LB274, there was a few references in there that needed to be changed, so that language is what the correctional facilities have to follow. Pharmacists in Nebraska welcome the opportunity to participate in programs that assist consumers in their quest to become environmentally friendly by properly disposing of unused medications. Pharmacists are the drug experts, and we are here to assist our patients, cradle to grave, with proper use and proper disposal of medications. I hope the committee will advance the bill. And if you have any questions, I would be happy to answer them. [LB274]

SENATOR CAMPBELL: Are there questions for Ms. Cover? Seeing none, thank you very much. [LB274]

JONI COVER: Thank you. [LB274]

SENATOR CAMPBELL: Others who wish to testify in favor of LB274? [LB274]

BILL MUELLER: (Exhibit 13) Senator Campbell, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Pharmaceutical Research Manufacturers of America. And the page is handing out an amendment that Senator Gloor was kind enough to reference. The PhRMA, the pharmaceutical manufacturers, does support LB274. We would ask that the committee adopt what Senator Gloor referred to as a good-Samaritan-type provision. What this would do is grant a pharmaceutical manufacturer immunity from liability; not generally, but relating to the relabeling and redispensing of drugs returned from a long-term care facility. The background on this is this: In this bill, we are changing the distribution channel of prescription drugs. Generally speaking, the manufacturer manufactures the drugs; a distributor/wholesaler delivers them to the pharmacy; the pharmacy dispenses them to a patient. Under this act, we would add another step, and that is in the case of a nursing home, that nursing home could return drugs that could be redispensed to another patient. So we're changing the typical distribution channel of drugs. The PhRMA's concern is that in this process, we lose track of the drug. We don't know what happens to that drug after it goes to the nursing home. We know what happens to that drug when

we give it to the wholesaler who then gives it to the pharmacy who prescribes it to the patient. This would say that if something would happen where someone who was redispensed a drug made a claim, they couldn't make a claim against the manufacturer because that drug was redispensed. I'd be happy to answer questions you may have. I do appreciate the fact that Ms. Cover and Mr. Hallstrom worked with me on drafting this. We didn't want it to be too broad, but we needed it to address this particular situation. I'd be happy to answer questions that the committee may have. [LB274]

SENATOR CAMPBELL: Senator Wallman. [LB274]

SENATOR WALLMAN: Thank you, Chairman Campbell. Thank you for being here. [LB274]

BILL MUELLER: Thank you. [LB274]

SENATOR WALLMAN: Would this be a huge saving like to, well, you mentioned nursing homes, do you think, with cycled, you know, the high-priced drugs? [LB274]

BILL MUELLER: I'm guessing that that's why we have this bill because we obviously have drugs that are not being used by patients that are hopefully being watched by someone to make sure that they're not being altered, to make sure that they're in their original condition when they come back. And my understanding, from a quick reading of the bill, is that once they would be returned, that patient could receive a credit for that, so they would receive money for that...for those unused drugs. [LB274]

SENATOR WALLMAN: Thank you. [LB274]

BILL MUELLER: Thank you. [LB274]

SENATOR CAMPBELL: Senator Howard, you had a question. [LB274]

SENATOR HOWARD: Well, it's along those same lines. So then the nursing home would return medication. Well, the medication actually would belong to the patient. [LB274]

BILL MUELLER: The patient, that would be my understanding. So the patient would receive the credit I would assume. [LB274]

SENATOR HOWARD: So the patient would receive the credit then. [LB274]

BILL MUELLER: The patient's family. [LB274]

SENATOR HOWARD: Right, for a prescription in the future for the patient? Is that how it

would work? [LB274]

BILL MUELLER: Well, I'm guessing that they might receive a refund from the pharmacy. [LB274]

SENATOR HOWARD: Okay. So that would be in case of their prescription being changed and they hadn't used it maybe. [LB274]

BILL MUELLER: I suppose that that could be the case. That's...I mean, I'm testifying to things (laugh) that are beyond my involvement in this issue. [LB274]

SENATOR HOWARD: Well, but we... [LB274]

BILL MUELLER: Joni really would be the one that would know best, but I'm guessing that that would be right. It would be a patient who either had medication changed or I suppose if the patient passed and there were drugs that were unused. [LB274]

SENATOR HOWARD: So it really would not be of benefit to the nursing-care facility? [LB274]

BILL MUELLER: I would guess that that would be the case. It would not be a value to the facility. I think it would be a value to the patient. I suppose if that patient happened to be a Medicaid patient, there would be value to the state in Medicaid. [LB274]

SENATOR HOWARD: I'm just trying to follow this through so I have a picture. You know, when I started down here, one of the things they always cautioned me about was unintended consequences. [LB274]

BILL MUELLER: Yes. [LB274]

SENATOR HOWARD: And that seems to happen on a regular basis. But in the case of a patient passing, then wouldn't the medication go into the hands of the relatives? Wouldn't they, when they collected the individual's things, wouldn't that be...I'm real puzzled by this. I... [LB274]

BILL MUELLER: I've been blessed. I've not had that situation arise in my life. I don't know what happens to the medication. [LB274]

SENATOR HOWARD: Well, I don't think it's been in place to deal with it. [LB274]

BILL MUELLER: I don't know. [LB274]

SENATOR HOWARD: Okay. Thank you. [LB274]

SENATOR CAMPBELL: Senator Bloomfield. [LB274]

SENATOR BLOOMFIELD: I would think, in response to Senator Howard's question on there, if the care facility is dispensing that, it's probably going to stay in their hands rather than if the bottle is setting there and she is self-medicating. [LB274]

SENATOR HOWARD: But it's made out to the individual, the prescription would have the name of the individual on it. [LB274]

SENATOR BLOOMFIELD: I don't think you're going to find the nursing home going back and taking that bottle forward and giving it to the family. [LB274]

SENATOR COOK: No. [LB274]

SENATOR HOWARD: Maybe that's something we need to talk about in Executive. [LB274]

SENATOR CAMPBELL: Senator Krist. [LB274]

SENATOR KRIST: This is a break in a chain of custody of what normally happens with a manufacturer, a distributor, and a retailer. [LB274]

BILL MUELLER: Exactly. [LB274]

SENATOR KRIST: And it's a hold harmless for the manufacturer once that chain of custody is broken. [LB274]

BILL MUELLER: That's correct. [LB274]

SENATOR KRIST: Okay. And that's...I understand that. The technicality of this is if the chain of custody includes a secondary pharmacy which is dispensing the drugs in the home situation, are we talking about the individual in the home turning them back or the pharmacy or the home that's dispensing them turning them back? And I don't know that we know the answer in Executive. I think potentially Joni probably does know the answer, and... [LB274]

BILL MUELLER: I'm sure that Joni knows the answer and I know that Bill doesn't. (Laughter) [LB274]

SENATOR KRIST: So you have exhausted your detail as well. [LB274]

BILL MUELLER: I've told you more than I know, as I heard earlier today. [LB274]

SENATOR CAMPBELL: I think we're going to quickly excuse Mr. Mueller. [LB274]

BILL MUELLER: Yes, yes. If I may say, Senator, as Joni said, it is common in many of these programs. And I look around the table, Senator, I know you've been here, Senator, I know you've been here when we've done this for cancer drugs and other kinds of drugs. Language like this is typical because you are altering the regular chain of distribution, so. [LB274]

SENATOR KRIST: Right, and if I could? [LB274]

SENATOR CAMPBELL: Sure. [LB274]

SENATOR KRIST: That's exactly where I was going. This is not abnormal. [LB274]

BILL MUELLER: It's not. [LB274]

SENATOR KRIST: This is the norm. And it's the chain of custody basically and hold harmless applies. [LB274]

BILL MUELLER: Yes. [LB274]

SENATOR KRIST: And I understand. But we're at a different level and... [LB274]

BILL MUELLER: I understand that, and I know Joni and she'll get you that information. [LB274]

SENATOR CAMPBELL: Any other questions Mr. Mueller? We thank you for your exhaustive information. (Laughter) [LB274]

BILL MUELLER: Yes, thank you. [LB274]

SENATOR CAMPBELL: Couldn't resist. Those who also wish to testify in favor of LB274? [LB274]

KATHY SIEFKEN: Chairman Campbell and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. And after that question-and-answer period, I hesitated whether I wanted to come up here or not (laughter) because I know less than Bill does, so that tells you where I am. Anyway, my members wanted me to come here today in support of this bill simply because it is a common-sense way to solve a problem where you've got...they're finding these kind of medications in our water and in our systems. And so we simply wanted to let you know that our pharmacies in our grocery stores are in support of this bill. If you

have any questions, I probably can't answer them. [LB274]

SENATOR CAMPBELL: Anyone who wishes to try a question here? [LB274]

SENATOR KRIST: Very informative. [LB274]

KATHY SIEFKEN: Thank you again. [LB274]

SENATOR CAMPBELL: Thank you, Ms. Siefken. Anyone else in the hearing room who wishes to testify in favor? Those who wish to testify in opposition? Those who wish to testify in a neutral position? We're batting a thousand here. Senator Gloor, would you like to close on your bill? [LB274]

SENATOR GLOOR: Going to try to clear this up just a little bit and in doing so recognize that I may, in fact, stir the pot even more. But a lot of the concerns about long-term care are in fact a diversion and in fact incorrect under what we're trying to do here with this law. Simply stated again, it currently is not legal for a pharmacy to take back medications that weren't sold at that particular pharmacy, and we're trying to allow that now with a statute change. So whether you buy them over the Internet or you buy them at Russ's and want to take them back to Walmart pharmacies, you can do that. There is clarification on the bill to say, and you can still take them into pharmacies if there's a recall. And, by the way, you can't sell them again if you take them back in. And, by the way, if a long-term care facility wants to still return those meds to the pharmacy they came from, they can still do that also. It doesn't pertain to the issue of resale or credit to the patient or any of that, it's just to make sure we keep it neat and clean under the statute as it's revised because, again, we're trying to make it so that they can go back to any pharmacy, that medications can go back to any pharmacy, not just the one it was dispensed from. And I understand we've headed down a path that makes it sound a little confusing as we've gotten into long-term care, but that was never the intent of this bill. The intent of this bill was, since we have a lot of discussion right now about what if a pipeline breaks and we have oil that goes into our groundwater, that's a hypothetical situation, one some people think is inevitable as opposed to hypothetical. But we have a real issue here, and that is medications, lots of medications are in fact going into groundwater, and that is a real pollution issue we have. And with some of these medications, I know from my own organization, some of those medications you get for cancer treatment, as an example, have bad things in them, sometimes inert metals that never, never disappear from the environment but are always there and work their way up the food chain. We're trying to make it possible that those medicines stop finding their way into our water tables and into our sinks and bathrooms and, in fact, go up in smoke at an appropriate licensed facility. And so I expect that we'll need to provide a little further clarification so that we back our way out of this discussion of (laugh) a bigger issue that doesn't exist, and we'll try and do that as we talk about the bill further in committee. [LB274]

SENATOR CAMPBELL: Questions? Yes, Senator Howard. [LB274]

SENATOR HOWARD: Senator Gloor, the amendment which really gives immunity to the drug manufacturer, are you...this was your amendment or did someone bring this to you? [LB274]

SENATOR GLOOR: It was brought to me. [LB274]

SENATOR HOWARD: Brought to you. [LB274]

SENATOR GLOOR: Yeah. At the last minute and... [LB274]

SENATOR HOWARD: By the lobbyist for the drug manufacturer. [LB274]

SENATOR GLOOR: Yeah, yeah. [LB274]

SENATOR HOWARD: Okay. Thank you. [LB274]

SENATOR GLOOR: And by way of clarification, if I...to make sure that we address your concern, as Ms. Cover pointed out, there are no controlled drugs that go into these. You cannot return controlled drugs, so the concern about that happening doesn't exist. [LB274]

SENATOR CAMPBELL: Okay. Any other questions? Thank you, Senator Gloor, for closing on your bill. [LB274]

SENATOR GLOOR: Thank you. [LB274]

SENATOR CAMPBELL: (See also Exhibit 14) And we will close the hearing for LB274. And for our audience today, that is the final hearing. [LB274]