[LB260 LB290 LB401]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 27, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB260, LB290, and LB401. 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: Good afternoon, and welcome to the hearings for the Health and Human Services Committee. I am Senator Kathy Campbell from the 25th Legislative District, which is a little bit southeast and wraps around the east and north part of Lancaster County. We are so glad you're here. I'm going to let my colleagues introduce themselves, and we'll start to my far right.

SENATOR BLOOMFIELD: Dave Bloomfield, District 17, made up of Dakota, Wayne, and Dixon Counties.

SENATOR WALLMAN: Norm Wallman, District 30, south of here.

SENATOR GLOOR: Senator Mike Gloor, District 35. That's Grand Island.

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

SENATOR CAMPBELL: And to my very far left is Diane Johnson, who is the clerk for the committee. And I am just going to be very adamant today to make sure that when you come up and hand the sign-in sheet, those bright orange sheets, to the clerk and any written testimony, hand everything to Diane at the end before you sit down and then we won't run into problems. I'll go through a few housekeeping and then we'll start. I'd like you all to please silence your cell phones so you do not bother anyone sitting around you. Testifiers should have 12 copies. And we do not make copies for folks, but the pages will help you find a spot where you can make them. We only need to have you sign in on the orange sheets if you are going to testify. Please print. And again, everything goes to the clerk. Each testifier will be allotted five minutes, and we do use the light system. So you start on green. You have a long time on green, and then it goes to yellow. And when it gets to red, you can look up and I'll be going "time, time." Please begin your testimony by stating your full name and spell the last name clearly for us for the record. We have a lot of testifiers this afternoon, so with that, welcome, Senator Lathrop.

SENATOR LATHROP: Thank you, Chairman Campbell.

SENATOR CAMPBELL: And we have been joined by Senator Krist and Senator Cook, both Omaha senators. So we will open the hearing on LB260: Adopt the Concussion

Awareness Act.

SENATOR LATHROP: (Exhibit 1) Thank you, Chairman Campbell and members of the Health Committee. My name is Steve Lathrop. That's L-a-t-h-r-o-p. I am the state senator from District 12, which includes Omaha and Ralston, Nebraska. And I'm pleased to introduce today LB260, which is the Concussion Awareness Act. Over the last few years, awareness of the dangers of concussion has arisen as researchers have learned more and more about the impact they have on athletes, with special emphasis on the younger athletes. As a result, state legislatures across the country are looking at ways to prevent concussions in our young people. In 2009, the state of Washington became the first state to pass a concussion awareness bill, and nine other states have passed similar legislation since that time. When I first became aware of these efforts, I began to work with the Brain Injury Association of Nebraska, the Nebraska State Athletic Trainers' Association, and the NFL, and others, to help develop what became LB260. Others will come behind me or after me, and we have a good array of people to testify about this bill that will give you information on why this bill is needed and the dangers of concussions and brain injuries. I would like to take this opportunity, however, to explain what the bill does. And it does essentially three things. First, it requires that schools and organizations that sponsor youth sports, such as the Y, to make training on concussion and brain injuries available to their coaches. This training would have to be approved by the Board of Medicine and Surgery. Other states are using on-line courses that can be completed in as little as 30 minutes and are offered free to the coaches. The bill does not mandate training, but it is thought that providing this opportunity will encourage many of the coaches to take advantage of it and become better informed. The second thing the bill does is require that the athletes and their parents and guardians be provided with information on concussions and brain injuries, including the risk posed by sustaining the concussion and the actions athletes should take in response to sustaining concussions, and the signs and symptoms of a concussion. And finally, LB260 establishes a return-to-play mechanism for young athletes. Should an athlete be suspected by a coach, an athletic trainer, or a medical professional of sustaining a concussion or brain injury, they will be removed from a practice or a game, and they'll not be allowed to return to participate in any supervised athletic activities until they have been evaluated by a licensed healthcare professional and have received a written clearance to resume their participation in that activity. If this takes place, the parent or the guardian of the athlete is to be notified of the date, time, and extent of the injury suffered by the athlete and any actions taken to treat the athlete for that condition. I think LB260 is a good bill in the right direction in concussion awareness and I think you'll hear stories today about the importance of this type of legislation. And let me close by thanking those people who have worked on this: the Brain Injury Association, the NFL. And I have worked with some of the folks that will come up behind me and I greatly appreciate their insight and work on this most important subject, which is concussions and brain injuries, which I have a personal interest in. You'll also have received a letter from the governor of the state of Washington, the first state to pass

such a bill, talking about what a success it's been and how educating on concussions has resulted in fewer health problems and, they believe, saved money for the state of Washington. And with that, I'll answer any questions. [LB260]

SENATOR CAMPBELL: Any questions from the senators? Senator Gloor. [LB260]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you, Senator Lathrop. This is an interesting bill and I've been reading a lot about it. In my younger days, I had a Boy Scout instructor, scoutmaster, as well as P.E. instructors, who thought the best way to toughen you up was to have you box. And so my best...my best move was to lead with my head. And there were a number of times I got knocked down and out, which some people may think explains a lot about me and my career. (Laughter) But I understand and was probably lucky because we were so young and had lacked the strength to hurt each other badly. But I have no doubt there would have been a number of times I would not have been allowed to participate any further in boxing matches, or football practice, for that matter. But my questions really have less to do with seeing the need for it than how we would orchestrate this. Are the training programs already put together? In other words, we're not going to leave the Y's and the schools to come up with their own way to provide the training (inaudible). [LB260]

SENATOR LATHROP: No. It would be...it would be approved by the Board of Medicine and Surgery, and I don't think it's going to take them very long to put it together, because a lot of that training has already been available and been done in other states. So I would expect that the Board of Medicine would find some program that's been used successfully in other states and adopt that and make that the standard. [LB260]

SENATOR GLOOR: If we built that into the legislation, we can assure that occurs. But if we're not mandating that this has to be utilized, how can we be sure that, from a variety of venues, from the schools, to the Y's, to the Boy Scouts, to whomever, it will actually have their instructors take (inaudible)? [LB260]

SENATOR LATHROP: I think the concern was that as soon as we start mandating it, then we're going to have people that are going to be concerned about other issues, perhaps liability issues and things like that. By offering it to and making this information available, there is nothing that stops the high school athletic association or some similar type organization from mandating that this has been recommended, okay? So I think that it can be mandated. We're just not going to do it in this bill and do it at this level because, frankly, as soon as you start mandating things, then you start talking about having to spend money at the school district level and at the organization level. And I think, as I've looked through a lot of the information that they would be providing to parents, it's really simple and good stuff: what to look for, what...you know, how do you determine if your son or daughter...if you...you know, they get done and they've been in a collision on the field, some of the questions that you might ask them to do a little bit of

an assessment. And the more information we can get to the parents and the athletes and those who coach, I think the more likely we are to catch people once they've had one concussion. And we certainly don't want them to get into the second collision or have the second concussion until they've resolved from the first. And that really is the aim of the bill. [LB260]

SENATOR GLOOR: Would it be safe to say this is less about the state government telling people what to do and more an issue of raising awareness and providing maybe some of the tools to make a difference? [LB260]

SENATOR LATHROP: It's most certainly the latter, that we're raising awareness, providing the information, disseminating the information, and it...you don't have to sit down and read 85 pages on brain injuries to understand this stuff. It's very simple and straightforward. It's symptoms and what to look for and what to do when they present themselves in a student athlete. [LB260]

SENATOR GLOOR: Thank you very much. [LB260]

SENATOR CAMPBELL: Other questions from the senators? Senator Bloomfield. [LB260]

SENATOR BLOOMFIELD: Yes. Not being an attorney and knowing that you are very well-versed in these, I hesitate to bring this up. But line 22, on page 3, "A student who participates on a school athletic team and is suspected by a coach or athletic trainer..." of having a concussion, if the kid is pulled out and given these tests and passes them all, to me he was suspected when the coach administered the test. And at that point he would have to wait until he got medical approval to go back in? [LB260]

SENATOR LATHROP: Okay. [LB260]

SENATOR BLOOMFIELD: It looks like a...kind of a rough area. [LB260]

SENATOR LATHROP: Yeah. And let me answer that by going to the last paragraph of the bill which is civil liability. We're not creating civil liability with this bill or changing any civil liability that might otherwise be there. So the purpose of this isn't a trap for someone who is going to end up sued because they didn't do something exactly the way they should. The intent of the bill and I think the way it's written is that if a coach sees two young soccer players collide when they're trying to head a ball, and, you know, they don't get up off the ground right away, they suspect that there's a concussion. Right? So then they can take them to the sidelines and do some of the things that they've been educated to do, which is to ask them questions about, you know, where are you at, what day of the week is it, what happened to you, those kinds of things, because there are ways to screen for the concussion. And that's what the duty of the

coach would be after that kind of an event. [LB260]

SENATOR BLOOMFIELD: I understand that. But as soon...as I read this, as soon as he questions them, even if they pass all of the questions and are not considered to have a concussion, he cannot put them back in until a medical person has... [LB260]

SENATOR LATHROP: Okay. Let me...I would say that there is a concern and then there's a...maybe the first thing is a level of concern and the second thing is suspecting. You don't get to suspect until you do some kind of an assessment that this training would teach you about. And if you, at that point, decide well this young man doesn't remember what day of the week it is or how he got to the field, then you say you're done playing. But if you see two kids collide and one doesn't get off the field right away, that doesn't mean you suspect it. That just means that you have a good reason to look into it. [LB260]

SENATOR BLOOMFIELD: But as soon as you administer one of these tests--Is today Monday or Friday?--have you not committed an act of suspecting, and therefore, you cannot put him back in? [LB260]

SENATOR LATHROP: I would say that you're more at investigating than suspecting. [LB260]

SENATOR BLOOMFIELD: Okay. I think... [LB260]

SENATOR LATHROP: And suspecting would happen...and we're making a legislative record so it's a good, a great question, Senator. But I think suspecting happens at the point in time where you've administered a question...this series of questions to the student athlete or you do some of the things that you look for--the pupils the same size and those sorts of things. And if any of those cause concern, then you suspect. But otherwise it's more of an investigation. [LB260]

SENATOR BLOOMFIELD: I would look for a little clarity there... [LB260]

SENATOR LATHROP: Okay. [LB260]

SENATOR BLOOMFIELD: ...so thank you. [LB260]

SENATOR LATHROP: I appreciate that. [LB260]

SENATOR CAMPBELL: Any other questions? Senator Krist. [LB260]

SENATOR KRIST: Let's you and I go back to 1973 and the Rummel... [LB260]

SENATOR LATHROP: Would that be the Prep-Rummel game that we...(laughter). [LB260]

SENATOR KRIST: Yeah, Prep-Rummel. [LB260]

SENATOR LATHROP: Where Rummel beat Prep? (Laughter) [LB260]

SENATOR KRIST: Rummel beats Prep. And... [LB260]

SENATOR LATHROP: I was there. [LB260]

SENATOR KRIST: ...and let's just say that Coach Jaworski decides that one of the Rummel stars looks like he's not getting up real good. Is this...have we protected ourself from, in the field of competition--which we know both parents and coaches potentially get a little more involved than they should--into playing games with this process? [LB260]

SENATOR LATHROP: I don't think that's the history of this bill, and I don't think the obligation is for a coach to...what we're doing is providing information, right? We're not creating a...when we talk about the coach suspecting, I think that's your own coach. So I'm not going to walk over to Prep's star quarterback... [LB260]

SENATOR KRIST: Oh, don't tell me that. (Laugh) [LB260]

SENATOR LATHROP: ...and say you look like you've got a concussion; you're out of the game... [LB260]

SENATOR HOWARD: (Laugh) This sounds personal. [LB260]

SENATOR KRIST: No, that's the question. [LB260]

SENATOR LATHROP: ...which is really the question. I think this about the coach of your own team having that concern. I sure wouldn't think that two good Catholic high schools would engage in anything like that. (Laughter) They used to get pretty competitive. [LB260]

SENATOR KRIST: Yeah. We were there. [LB260]

SENATOR LATHROP: We were there. [LB260]

SENATOR KRIST: I'm just I guess following along with Senator Bloomfield's concern. It would be very easy for me on my own sideline to witness a collision and to...and say this young man needs to come out of the football game and actually call time-out, and

potentially eliminate star players from being on the field. Is that wrong? I don't know, but I think we should project ourself into it. [LB260]

SENATOR LATHROP: Well, it's a great question and certainly we can look at it and I can get back to the committee, and find out in the nine states that have passed this if that's ever been a concern, or if they've used different language to get ahead of that concern, Senator. [LB260]

SENATOR KRIST: And I will say at the outset, I think this is wonderful. I'm glad you brought it forward. I think that what we're finding in competitive athletics, even in a professional level, is the concussion didn't start when you put on a Miami Dolphin uniform; it started when you were 9 or 10 or 11 years old. So thanks for bringing it forward. But I think that's a...that might be a loop that... [LB260]

SENATOR LATHROP: Okay. Well, both of them are very good and well-stated concerns. [LB260]

SENATOR CAMPBELL: And so who was the winner of the 1973...? [LB260]

SENATOR KRIST: We're not going to talk about it. (Laughter) [LB260]

SENATOR LATHROP: Did you just say Central? (Laughter) [LB260]

SENATOR CAMPBELL: No. (Laugh) I said, who was the winner? [LB260]

SENATOR LATHROP: Oh. Oh. Well, in '75... [LB260]

SENATOR KRIST: We could go back to... [LB260]

SENATOR LATHROP: ...I remember that very clearly because I was there. But '73 would probably be the Ed Burns era, and my guess is Rummel. [LB260]

SENATOR KRIST: Yeah. Rummel in '73. Prep took state in '75. Just for the record. (Laughter) [LB260]

SENATOR HOWARD: What a story. [LB260]

SENATOR LATHROP: And lost to Rummel in basketball and football. [LB260]

SENATOR CAMPBELL: And were either of you gentlemen involved on these teams? This is just tremendous... [LB260]

SENATOR KRIST: Rah-rah. (Laugh) [LB260]

SENATOR CAMPBELL: ...recall. Thank you, Senator Lathrop. [LB260]

SENATOR LATHROP: Well, it's the glory days for maybe perhaps both of us. (Laughter) All right. [LB260]

SENATOR CAMPBELL: Will you be here for... [LB260]

SENATOR LATHROP: I'll stay and close. Yeah. Thank you. [LB260]

SENATOR CAMPBELL: Okay. All right. How many people in the hearing wish to testify in favor of this bill? Okay. Michelle, I hope you're counting. How many people wish to testify in opposition to this bill? Okay. How many wish to provide neutral testimony on the bill? Okay. I would encourage the testifiers, and we are very glad you are here today. We have a number of testifiers. We also have some testifiers on a bill that will come after this bill who have some time constraints, so we will be very quick to keep you on the clock today. So with that, we'll start with the proponents for this bill. Notice she had the sheet and all of the information to the clerk. Excellent. Good afternoon and welcome. [LB260]

LORI TERRYBERRY-SPOHR: (Exhibit 2) Thank you. Good afternoon, Senator Campbell and the other members of the Health and Human Services Committee. I am Lori Terryberry-Spohr--Dr. Lori Terryberry-Spohr--spelled L-o-r-i, last name is T-e-r-r-y-b-e-r-r-y hyphen S-p-o-h-r. I am the brain injury program manager at Madonna Rehabilitation Hospital here in Lincoln, and as a clinical neuropsychologist I have worked in the field of brain injury and concussion management throughout my career. I am also currently a member of the Nebraska Traumatic Brain Injury Advisory Council and have been the lead investigator of the Nebraska Concussion Study, a five-year grant-funded research study to investigate concussion recovery patterns in high school athletes. It is in my role as a clinician and expert in concussion management, but also as a parent and volunteer coach, that I come here on behalf of Madonna to urge your support for LB260. Over the last 20 years, the research and knowledge base in the area of concussion management and recovery patterns has grown exponentially. New advancements in this area include the knowledge that each individual recovers differently from concussion. No longer do we believe that athletes recover within a few minutes. Most will recover in days, but some take weeks and a few take months. During this recovery period, individuals are at risk for additional injury. We now know that returning players to athletic competition on the same day of injury is a very dangerous practice and in some cases is potentially life-threatening. In the state of Nebraska, over the last 12 years, we have at least nine documented cases of catastrophic head injuries related to sports. In essentially all of these cases it is believed that more than one injury occurred in close proximity. In other words, the athlete had one probable concussion and before they recovered from that they had another. This is commonly referred to as

second impact syndrome, and over 50 cases have been documented nationally. Second impact syndrome almost always occurs in individuals under the age of 25. Actually all documented cases are under the age of 25 and appears to be related to a vulnerability in the brain. You have probably heard the stories of Brady Beran, which you will hear from shortly, and Adrian Regier, whose lives have been permanently altered as a result of this kind of injury that may well have been prevented. Most professionals who work with these injuries believe that if the original injury was identified and properly managed, the likelihood of this type of catastrophic event would be greatly reduced, as would the likelihood of repeated injuries. But it is not only the immediate risk of multiple injuries that we are concerned about. We also have growing evidence that multiple concussions may have long-term ramifications as well. Recent research with NFL players suggests that they are 19 times the risk of developing dementia-related syndromes like Alzheimer's disease, and they are developing dementia on average about 10 years earlier than their peers who have not played professional contact sports. There is also now evidence to support that at least some individuals with ALS, also known as Lou Gehrig's disease, are actually suffering from a condition known as traumatic encephalopathy, which is a condition that develops as a result of multiple brain injuries or concussions. As a result of these concerns, the NFL has put in place a number of changes in its concussion management practices. All concussions must be evaluated by doctors not hired by the team in order to assure objective evaluation prior to return to play. The players themselves are now paying attention, and Super Bowl quarterbacks like Kurt Warner and Ben Roethlisberger have made public statements following concussions that they now understand the danger of playing with concussive symptoms and will not take that risk. The NCAA has put in place an entire new set of rules and regulations regarding concussion management including removing the player from the event, no return to play the same day, and required medical evaluation. And the National Federation of State High School Associations has changed their rule book to state that no athlete should return to play the same day of a suspected injury and needs to be cleared by a medical professional. But we all know that just because something is recommended, it's not always applied consistently. Without mandated education and medically cleared return to play, it will be years before these safe practices are applied consistently in all youth sports. The type of legislation that you have before you will ensure that all coaches, parents, and athletes are provided with the education they need to understand and appreciate the seriousness of this issue. The law has been passed in nine states already, and it is estimated that an additional 24 states will have it introduced this year. It will ensure that the pressure to make a decision about playing an athlete following a suspected event will rest with those that it should--our trained healthcare providers--and will not fall on those on the sidelines who do not have the expertise or education to shoulder that burden. And it will ensure that good, safe practices for the youth who are the most vulnerable to these types of injuries are implemented now. Otherwise, the years it might take for the trickle-down effect to occur could result in serious long-term ramifications for our student athletes. Please keep all youth athletes safe and support LB260. Thank you

very much. [LB260]

SENATOR CAMPBELL: Thank you, Doctor. Questions? Any other questions? Any questions? Thank you, Doctor, for joining us today. [LB260]

LORI TERRYBERRY-SPOHR: Thank you. Appreciate it. [LB260]

SENATOR CAMPBELL: The next testifier please. And we are still on proponents. [LB260]

RUSTY McKUNE: (Exhibit 3) Good afternoon, Senator Campbell, members of the Health and Human Services Committee. My name is Rusty McKune. That's R-u-s-t-y M-c-K-u-n-e. I'm the head athletic trainer for the University of Nebraska at Omaha, and president of the Nebraska State Athletic Trainers' Association. As a father of three and a healthcare professional practicing athletic training in the state of Nebraska for the past 14 years, I am passionately involved in the healthcare provided to the young athletes engaging in sports across this state. Thank you for the opportunity today to speak to you about LB260, the Concussion Awareness Act, on behalf of the Nebraska State Athletic Trainers' Association. The Nebraska State Athletic Trainers' Association represents and supports over 400 members within the state of Nebraska. Athletic trainers are healthcare professionals licensed by the Department of Health and Human Services, who specialize in the prevention, diagnosis, treatment, and rehabilitation of sports-related illnesses. These services are provided under guidelines established with a licensed physician within a medical scope of practice and with adherence to a national code of ethics. In January 2010, the National Athletic Trainers' Association, with the support of 29 other leading healthcare and sports organizations, established the Youth Sports Safety Alliance. The initiative of this alliance is to raise awareness, advance legislation, and improve medical care for young athletes. In December, the alliance reported that across the nation 48 young athletes died in 2010. On a list that includes sudden cardiac death and heat-related illness, concussions are easily the most publicized and recognizable cause of death. According to the latest statistics from the Safe Kids Campaign, there are 30 million children and teens participating in some form of organized sports. This population accounts for more than 3.5 million injuries each year, which correlates to roughly 9,000 children being treated in emergency rooms across this country for sports-related injuries each day. While the majority of these visits may be musculoskeletal in nature, an estimated 136,000 concussions occur per academic year in high school athletes alone. With these numbers, it should come as no surprise to learn that for the ages of age group 15-24, sports are second only to motor vehicle accidents as the leading cause of traumatic brain injury. The Nebraska State Athletic Trainers' Association fully supports Senator Lathrop's proposed bill and is proud to be a part of the coalition that worked together to help draft this legislation. In 2010, the NSATA identified safety in youth sports as one of its key topics to address. While we are currently making strides in this area, there is still a long road ahead and much work

to be done. A critical first step down this road is LB260. This bill is similar to the 9 existing and 19 proposed legislative bills around the country which address concussion in youth sports. It contains the three core principles identified by the NFL in their efforts to expand and support concussion legislation, these being education, the removal from play, and parameters regarding return to participation. This bill provides Nebraska with the opportunity to ensure that accurate and up-to-date information is distributed to those that need it the most--the parents, coaches, and participants in the youth sports and activities across the state. A 2004 study indicated the following as the reasons high school student athletes failed to report concussions: (a) they didn't realize a concussion was sustained, (b) they didn't want to leave the game, (c) they didn't think the concussion was serious enough to report, and (d) they didn't want to let their teammates down. As our target groups across the state become more informed, this bill will provide us with the opportunity to take action to change a culture and the way that we view not only concussions, but sports injuries as a whole. Now is our chance to increase public awareness about concussion in sports and let our young athletes know that every concussion is serious enough to report. It is no longer acceptable to refer to a concussion simply as "getting your bell rung." It is not okay to tell a young person to play through the pain if that pain has not been evaluated by a healthcare professional. And it certainly is not in anyone's best interest to teach kids that what's on the scoreboard is more important than what is in their medical record. LB260 will provide us with the infrastructure necessary to ensure that the diagnosis and management of concussion is rendered by qualified healthcare providers with experience in traumatic brain injuries among a pediatric population. However, steps must be taken to ensure that these providers are available and that our youth and their families are directed and have access to these individuals. The Public Health Division of the Nebraska Department of Health and Human Services recently conducted a concussion needs assessment survey. This survey was sent out to all 314 current NSAA member schools, of which 206 have responded so far. Within the survey, it was reported that only 19 percent of the respondents had coverage by a certified athletic trainer for all football practices and competitions. As healthcare providers...specialists...professionals specializing in athletics and team cares, athletic trainers are an important first line of defense in the prevention, diagnosis, and management of concussion. However, as the study indicated, there are a large number of schools that do not have athletic trainers present at all times. In these instances, there must be a mechanism in place to ensure that those individuals suspected of suffering a concussion are directed to, have access to, and are evaluated by a qualified healthcare provider who has experience with pediatric sports-related concussions. I cannot sit before you and say that we can prevent all concussions from occurring. However, through this legislation Nebraska has the opportunity to be proactive and join those states that currently have or are proposing legislation in taking the steps necessary to help prevent the potentially catastrophic outcomes. Thank you. Any questions? [LB260]

SENATOR CAMPBELL: Thank you, Mr. McKune. Questions? Senator Wallman.

[LB260]

SENATOR WALLMAN: Thank you, Chairman Campbell. Yes, thanks for coming. [LB260]

RUSTY McKUNE: Yes. [LB260]

SENATOR WALLMAN: I used to be on the school board. We never seemed to have enough money in our budget for a trainer. And this concerned me back then; it still concerns us today. Do you think coaches...are very many coaches taking something like this, you know? [LB260]

RUSTY McKUNE: Are they taking...? [LB260]

SENATOR WALLMAN: Training for brain injury. [LB260]

RUSTY McKUNE: Right now, I...across the state, it's not...as far as I know, it's not mandated that coaches have this training. In some states it is. When I was a graduate student in Ohio, every year they had to take refresher courses. Right now, it's not a mandate. As far as I know, it's not a mandate. [LB260]

SENATOR WALLMAN: I think Texas is, I think. [LB260]

RUSTY McKUNE: (Inaudible.) [LB260]

SENATOR WALLMAN: And I think it's a good program. Thanks for coming. [LB260]

SENATOR CAMPBELL: Other questions? [LB260]

RUSTY McKUNE: I would...could I address one of Senator Bloomfield's questions? [LB260]

SENATOR CAMPBELL: Absolutely. [LB260]

RUSTY McKUNE: Okay. You were talking about the screening process in suspecting of a concussion. That's something that we deal with every day. When a student athlete goes down, oftentimes they may appear to have a concussion. They may have the wind knocked out of them. They may be dizzy from heat exertion. And it is at that point in time that we have to go up to them and establish whether or not a concussion exists. We have to establish what is in place. At no time do I really suspect a concussion until I've asked the specific questions. I ask those questions not just to rule out a concussion, not just to identify a concussion, but to identify any number of health-related issues that might be causing this. Once specific answers are given to those questions, as Senator

Lathrop pointed out, that's when I begin to suspect a concussion and that's when further follow-up care and further follow-up testing is addressed and further follow-up care is provided. So I don't know if that answers your question or not, but... [LB260]

SENATOR BLOOMFIELD: I have no question with what you are doing. My question lies only in at what point do you go from... [LB260]

RUSTY McKUNE: Right. [LB260]

SENATOR BLOOMFIELD: ...here, to suspecting; at what point can you not put the child back into the game? [LB260]

RUSTY McKUNE: Right. And again, I think it relies on the questions that, you know, if a child...if you ask a child: Are you dizzy? Does your head hurt? Are you nauseated, vomiting? Do you have problems remembering what you had for lunch? If the answer to those questions are yes, then I think at that point in time, as is evident in all of the training courses, those are the things that we look for. At that point in time then I think it would be safe to say, yes, we suspect a head injury, and at that point in time then you pull them from the competition. [LB260]

SENATOR BLOOMFIELD: I just want to make that point in time clearer. [LB260]

RUSTY McKUNE: Right. So okay. [LB260]

SENATOR BLOOMFIELD: Thank you. [LB260]

SENATOR CAMPBELL: Mr. McKune, has your association done any training with some nonprofit associations or offered to help them in identifying this? [LB260]

RUSTY McKUNE: With concussions, we take steps every day. As an association, we haven't necessarily done it with our name on it. But every...there's several athletic trainers in this room, and every one of us has gone out and taken part in education that is related to coaches. I volunteer with OPS. I'm a member of their sports medicine advisory committee. Our committee, several years ago, developed their guidelines for concussions. I went out with a couple of the athletic trainers. We met with the athletic directors. We met with the coaches. We developed handouts to give to the parents. All this information was placed on their Web site. So, yes. And I think with where our association is going, our involvement is only going to increase, through the Internet, being able to post and provide information. That certainly is something that we are willing to do. It's certainly something that we're willing to take a stand and provide this information for those people. [LB260]

SENATOR CAMPBELL: Thank you. I appreciate you going out. And having been a

parent of a student athlete, I have to say that I trusted what the trainer was telling me, many times more than anyone else, because you're with the student athletes every day and you know them really well. So thank you for your service to students. [LB260]

RUSTY McKUNE: Thank you all. [LB260]

SENATOR CAMPBELL: Next proponent. Good afternoon. [LB260]

STEVEN SHANAHAN: (Exhibit 4) Good afternoon. Senator Campbell and members of the Health and Human Services Committee, my name is Dr. Steve Shanahan, and it's S-h-a-n-a-h-a-n, and I'm currently the interim executive director of the Nebraska School Activities Association. I'm also the former superintendent in Blair, and I'm here to speak in favor of LB260. The legislation that you're considering today represents a very serious concern to us, just as it has to the previous speakers and those that will come after me. We represent 312 schools, about 95,000 student athletes statewide. As you know, we conduct a number of state championships--22 in all; 24 activities altogether. And a great many of those involve physical contact, and with that contact comes the potential for serious injury. Our organization alone carries a catastrophic insurance policy of over $200,000 premium each year. So the safety of our students is a primary concern to us. As you heard earlier, the National Federation of High Schools, which is the equivalent of the high school NCAA, has placed in each one of its rule books the following statement: Any player who exhibits signs, symptoms, or behaviors consistent with a concussion, such as a loss of consciousness, headache, dizziness, confusion, or balance problems, shall be immediately removed from the game and shall not return to play until cleared by an appropriate healthcare professional. This protocol is referenced in each one of the rules meetings we have with our coaches at the beginning of each athletic season. And we place on our Web site a number of different concussion-related materials: a concussion checklist entitled "When in Doubt, Sit Them Out"; Centers for Disease Control information; National Federation of High Schools concussion information; procedures for handling concussions; and a parent's guide for concussions in sports. Also, I'm not sure how many of you are aware of it, but the National Federation of High Schools has an on-line course entitled "Concussion in Sports--What You Need to Know." That course is available to any member of the Nebraska Activities Association. It can be taken for free. It's a 20-30 minute program that's on-line and it serves as an excellent method to make available training to all of our members on how to recognize the symptoms of a concussion or a brain injury. We would recommend in our organizations that local school districts use this to train coaches and sponsors. And many of our schools, as you know, have probably 50 or more people involved in athletic coaching, and it would be an excellent way for them to get this information. One of the things that is most concerning to us, and you heard it a little bit earlier, is that finding a licensed healthcare professional in many of our communities outstate may be somewhat of a problem. It may be less of a problem than I perceived it to be earlier when I talked to some of our members who said that in most communities they would

be able to find someone. What we are most concerned about, I think, is that...and as you just heard from the previous speaker, the training to give to people who are in the medical profession or healthcare professionals who would be able to diagnose, and return to play at some time, these athletes. So I would encourage the committee to consider avenues that healthcare professionals can take to give them access to training and certification, and I think that's possible. I would just like to end with saying that I think the Nebraska Activities Association has been proactive in this, as has the National Federation of High Schools. I applaud the committee and I applaud the senator for bringing this to the forefront. We are certainly supportive of this in the Nebraska School Activities Association and would pledge our help in anything we can do to move it forward and to give information out to our member schools. I'd be happy to answer any questions. [LB260]

SENATOR CAMPBELL: Thank you, Mr. Shanahan. Questions from any of the senators? Senator Gloor. [LB260]

SENATOR GLOOR: I'm sorry I missed your testimony, but I...but you're the person I want to ask a question of. Something that's come to mind for me, Dr. Shanahan, has been there's a component of this bill that would require a student athlete, a young athlete to see a healthcare professional to get a release. How would you see that playing out with member institutions when we're dealing with lower income children whose parents don't have insurance, aren't Medicaid-eligible, but just can't come up with the dollars, or perhaps live in an area of the state that's hard to get to see a provider of healthcare to give them that release? I'm thinking of it in terms of, gee, we don't want to penalize a kid who, for whatever reasons they can't control, can't get in to get that release. [LB260]

STEVEN SHANAHAN: Your concern is the same concern I had when I...as I was writing the testimony, I had that same concern. I talked to some of our superintendents in smaller schools outstate, and their statement to me was: I think you'll find it will be much easier for us to find a healthcare professional than you think it is. If we need to go to a doctor or we need to have some kind of medical treatment, we don't have to travel great distances. There are people there. I think it's the training of those people in brain injuries and traumatic brain injuries that would be important, so...and I think we heard it earlier. I think more avenues to be able to train those people to be able to recognize and then release to return to play, I think would be important. I think in the metropolitan area, Omaha and Lincoln, I think...and I think you'll find this with other speakers, that there are quite a few people who are trained and able to give that assistance. And many times, schools have athletic trainers who are...you know, who have been trained and who have been certified, so. [LB260]

SENATOR GLOOR: Well, there's an availability issue and there's an accessibility issue, and the accessibility may be as simple as dollars and cents. And that's a little concern I

have. But maybe one of the other testifiers has thought through that or Senator Lathrop may have. [LB260]

STEVEN SHANAHAN: Sir, one of the things I wrote down is I know how shrink...how state aid to education is shrinking. I mean it's just a fact of life. And then if this is something else added on that's going to cost parents or schools--parents in travel and time; schools in procuring a trainer or someone certified--could be a concern. I agree. [LB260]

SENATOR GLOOR: Thank you. [LB260]

SENATOR CAMPBELL: Senator Cook. [LB260]

SENATOR COOK: Thank you, Madam Chair. Mr. Shanahan, were you my English teacher at Nathan Hale Junior High School? Speaking of the '70s. [LB260]

STEVEN SHANAHAN: Was this written all right? Did I...? (Laughter) [LB260]

SENATOR COOK: I recognized your signature. It was very well written. So the answer is yes? [LB260]

STEVEN SHANAHAN: You're probably... [LB260]

STEVE SHANAHAN: Yes. Yes, I was. [LB260]

SENATOR COOK: I was in core. [LB260]

STEVE SHANAHAN: How did I do? [LB260]

SENATOR COOK: You did very well. I think my colleagues would be the best witnesses to how good of a command of the English language I have. [LB260]

SENATOR CAMPBELL: And how was... [LB260]

STEVEN SHANAHAN: Those were fun years. [LB260]

SENATOR COOK: Weren't they? [LB260]

STEVE SHANAHAN: Yeah. [LB260]

SENATOR COOK: Oh, not as much fun as the Rummel-Prep game of 1975. (Laughter) [LB260]

STEVE SHANAHAN: Evidently not. (Laughter) [LB260]

SENATOR CAMPBELL: We can assure you that the education was great, because she's just doing a great job expressing herself... [LB260]

SENATOR COOK: Why, thank you. [LB260]

SENATOR CAMPBELL: ...written. [LB260]

SENATOR COOK: In written and oral forms. [LB260]

STEVE SHANAHAN: Most of education begins in the eighth grade. Yeah. [LB260]

SENATOR COOK: Yes, it does. [LB260]

SENATOR CAMPBELL: Okay. Thank you very much for joining us today... [LB260]

STEVE SHANAHAN: You're welcome. Thank you. [LB260]

SENATOR CAMPBELL: ...and your testimony. The next proponent, please? [LB260]

CHARLES MORGAN: Good afternoon, Senator Campbell, members of the committee. My name is Charles Morgan. That's C-h-a-r-l-e-s M-o-r-g-a-n. I appear before you today as a coach. I did not come today with any prepared text. I came to talk to you in favor of LB260 because I am concerned about the safety of my student athletes. I'm a father and I tend to adopt my young ladies and consider them my family, so. Senator Bloomfield, I do recall the statement...the question that you asked. And I can only say that in my case, as a coach, when we suspect any injury, that kid is done. Period. End of story--until my student athlete is cleared. I'm the head coach of the girls' soccer team at Lincoln East. I'm a competitor as fierce as anyone else. I have two state championships and a runner-up, so winning I do enjoy. I enjoy winning very much, but never at the point of sacrificing the health or risking that of any of my student athletes. I came to ask you to support this bill. I would entertain any questions that you may have. [LB260]

SENATOR CAMPBELL: Any questions for Coach Morgan? Since it's Old Home Days, Coach, I have to tell you my daughter played for LEGS. That stands for Lincoln East Girls Soccer, so. We've just...fun to relive all of our old days today. [LB260]

SENATOR GLOOR: This is Old Home Week. [LB260]

SENATOR COOK: It is. [LB260]

SENATOR CAMPBELL: It is Old Home Week. Go Spartans. [LB260]

CHARLES MORGAN: Well, I didn't think I was that old until you were talking about football in 1973, and I was already in the army, so I was...(laugh). Senator. [LB260]

SENATOR KRIST: It's not a question, it's a comment. The reason we can relive all these is none of us had severe concussions, so. (Laughter) [LB260]

SENATOR HOWARD: Head injuries, yeah. [LB260]

SENATOR KRIST: Or a head injury. [LB260]

SENATOR CAMPBELL: We have some. Coach, thank you for giving so much time to students and for coming today. [LB260]

CHARLES MORGAN: Thank you. [LB260]

SENATOR CAMPBELL: Next proponent. [LB260]

BRADY BERAN: (Exhibit 5) Brady Beran, B-e-r-a-n. Thank you, Senators, for allowing me to speak in favor for this concussion education. "Take me out, Coach." Those are the words you're not going to hear from an avid young football player. Looking back, those are words I wish I would have said September 24, 2004. I was a 17-year-old junior at Lincoln East, playing in a varsity football game. Earlier in the game, I was involved in a hard tackle and sat out a play. After that, my friend patted me on the back at halftime and I told him, "Don't touch me. I'm so tired." My other good friend noticed I didn't come over and give him a high-five after his kick in the third quarter. Every single time that year I had always sought him out and given him a high-five after every kick he took place. My parents noticed that I was playing a step slow in the second and third quarter of the game. Halfway through the third quarter, I was involved in a helmet-to-helmet collision. I went down, and a coach came and helped me get up and I walked off the field. I went to the sideline and then collapsed in a few minutes. The ambulance was called. I was taken to Bryan West Hospital. A CT scan showed I had bleeding in the head and I needed immediate surgery. My chances of surviving through the surgery were very slim. Thanks to a skilled neurosurgeon and the grace of God, I survived surgery. But that's not the end of the story. I was in a coma for five weeks. During that time I had a severe stroke caused...it was caused by a blood clot in the brain; pneumonia; two stomach surgeries for infection in the stomach from a dislodged feeding tube; and two more brain surgeries--one for putting the left side of my skull back on and one to drain the fluid off my brain. As I started to come out of my coma, I was unable to walk, talk, swallow, or eat. I then went to Madonna Rehabilitation Hospital...Rehab Center...where I was an inpatient for two months. At Madonna, emerging from my coma, I was like a three-year-old having to learn everything again. I

lost my ability to read and I had aphasia. Right before I left Madonna, they gave me an IQ test. They had to stop quickly. I had the intelligence level of a seven-year-old and still had to have someone at my side to help me when I was walking for balance...because I had balance issues. Did you know that the brain is the slowest part of the body to heal? Through many hours of rehab and much help I got, I graduated with my class, my high school class in 2006, and shockingly, qualified to start at Southeast Community College. I emerged there with my associate's degree and am now taking classes at UNL with the help of the disabilities program. Education is the key on these concussion issues. Had I or my friends been more aware of the seriousness of concussion and second-impact concussion syndrome, this serious injury could have been prevented...it might have been prevented. Thank you. And if you have any questions, I'd be happy to answer them. [LB260]

SENATOR CAMPBELL: Questions for Mr. Beran? Seeing no questions, we're all very proud of you. [LB260]

BRADY BERAN: Thank you, Senator Campbell. And I want to tell you that you are my senator from my district and I just had to do some research on you for one of my classes. (Laughter) [LB260]

SENATOR CAMPBELL: Perhaps we should speak afterwards. (Laughter) [LB260]

BRADY BERAN: Senator "Gloom," it's one of those "don't ask, don't tell" things, so. But, yes. [LB260]

SENATOR CAMPBELL: Thanks. Thanks a lot. (Laughter) Brady, you're now my hero. Thank you so much. But we are all so proud of you and what you have accomplished. [LB260]

BRADY BERAN: Thank you very much. And I hope to maybe speak with you guys later. [LB260]

SENATOR CAMPBELL: Absolutely. Any time. The next proponent. Good afternoon. [LB260]

BLAKE LAWRENCE: Good afternoon. My name is Blake Lawrence, L-a-w-r-e-n-c-e. Thank you for letting me speak with you. I haven't prepared anything. Just wanted to give my support of this bill. My experience with concussions is I was recruited to play football for the University of Nebraska-Lincoln in 2007, and came here to play for Coach Callahan. Those were some sad years, but...(laughter). Since that time, earned my way onto the field as a starting linebacker in 2008. Started five games in 2008 and began the 2009 season as a starter for the Nebraska Cornhuskers. During 2008, I was going through some concussion issues. And after my first concussion, there were some

recognized symptoms and I was held from play for a week until I was cleared by our team doctor. My next concussion occurred in a game at Kansas State in Manhattan, Kansas, and I came off the field, passed the tests that are typically provided by the athletic trainers, and was put back onto the field. During that time, I experienced no second-impact syndrome. I thank God for that. I feel that I was experiencing concussions but did not suffer through some of the things that some have talked about before. After my second concussion, some more attention was brought to the factor that I may be more prone to concussions than other athletes on the field. In spring of 2009, I suffered yet another concussion--three in one year, and each with the response of holding me out of play and making sure that my brain is ready to go before putting me back on the field. After the third concussion I was approached by the trainers, the doctor, and Coach Bo himself, and was told about the seriousness of concussions. And to me, honestly, after my third concussion, I thought that there was nothing wrong. I could just sit out another week and be ready to go. But because I was made aware of the seriousness of concussions from the doctors, the trainers, and Coach himself, I knew I had to put an ultimatum on my career in sports. So after discussing with my family, I said if I had one more concussion, no matter what the symptoms or situation, I would remove myself from sports. In practice in 2009, while I was a starting linebacker, I suffered one more concussion, and it went through my mind to not tell anyone about it because I had so much going for me. I was in Nebraska, a dream school. You know, football in this state is everything. And it just...it took a lot of courage for me to walk in and tell the trainers that something had happened. And not every athlete is going to be able to do that. I think a lot of people do care what's on the scoreboard and want to throw away their medical record, especially if you're a starting linebacker for Nebraska. But I feel that because I was educated, because the seriousness was brought to my attention, I knew that I couldn't risk going on the field one more time. And that day I didn't know it was going to be my last day of playing a sport I love, grew up playing, and wanted to play for a long time. But because I was educated and because there was support there for me, I was able to step away. Since that time, I graduated college in two and a half years, I'm pursuing my MBA degree. I've started my own business. And I can't say that if I was able to play or if I didn't walk in and tell someone that something was wrong, that I'd be able to do any of those things right now, so. I could take any questions but thank you for letting me speak with you. [LB260]

SENATOR CAMPBELL: Thank you, Mr. Lawrence. Questions for Mr. Lawrence? Mr. Lawrence, did you do an interview on KLIN, the morning show? [LB260]

BLAKE LAWRENCE: Yes, I did. Yes. [LB260]

SENATOR CAMPBELL: You did a terrific job. [LB260]

BLAKE LAWRENCE: Thank you. [LB260]

SENATOR CAMPBELL: Senator Lathrop would have been so proud of you, because I knew quite a bit about his bill and I hadn't even read it yet, and you did a great...you just did a great job and certainly I think spoke to a lot of students out there. And if they can hear you talk from that show, it was just really well done. [LB260]

BLAKE LAWRENCE: Great. Thank you. I would love to be a part of making it known that it is okay to be informed and step away. High school students, young athletes, take it in your control and be educated and step away when you need to. [LB260]

SENATOR CAMPBELL: You're just an inspiration. Thank you. [LB260]

BLAKE LAWRENCE: Thank you. [LB260]

SENATOR CAMPBELL: Next proponent. Good afternoon. [LB260]

ISAIAH BOCKELMAN: Hello. My name is Isaiah Bockelman. That's I-s-a-i-a-h B-o-c-k-e-l-m-a-n, and I am currently a senior at Lincoln Lutheran High School. And my junior year, on September 25, I suffered two concussions in one football game. The first one was in the first quarter of a game. And there was noticeable symptoms after that, but I managed to pass the...just the playing test that I had on the sidelines because I have had a history of concussions, and that was up towards the eighth, ninth or tenth concussion I've had. And so I got through the test. I ended up sitting out a quarter and a half, and then I went back in the third quarter. And I couldn't even read the plays off of my wrist. I had to have another player in the huddle read the plays. I was still playing in the game. And I ended up getting hit again and that hit was much worse, and I ended up on the ground and I needed help. I could hardly walk after that. And it just wasn't the same anymore. So most of my life I had been doing a lot of sports, and I had to go through the fact that I couldn't play any, anymore. I had to take the whole year off so I didn't play any sports last year. And taking that necessary time off and being educated by my doctors, I have learned the importance, and it's definitely changed the way I play and it's also made me value what I do have and that my situation isn't worse, as it could have been. And I would hope that you guys support this too. Thank you. [LB260]

SENATOR CAMPBELL: Any questions? We're very proud of you, too, Isaiah. Thanks for coming today. Next proponent. [LB260]

KATE KULESHER JARECKE: (Exhibit 6) Senator Campbell and members of the committee, my name is Kate Kulesher Jarecke, K-a-t-e K-u-l-e-s-h-e-r J-a-r-e-c-k-e. I'm the executive director of the Brain Injury Association of Nebraska. The Brain Injury Association of Nebraska was incorporated last year by individuals with brain injury, their families, and professionals in the field to provide support and education to one another, as well as to advocate on behalf of persons with brain injuries and their families. Additionally, research and prevention programs are primary goals. Our association is

one of 45 chartered affiliates of the Brain Injury Association of America. We applaud Senator Lathrop and his staff, and the Nebraska State Athletic Trainers' Association for their work on helping prevent further injuries by introducing LB260. You've heard from the medical professionals and the athletes. I just...so I won't take up any of your time. You have my testimony there. But I want to reiterate a couple points on LB260. Right now, the coaches' training is free and on-line through the CDC. The Y's of Nebraska support this legislation. Alone, and in Lincoln, Nebraska, they have 5,000 coaches and they're in support of this legislation. So both the organizational and the schools are supporting. And one of your questions, Senator Gloor, on the healthcare providers, and especially in further reaches of the state, we have heard from the medical community. A lot of them actually volunteer their time to the schools. Athletic trainers will volunteer in different schools, and that as well as the M.D.s. Every year, school physicals are required. The trauma centers, too, are willing to work on this. So I think there are those throughout--of course, we'd like to have a lot more education on brain injury throughout the state, and I'll work on that too--but I think we do have a lot of those healthcare professionals that are willing to step up and help with that, with the athletes. And to that point too, I think when a parent has an athlete with a torn ACL, they're not going to send that person with an ACL back onto the field to play. They want to make sure that athlete is cleared. And we just need to make that awareness point on concussions as well. So I think that...those are the biggest points and that there's no fiscal note on this bill, so that's always a good thing too. So if there's any other questions? [LB260]

SENATOR CAMPBELL: Any questions by the senators? Thank you for providing all the information to us. [LB260]

KATE KULESHER JARECKE: Okay, great. Thank you. [LB260]

SENATOR CAMPBELL: Next proponent. The last proponent. [LB260]

WALT RADCLIFFE: (Exhibit 7) Madam Chairman and members of the committee, my name is Walter Radcliffe and I'm appearing before you today as a registered lobbyist on behalf of the National Football League in support of LB260. I've given Diane a letter from Commissioner Goodell. I won't read the letter. There's just three points contained in the last paragraph on the first page that I would call to your attention as the primary reasons why the NFL supports LB260. It believes that the bill contains the three core principles that you've heard about, which is, first of all, education for youth, athletes, parents, and their coaches; secondly, the removal of the athlete who's suspected of sustaining a concussion from play; and then finally, mandatory clearance of that athlete by an appropriately licensed healthcare professional before returning to play. And those are the three major points that they've supported nationally with regards to this legislation. I know you have other bills and other testifiers, so I will close and be happy to answer any questions you might have. [LB260]

SENATOR CAMPBELL: Are there any questions for Mr. Radcliffe? Thank you, sir, for coming today. [LB260]

WALTER RADCLIFFE: Thank you, Senator. And thank you, members of the committee. [LB260]

SENATOR CAMPBELL: Senator Lathrop, would you like to close on your bill? [LB260]

SENATOR LATHROP: Yes, just briefly. And thank you; that hearing was a little bit long. I'm sure you're probably looking at the clock behind me, but let me thank you for your patience, and then also take this opportunity to thank the folks that came here today. I...one of the...and you've all had this occasion where you work on a bill and the people that you work with are just inspiring and incredibly helpful and then the cause seems compelling. And after the testimony today, I think you can see why the bill is necessary, that it's well-crafted, and we'll certainly look at the concerns expressed by the committee. But we're very anxious to see it move from the committee and go to the floor for debate by the full Legislature. [LB260]

SENATOR CAMPBELL: Any other comments or questions? Senator Bloomfield. [LB260]

SENATOR BLOOMFIELD: Senator Lathrop, somebody told me in my office at one time that a paramedic, like from a volunteer fire department--our small school has the ambulance at every football game--that that paramedic can sign off? Is that as you understand it? [LB260]

SENATOR LATHROP: Paragraph 3 describes...or pardon me, Section 3, on page 2, indicates a "licensed health care professional means a physician, an athletic trainer, a neuropsychologist, or some other qualified individual who is registered, licensed, certified, or otherwise statutorily recognized...to provide medical treatment and is experienced" with brain injuries. I don't know if an ambulance attendant or an EMT is authorized to provide medical treatment, but certainly they would be capable of making the assessment that this would call for. [LB260]

SENATOR BLOOMFIELD: Okay. Thank you. [LB260]

SENATOR LATHROP: So I don't think they could clear them, in other words. [LB260]

SENATOR BLOOMFIELD: Okay. [LB260]

SENATOR CAMPBELL: (Exhibits 8-11) Before we close the public hearing, we need to note that there are letters in support of this bill from the Nebraska Nurses Association; we have a copy of the letter from the Governor, (see Exhibit 1) as Senator Lathrop

indicated; the Nebraska Medical Association; the Y's across the state; and Alegent Health. So with that, we'll close the public hearing and thank everyone who came to testify on LB260. And we'll take just a minute for those in the hearing room who wish to leave and for the testifiers beginning to come forward on LB290. Okay. If we could ask our guests to quietly leave. Okay, I'm not loud enough. Mr. Radcliffe, I'm going to put you in charge of the...to quietly leave. Senator Pankonin, I know, has some people that need to leave and that's why I've been watching the clock to try to get you up and out. Welcome. It's so good to see you again. For our audience, Senator Pankonin was a longtime member of this committee and we miss him, and it's good to see you. [LB260]

SENATOR PANKONIN: (Exhibit 14) It's good to be here. Thank you. Good to see a lot of familiar faces, of course, all familiar faces, but nice to be before your committee and appreciate the work that you all do on these topics. Good afternoon, Chairman Campbell and members of the Health and Human Service Committee. I'm Dave Pankonin, P-a-n-k-o-n-i-n, and I represent the 2nd Legislative District. I'm here to introduce LB290. The bill would amend the language in 71-464 to give Nebraskans the right to obtain reasonably detailed information that is meaningful to them about healthcare services they receive, and the associated charges for those services. Section 71-464 was created in 2009 by Senator Howard's LB599. The objective of that bill was to simplify and broaden a patient's right to an itemized billing statement. The objective was laudable, but when the new language created by the passage of LB599 was needed to produce patient information, it sometimes did not work in the way in which it was intended. Earlier this session, I explained to Senator Howard the problem that arose for one of my constituents and my plan to amend 71-464 to make its purpose clear to healthcare facilities and consumers alike. Today my constituent and I would like to offer a more complete explanation to this committee. The issue that prompted the introduction of LB290 was brought to my attention by Pam Orr, who lives near my hometown, Louisville. Mrs. Orr had several surgical procedures performed at a healthcare facility in Omaha. She, understandably, wanted to know what the services she received and what the charges were for those services. First on her own, and then with the help from my office, Mrs. Orr tried several times unsuccessfully to obtain the information to which she was entitled. Mrs. Orr, as I believe most citizens would do, called and wrote to the patient accounts office. She described what she wanted and after contacting my office included the language in 71-464 in her communication with the accounts office. The response she received each time failed to provide her with any information about the services that were performed for her or the charges for those services. The Department of Health and Human Services and my staff both encouraged Mrs. Orr to redirect her request for the information, to which she was entitled, to the facility's administrator with a notation about the statutory basis for the request, and copies to DHHS and my office. This final communique produced the information that Mrs. Orr had been seeking. But as I am sure Senator Gloor would tell us, healthcare facility administrators would prefer not to have to intervene in matters such as this. I believe the changes proposed in LB290 will lessen the chance of similar situations

occurring in the future. It has been brought to my attention that some interested parties would prefer to retain the requirement to include diagnostic codes in the information to be provided to a patient or patient's representative. While these codes are of no practical use to the average citizen, I would not object if this committee decided to retain this existing requirement of 71-464. I would be happy to answer questions, and Mrs. Orr will follow me to provide more details about her experience and the need for the changes proposed by LB290. Thank you. [LB290]

SENATOR CAMPBELL: Questions for Senator Pankonin? Senator Howard. [LB290]

SENATOR HOWARD: Thank you. Senator Pankonin, you and I talked about this and you told me what the problem seemed to be with your constituent. To just go into it a little bit more so that the committee has a complete picture, when she asked the bookkeeping or accounting office for the information they were not able to provide what she needed, which was virtually an itemized list of the charges. [LB290]

SENATOR PANKONIN: Yes, she's going to follow so you can ask her directly. [LB290]

SENATOR HOWARD: Would you prefer I ask her? [LB290]

SENATOR PANKONIN: I think that would be appropriate. [LB290]

SENATOR HOWARD: Okay. Since I got the story from you, that's why I asked you. [LB290]

SENATOR PANKONIN: Right. Well, she had trouble getting the information, but I'm going to let her explain her own experience so then you can ask her. [LB290]

SENATOR HOWARD: Well, if I can just...if you...as I recall you telling me, when she did go to the hospital administrator she was able to successfully get the information. [LB290]

SENATOR PANKONIN: She did finally, yes. [LB290]

SENATOR HOWARD: Thank you. [LB290]

SENATOR PANKONIN: Yes. [LB290]

SENATOR CAMPBELL: Senator Pankonin, will you be staying for closing? [LB290]

SENATOR PANKONIN: I will. [LB290]

SENATOR CAMPBELL: Okay. Excellent. Mrs. Orr. Welcome. [LB290]

PAM ORR: Thank you. Good afternoon, Chairman Campbell and members of the Health and Human Services Committee. My name is Pam, P-a-m, Orr, O-r-r, and I am glad to be here to help support LB290. This is a new experience for me. [LB290]

SENATOR CAMPBELL: You're doing fine. [LB290]

PAM ORR: And I'm learning as I go here, but it was something that I am very proud to say I was helped tremendously by the people sitting behind me here. I had a procedure done and it turned out maybe not the way I wanted it, but the most important thing was I didn't know what I was paying for when I got the bill. The bill was...seemed tremendously high for us. My husband and I are on a budget. We're both employed but when I got it, I just, I was like, oh, my gosh. And so the first thing I did was to let the accounting department know that I was interested in finding out, what was I paying for? I remember somebody asking me when I woke up, would you like to have a 7 Up and I said, no, I didn't want a 7 Up, and I got to thinking, well, maybe every little thing that they offered me was in that total. So I called Blue Cross and Blue Shield, that's who is the carrier of the insurance, it's through my husband's company. And the lady was really nice, but she said...because I said, can you tell me, do you have it itemized so I know what I'm paying for because I'm paying a lot of money here but I don't know what it's for. And so what they said was, no, did you know in your state that they don't have to give that to you. And so this is what Blue Cross Blue Shield told me. And I said, no, I didn't know that, but I went ahead and contacted them again and said, I need to have a statement. I need to know what I'm paying for. Not only did it not have the items that were used in the procedure listed, it didn't even for a while there show me the payments I was making. I said to my husband, is this going into somebody's pocket? Where is this money going? And, in fact, there was one statement that came that I sent down to this office, a copy of it, it looked like it had gone up. My payments I was paying disappeared, and it looked like it almost doubled. So I was really getting concerned and I was getting confused. And so at that point I just went on the Internet and looked up, how did you get ahold of your senator, and that's what I did. So I contacted the office and got some communications from Sherrie and she was very helpful and we went back and forth and...because I work outside the home and so I'd check my e-mail every night to see what I needed to do. Even after I had started talking to them, I tried again. And, in fact, once I thought maybe I should stop making payments and I was encouraged, maybe that's not a good way to go from, you know, Sherrie, because that might cause some problems. And at one time, too, I got a letter saying they were going to turn us into a credit and collection. So as this went on, I kept communicating with them back and forth and I think that's when I got the bill that said I was owing more than what I had written down on there. At one point, too, I had talked to somebody and they said, yes, you can pay this amount of money every month and we'll be real nice about that. But there was still nothing there telling me what I was paying for, and so I thought this isn't right. And finally I was given the advice to contact someone that would maybe understand that this

is a problem and there are some things out there that could support me. And then when that happened, then I did get finally an itemized bill. And actually I even got some money back because I had overpaid. And so that was the result of that, that obviously, I was overpaying. Somebody wasn't documenting it correctly, so there was a couple of things going on there. Either they had changed personnel, I don't know. I can't speak for them but there was a problem with the way they were letting me know what I was paying for. So I'm here to support LB290 today. [LB290]

SENATOR CAMPBELL: Questions for Mrs. Orr? Senator Howard. [LB290]

SENATOR HOWARD: Thank you. I wish you'd been there when I put the original bill through because you would have been perfect testimony for that. As I understand it, you simply wanted to know what you were being billed for, like anybody would. [LB290]

PAM ORR: Right, especially when, you know, you're on a budget and you count every penny. [LB290]

SENATOR HOWARD: Absolutely. Absolutely, and you get a bill that's a shock, basically. Senator Pankonin and I had talked about this and I just want to make sure that the way that I understood this working is correct. You got the bill, you contacted the billing office, like any of us would do, and they weren't very specific. They, in fact, told you that in Nebraska that wasn't accessible to you, which... [LB290]

PAM ORR: Well, actually Blue Cross and Blue Shield told me that. They never told me anything. I just kept asking requests and I didn't get anything back from them, via letter or phone call or anything other than one lady told me, well, we'll let you make payments every month until...I don't know what, eternity, because I don't know where my payments were going. There was no balances. [LB290]

SENATOR HOWARD: Right. And that wasn't the answer to your question anyway. But when you finally reached the bottom of this, and thank goodness that you went to Senator Pankonin, and he's very conscientious and I'm sure they were there for you, which is how we all want to be. That when you had this information and you were able to go to the administrator or that person in charge of the facility with the information and they were cooperative and helped you get what you needed. [LB290]

PAM ORR: Yes, and I did it via a letter and leaving a voice mail. In fact, I had to...I think it was two or three voice mails because I kept getting cut off and I was trying...you know, how you only have so much time you talk really fast. I remember I think I had to call back two or three times to get the message across, but I also supported it with a letter so she had both of those in her hand. [LB290]

SENATOR HOWARD: Good. Good. She had the documentation. That was very smart.

Well, I really appreciate your sticking to it and getting this. And like I say, the original bill was put into place to address that exact thing, to give you the opportunity. For me it's really no different than your charge card bill. You want to see what's on that bill to make sure you've not paid for something that you didn't authorize or wasn't your charge. And I'm glad you followed through and got to the bottom of it. I've looked at this again. Senator Pankonin and I have talked...and in looking at it, to me it's the same thing only it's a little less...it's watered down a little bit. It just says, reasonable description. It doesn't include the codes and it doesn't...it's not as specific as the original bill, the diagnostic codes, specifically. So I don't know really...if the original bill worked for you, do you see the reason that this should be changed? [LB290]

PAM ORR: Well, diagnostic codes don't really mean anything to me. I mean, that's more, I guess, in your world. (Laughter) The main thing to me would be if I took a 7UP, it would say I took a 7UP and it was this much money. [LB290]

SENATOR HOWARD: Did the information that you received tell you that? [LB290]

PAM ORR: No. And at the very end, it really didn't. It just... [LB290]

SENATOR HOWARD: Were you comfortable with what it did tell you? [LB290]

PAM ORR: Yes. At the very end because it did, at least it was...to me it was almost like there was kind of two battles I was fighting. One, to get an itemized listing of what was used, the other was to show what payments I had made and where that money was going for, and how it was applied, and what was the original total, and how did that...why did that total go up throughout all this, so. [LB290]

SENATOR HOWARD: Sure, sure. Well, and I would suggest to you that if you ask the person in accounting what those or the insurance what those codes would mean, certainly they should be able to define those codes and tell you what that wordage means. [LB290]

PAM ORR: Well, yes. [LB290]

SENATOR HOWARD: But I'm glad you got to the bottom of it. I'm glad you got a little money back. [LB290]

PAM ORR: Yeah, it wasn't a lot. It was more the idea that...like I said to my husband, I know we were paying more than we should, but we had no way of knowing. That was the biggest thing. [LB290]

SENATOR HOWARD: Well, and when you're diligent about your payments, then you don't. [LB290]

PAM ORR: That's the thing, yeah. [LB290]

SENATOR H0WARD: Thank you. [LB290]

SENATOR CAMPBELL: Senator Gloor. [LB290]

SENATOR GLOOR: Thank you, Senator Campbell. Mrs. Orr, just to help me kind of narrow down the scope of the challenges we may have with what I'd consider to be noncompliance. Without getting into specifics, you don't need to tell me where you were but was this a hospital or was this one of the myriad of other ambulatory facilities? [LB290]

PAM ORR: Yeah, it was not a hospital, no. In fact the doctor had recommended to me that this is where he did his surgeries in Omaha. He does several surgeries across the state but this is the facility he worked with, and ironically it's at a place where I first met my husband 39 years ago. John Day Company was there and it's no longer there. It's moved and this is... [LB290]

SENATOR GLOOR: Lost some of its romance. (Laughter) [LB290]

PAM ORR: Yeah, I guess. Especially, yeah, when we were down there in that same area so, no, it was what you call ambulatory, so. [LB290]

SENATOR GLOOR: And to make sure I understand what you were looking for, you were looking for not necessarily what they used, but what they used that you were charged for. In other words, if they didn't charge you for the 7UP, you didn't care whether you saw it on the bill. [LB290]

PAM ORR: Right. [LB290]

SENATOR GLOOR: You did want to see what was going on the bill that somebody would be paying for. [LB290]

PAM ORR: And what I was paying for every time I sent a check in. Where that money went, and like I said, was it going into somebody's pocket. I had no idea. [LB290]

SENATOR GLOOR: A reasonable expectation. Thank you. [LB290]

SENATOR CAMPBELL: Any other questions from the senators? Thank you, Mrs. Orr, and I'm sorry that you had to go to this point, but we're happy that you got a resolution. [LB290]

PAM ORR: Well, it's a learning experience, so. [LB290]

SENATOR CAMPBELL: Absolutely. [LB290]

PAM ORR: Thank you. [LB290]

SENATOR CAMPBELL: I was told some people have a time constraint and so could we take that...is that a proponent or opponent? Opponent. Hold on just one minute. How many people in the hearing room want to testify in favor of the bill are proponents? How many wish to testify in opposition? Okay. Would you like to come forward and I apologize. I'm working really hard to get to that 3:00. (Laughter) [LB290]

SHERI SMITH: I know. You've done a great job. Madam Chair and members of the committee here, my name is Sheri Smith, S-h-e-r-i S-m-i-t-h. I am representing the Nebraska Association of Independent Ambulatory Centers. And when you look at this bill at its face value, it looks like there should be no opposition to it. Who doesn't think a patient has the right to know what they're paying for? But I would like you to consider a few things from our perspective in your consideration of this bill. We believe that the vast majority of ambulatory centers in this situation are providing that information already. One of the things that I think that you need to understand about ambulatory surgery centers is that we have a global billing. We do not itemize our statements. We do not bill for sutures. We do not bill for drugs. We do not bill for 7UP. We do not bill for any of those things. We have one fee that is included in the facility fee. Those fees are set either by negotiations with independent...like Blue Cross Blue Shield or United Healthcare. We have negotiations with them and we reach an agreement for a particular level of service or a code. When we see Medicare patients, Medicare tells us this is the amount that you can bill for this procedure; no more, no less. It doesn't matter if we use more drugs, less drugs, it doesn't make any difference in the amount that we're able to collect. So my concern would be if you make this a state law, now patients will come to us and they'll say, I want to know the breakdown of your bill. Well, the bill includes O.R. time, includes staff nursing time, includes sutures, drugs, includes all of those things. And when Mrs. Orr called the billing department and said they said, I can't tell you, they can't tell you that. The billing department does not have a breakdown of how many R.N. minutes, how many O.R. tech minutes are included in the billing process. As an administrator, I take that into consideration when I'm negotiating my rates with carriers. So the billing staff, truly, could not give her that information. Now I can't address her particular situation. It sounds like they might have an issue with their billing software where her payments weren't being credited. I can't address that. But I do want you to take into consideration if you make this a state law, that is going to be very labor intensive for our facilities to provide that information. We try and keep our costs down. We try to make it a reasonable alternative for patients to hospital care, if they so choose. Some patients prefer hospitals, some patients prefer the ambulatory surgery center. But we try to keep our costs down and that is one of the ways that we keep our

costs down. It's a global billing. If the center is Medicare certified, we have to provide that information to patients. If not, we don't get certified by Medicare. So that's part of the issue that we're dealing with. I guess my concern would be, do we need a state law for maybe one isolated incident? And I truly feel sorry for...I understand, you know, that would be a very horrible situation to be in. And I'm glad she was able to get it resolved. But my concern would be, do we start writing legislation for every rogue member of a profession? I would be happy to entertain any questions that you might have. [LB290]

SENATOR CAMPBELL: Are there any questions? Any questions? Oh, sorry, Senator Krist. [LB290]

SENATOR KRIST: Have you ever received a phone call on a patient concern from the Ombudsman's Office in the state of Nebraska? [LB290]

SHERI SMITH: No, I have not. [LB290]

SENATOR KRIST: If you would have received a phone call from the Ombudsman's Office or from the Senator's office and they explained the issue, would you have been able to, either over the phone or in writing, say this is a block payment? We negotiated this with the insurance company. It includes all of the items that, therefore, in fact, share the information on how you bid that process? [LB290]

SHERI SMITH: I could, yes. [LB290]

SENATOR KRIST: Yeah, so you could go into the... [LB290]

SHERI SMITH: We do cost per case for each case that we do. So we are aware when we're negotiating what fee we need to have to cover our expenses. So I would be able to provide that information, but I am the administrator of the facility and people at our billing department would not have access to that information. [LB290]

SENATOR KRIST: Thank you. That's the point I was making and then the, I can't provide that information sometimes in a billing department means, I can't give it to you by law. It sometimes means, I can't because I don't have time. It sometimes means, I can't because I won't and that's not very often, I'm sure. And then it sometimes is, I don't have that information available to me. If that question were asked and if that were the answer, would the billing department...would your billing department say, I can have the administrator call you? [LB290]

SHERI SMITH: Absolutely. [LB290]

SENATOR KRIST: Okay. Thank you very much. [LB290]

SENATOR CAMPBELL: Any other questions? Senator Gloor. [LB290]

SENATOR GLOOR: Thank you, Senator Campbell. I'm going to recapture my thoughts here for a second. Pardon me, Mrs. Smith. You've done a nice job pointing out something I'd like to reiterate and that is, and it's a frustration for most consumers, but the bill that's generated is generated pretty much at the dictate of the payor which could be any number of third-party payors. And although patients see themselves as the patient and the consumer, and that's correct, as long as there's a third-party payor involved, they dictate what that bill looks like. And I think most people don't understand or recognize that as a frustration. But having said that, there is a law already on the books. And I'm not understanding why your objection is that we don't need a law when we already have one that somebody could and should have been responding to. [LB290]

SHERI SMITH: Yes, and I apologize for that. I should not have said that, but I just don't know that this additional law would be required. [LB290]

SENATOR GLOOR: And clearly it's hard to satisfy the curiosity and the inquisitiveness and the need to know of every patient. But it would seem to me even with global billing, it would be easy enough to put together a two paragraph letter that would say, you had this procedure for which there is a global billing that will include nursing time, preoperative time, certain number of medications. And it may even include a beverage that goes along with the recovery, etcetera, etcetera, but understand that this is a single price to which we have...I mean.... [LB290]

SHERI SMITH: Right. I guess my concern would be, how far is this going to require us to go? If it's just a global statement that says, this includes the R.N. staff time, the surgery tech time, the O.R. time, the equipment time, the sutures, the drapes, you know, if I can just put that in a statement, which again is time consuming to provide this type of information, if that's sufficient, then, you know, maybe I don't have as much of a concern. But if I need to itemize out and I have to say, well, we used this much of this particular drug, which costs this much money, you know, suture. My costs on some of our sutures are 15 cents. Now I include that in my estimate so I can include all of the costs, but to list out 15 cents for a suture for a patient itemized statement really would be extensive. [LB290]

SENATOR GLOOR: Yeah, maybe it's just an issue of definition here because a global fee to me wouldn't require measuring any amount of medication or any length of suture material that went in, because it's going to be the same global price regardless of how much of that you use. But letting people know what is used, within reason. We have no way of measuring Kleenex used, we have no...I mean, there are certain things it would be impossible to know. This may be an issue of definition (inaudible). Thank you. [LB290]

SENATOR CAMPBELL: Senator Cook. [LB290]

SENATOR COOK: Thank you, Madam Chair. My question kind of bounces off of Senator Gloor's question. You mentioned in your testimony that you indeed negotiate prices for...whether it's professional time or materials and kind of do an algorithm and base prices on that. Would you view that as a burden to perhaps supply the patient with a list of what those items might be and a roundabout figure as to point 15 of an R.N's time, point...what typically goes into that procedure? Let's say I go in for an outpatient podiatry procedure. There are a set of steps that the healthcare practitioner, her or his assistant, however much pain reliever goes in, would that be something that you see as a...versus a point by point, patient by patient, itemization? [LB290]

SHERI SMITH: Well, I guess all of that information would be funneled probably through me personally. The billing department would not have that information so those requests would come to me. I guess again I'm a little bit concerned when we bill globally, we have one fee, what advantage that would be to a patient. I think what Mrs. Orr would like to see is, was she billed for the diet 7UP or whatever it was. Well, those things don't even come into play when we're looking at negotiating our rates. We don't bill for Kleenex, we don't bill for the crackers that a patient might have following a procedure. None of that is included in it. What we take into consideration is mostly the O.R. time, the estimated cost of the drugs that we would use, and sometimes, sometimes we use more than we estimate. We have procedures that we have lost money on because we've actually used more than what we had negotiated as our base price. So I don't...you know, we could provide that information and I'm not saying that we would not, but I don't know to what benefit that would serve. I mean, I could say this procedure it takes two R.N.'s and each one of them spend 35 minutes in the room. My surgery tech... [LB290]

SENATOR COOK: Or some generalized information. This outpatient procedure typically takes this much, nothing that would be specific to each patient's procedure, but potentially you have a range of procedures that you offer at your facility and I won't say kind of a la carte, but typically this is what you might as a courtesy to the patient to know. [LB290]

SHERI SMITH: Some general...and we could, yes, yes. I would say yes. If I had a patient that called and asked for that information, I would be able to provide some general information to them that, you know, this is what's included in our pricing, our global pricing is that it's the staff time, the O.R. time, the equipment time. All of that is included in it. And I could certainly provide that information. [LB290]

SENATOR COOK: All right. Thank you. [LB290]

SENATOR CAMPBELL: Any other questions? Senator Bloomfield. [LB290]

SENATOR BLOOMFIELD: As a layman, would you explain to me global billing and global pricing? [LB290]

SHERI SMITH: Okay. The global fee is when you come in...I work for a urology practice. When you come in to...I'm just going to use bladder tumor removal. You come in for a bladder tumor removal, we bill you one fee. Now we're going to know in advance what that is. If you would like to know, and we do really make an effort to let our patients know prior to the procedure what their costs are going to be, including calling the insurance company, checking on their benefits, on their deductible, and talking with the patient ahead of time. So there's no surprises that you're...this is going to be your patient responsibility following the procedure. But the global billing is one. It's not like a hospital where you're going to be invoiced for the box of Kleenex or the drugs that are used. All of that is going to be in our one global fee. [LB290]

SENATOR BLOOMFIELD: Okay. The...I'm trying to get my words right here. The bill that Mrs. Orr would have received, is that from your clinic or is that from some outside...? [LB290]

SHERI SMITH: It wasn't from our clinic, but I don't know what she... [LB290]

SENATOR BLOOMFIELD: But would it be from a...typically from a clinic? I went through a similar situation as her and we never did get to the bottom of it. I ended up talking to the doctor and he just cleared it up because nobody could explain what we were paying for. [LB290]

SHERI SMITH: Okay. Well, and I'm sorry you had those problems. I really am. We would like to handle that. [LB290]

SENATOR BLOOMFIELD: The insurance company paid an amount. We got the thing from the insurance company saying they had paid this amount, and that we owed three hundred and some dollars, as I recall. We got a bill from the doctor's office in nine hundred and some dollars. And we went in and questioned it and they couldn't explain it. [LB290]

SHERI SMITH: When you have a procedure at a facility, you will get two bills. You will get the physician's, the professional service, the doctor actually performing the surgery. And then you will get a bill from the facility for all of the other charges combined. And so you could have easily had a $900 bill from the doctor, and a remaining $300 bill for the facility. That would be... [LB290]

SENATOR BLOOMFIELD: But you made the statement that perhaps it was in the billing

software, was the issue with her. [LB290]

SHERI SMITH: Well, as far as her payments, yes. [LB290]

SENATOR BLOOMFIELD: How big a problem is that? And are you able to speak to that because I think that's where ours ended up being, too, was in the billing software. Should we be looking at billing software instead of global billing? [LB290]

SHERI SMITH: That's a hard...I don't know the answer to that one. When you make a payment to a facility or a physician office, either one, you should have something that reflects that payment. And I don't know what the particulars are, why it wasn't showing up that she made that payment. But she has a right to have something that reflects that payment and shows that she's made those payments. I agree with that wholeheartedly. [LB290]

SENATOR BLOOMFIELD: We couldn't get it either. [LB290]

SHERI SMITH: I would not argue that one at all. [LB290]

SENATOR CAMPBELL: Other questions from the senators? Thank you very much. [LB290]

SHERI SMITH: Thank you. [LB290]

SENATOR CAMPBELL: Is there anyone else who is under a time constraint? Realizing we're all under a time constraint but...good afternoon. [LB290]

JOHN QUINN: Good afternoon, Madam Chairman and fellow committee members. My name is John Quinn, Q-u-i-n-n, and I'm here to oppose this bill primarily based on the information you just heard from the previous person in that our surgery center and most surgery centers are not set up to detail every item that we include in every surgery. We do the global billing and we would rather than be so opposed to this, we would propose to, as the senator asked about how do we find out in advance what this is going to cost us. This is something that we've been pushing for, I know, 32 years in our facility, and we provide the information up-front. When a person asks...when they call in ahead of time and they ask how much is my billing going to be. We want that clear ahead of time. Your facility charge is X amount of dollars. It includes the facility fee, which includes the anesthesiologist and the CRNAs, all the nurses, the overhead of our business that we have to compute to figure out how it averages out for each surgery, with each type of surgery, and we do dozens of types of surgeries and we have probably over 50 physicians that come to our facility. That's a very difficult thing to come up with a global amount. The government is very good in telling us how much we can charge on all our Medicare cases, and over half of our cases are Medicare cases. So it wouldn't make

any difference whether we're going to make a dime or lose a dollar. That's all we can take in. And we have to live with that. The insurance companies are very similar to that in that they tell us what they will pay on each code and we accept that, and we have to do it with all of the different codes. Some of them, when we negotiate, we lose money on and some we make money on. You know, hopefully, we make money on enough that we don't lose money at the end of the year. Last year we lost money at the end of the year, but it was a bad year because of the depression-type situation. We didn't do the number of cases that we normally do. We didn't recompute our cases and our caseload, and what our charges were. We went consistently and we still have, and now this year we're starting to see an improvement again. We're hoping we're getting out of the woods and that we'll...we're supposed to be a profit making organization and, hopefully, we can do that. I think that the previous speaker gave a pretty good explanation of your questions, but I would be glad to entertain any questions that you have. And maybe from my background I might be able to get a little more light on it and I will be happy to do that. And incidentally, in case you're interested, I played football in 1948, (laughter) and when we practiced, we didn't even have helmets, so how about that. (Laughter) [LB290]

SENATOR CAMPBELL: Sir, those are brave years when you played football. Is it Dr. Quinn or Mr. Quinn? [LB290]

JOHN QUINN: I am John Quinn. I am not a doctor. I'm the general manager of the Omaha Surgical Center. [LB290]

SENATOR CAMPBELL: General manager, okay. Questions from the senators? Sir, thank you very much for coming today and clarifying some points. [LB290]

JOHN QUINN: Thank you. And I'd like to give my condolences to Mrs. Orr on her problems. We put our patients primarily first, and that's why we insist that we take a proactive approach and provide the information ahead of time so that they know what their costs are going to be. You know, a lot of times with insurance, it's how much out-of-pocket and we know that we can save them a ton of money if they come to us versus a hospital. And that's just the way it is. That's a fact. Thank you. [LB290]

SENATOR CAMPBELL: All right. Thank you. Others in the hearing room who wish to testify in opposition? Those who would like to provide neutral? [LB290]

KORBY GILBERTSON: Good afternoon, Madam Chair and members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America and also Nebraskans for Workers' Compensation Equity and Fairness. Hopefully, that will take me longer than my testimony. We had one concern when we read this bill. We have no problem whatsoever with patients and their

representatives getting information. Our sole concern with the bill is that in the existing language it required that the diagnostic codes be included and we would hope that those would still be included because as many of you have lived through the workers' compensation schedule fights over the years, that is how our fee schedules are based and so a lot of times that information is actually very useful. And I'd be happy to try to answer any questions. [LB290]

SENATOR CAMPBELL: Questions for Mrs. Gilbertson? Any questions? Thanks for coming today. [LB290]

KORBY GILBERTSON: Thank you. [LB290]

SENATOR CAMPBELL: Next testifier in a neutral position. [LB290]

DON WESELY: (Exhibit 12) Madam Chairman and members of the Health and Human Services Committee, I'm Don Wesely, D-o-n W-e-s-e-l-y, representing the Nebraska Association of Trial Attorneys. We, too, share the concerns Korby just shared with you and have an amendment drafted that should be passed around that would reinsert language that would include current procedure terminology codes and diagnostic codes. And it simply is some of the work that some of our attorneys do, they need that information. So that's our request. And happy to answer any questions, if you need. [LB290]

SENATOR CAMPBELL: Any questions for Mr. Wesely? Senator Howard. [LB290]

SENATOR HOWARD: Thank you. I believe that you were involved in the original bill that we worked on together. [LB290]

DON WESELY: Yeah. [LB290]

SENATOR HOWARD: Okay. Good. Well, just answer me this, frankly, do you see a need to change this? And you can answer from your perspective. [LB290]

DON WESELY: I have several perspectives on this because we also represent the Ambulatory Surgical Center. (Laughter) It appears to us that a clarification would be in order with the problem that was identified, but we would, putting on the hat of the ASCs, we would be happy to work with Senator Pankonin and the committee to try and make sure there's a recognition of a kind of a different way of billing so that there isn't an adverse effect unintentionally. But we would be happy to work through this and make sure people get information that's available. [LB290]

SENATOR HOWARD: That was our original intention. [LB290]

DON WESELY: Yeah, it was. And not realizing the way the billings are handled through ASCs, we need to understand an adjustment is in order there, but otherwise we can find a way to make it better. [LB290]

SENATOR HOWARD: Okay. Thanks so much. [LB290]

SENATOR CAMPBELL: Other questions or comments? I just think we're not used to this global payment. You know, one payment and trying to... [LB290]

DON WESELY: Yeah. [LB290]

SENATOR CAMPBELL: ...get...sort of wrap your arms around that because we're so used to seeing every little Band-Aid, every little thing itemized from a hospital perspective. [LB290]

DON WESELY: It's a different approach. If you don't mind, can I follow, because we actually when I was here I tried to get information prior to going in for surgery because then I thought there would be cost competition and I could never get that passed. But it looks like they've taken that step with ASCs, but because of the different billing methodologies for hospitals, they just can't. I mean, they react versus, you know, setting a fee in place. So circumstances are a little different, but the intent is the same. [LB290]

SENATOR CAMPBELL: And unfortunately, Mrs. Orr got caught up not only in what that entailed, but then the whole thing with the computer not keeping track of her payments, it just made it more difficult for her to understand her bill. [LB290]

DON WESELY: That's not excusable, so. [LB290]

SENATOR CAMPBELL: Yeah. I'm sorry, Senator Howard. [LB290]

SENATOR HOWARD: No, that's fine. And when we worked on this, a year ago was it? [LB290]

DON WESELY: It seems like it, maybe. [LB290]

SENATOR HOWARD: It seems like it. It's either... [LB290]

DON WESELY: Was it two years ago? [LB290]

SENATOR HOWARD: It's either one or two. There was no mention of this global concept. We didn't deal with that. I appreciate Senator Bloomfield's question because I had to deal with a charge on my charge card I hadn't made and their global way of addressing it was having a fraud division in Pakistan which, (laughter) I'm glad the

medical world is not handling things that same way. (Laughter) [LB290]

DON WESELY: Thank you very much. [LB290]

SENATOR CAMPBELL: Any other comments? Senator Pankonin, would you...I didn't see any other hands. Am I missing anyone? Okay. Would you like to close on your bill? [LB290]

SENATOR PANKONIN: I would and I'm just going to make some general comments from the hearing. You know, first of all, it's still nice to see that we had a citizen who had an issue, who through the system could bring the issue. And she's here today, and that's still Nebraska and the way we work. But I do think it's brought out some interesting dialogue in the fact that, as Senator Howard has brought out, the language that's already in the statute calls for an itemized billing statement. And so, as you've mentioned with global and these ASCs, these clinics, they're really not following the law right now. That's where we're at. So we do need to change the language, and as Senator Howard also pointed out, we maybe softened it. But what we said is that a patient, without charging within 14 days, can get a reasonable description of the procedures, supplies, and other services provided for the care, and a charge for each item or category of such procedures, supplies, and other services. So Senator Howard is right. The law already has itemized. We're backing off of that, but we're still saying, you know, a person ought to have a reasonable idea of what they're paying for, what happened. And we've heard that some of these things can be discussed beforehand, but we all know that in these type of procedures there may be things that change and/or you thought you knew here, but you didn't find out later, and then the billing process and whatever. I can tell you this. From one of my business ventures, the farm equipment dealership, if Senator Wallman brings his combine in and after it's done, I say, the bill is $14,106.00 for a global bill, he ain't going to pay it. (Laughter) He wants to see that list that has every nut and bolt and bearing and whatever. So I think this does amplify part of the problem in our healthcare system in that, because there's other payees, insurance companies, the government, whatever, it is confusing for us as citizens. My wife Lori broke her wrist the week between Christmas and New Year's and you know, we're trying to match up all these things and it is hard, and trying to stay on top of this. But I think what we brought out here today, and maybe Ms. Chaffee and others can look at it, but the law is not being followed right now because it's not itemized. So we do need to look at something and we're happy to talk about it or maybe this is something that takes some discussion. But I think it is reasonable. You know, we talked about reasonable. If it's reasonable, you know what you got to pay for, even if it is global, you know...and I was a little concerned, too, when the hospital administrator said you got to go to them instead of the billing department, it's another step. You would think there would be an easier way or we should have that information right away. But, appreciate Senator Howard's original intent. [LB290]

SENATOR CAMPBELL: Senator Howard. [LB290]

SENATOR HOWARD: Thank you. I appreciate that. Do you have any objections to the amendment? Did you get a chance to see the amendment? [LB290]

SENATOR PANKONIN: We did look at the amendment late this morning and helped Mr. Wesely get it drafted and so, right...and I mentioned that in my opening that the diagnostic codes is not a problem and an amendment is not a problem. We just need to see and maybe talk to representatives of these centers that...because actually they're not following right now. [LB290]

SENATOR HOWARD: Right. [LB290]

SENATOR PANKONIN: You know, they just plain said, they're not following because they're not giving itemized. [LB290]

SENATOR HOWARD: Well, the amendment reads, including current procedure terminology codes and diagnostic codes. [LB290]

SENATOR PANKONIN: Right. [LB290]

SENATOR HOWARD: So it's not an or, it's an and. [LB290]

SENATOR PANKONIN: Yes, and we should, obviously, know how this works that...whether it's Ms. Chaffee or others, that we try to work this out that gets the language that works for, hopefully, everybody, but it is unfortunate that...I'm sure Mrs. Orr isn't the only one who has asked, you know, what am I paying for here? And she had two issues. She had the issue of paying and understanding that bill, which I'm guilty of that. Those are hard to understand, sometimes it's moving targets. But this idea of, you know, what did I get for the money that's paid, I think is important. [LB290]

SENATOR HOWARD: Well, I think not only do we have the right to have it, I think we also have the responsibility to make sure we're getting what we're paying for. [LB290]

SENATOR CAMPBELL: Any other comments? We'll take Senator Gloor and then Senator Bloomfield. [LB290]

SENATOR GLOOR: Senator Pankonin, this is one of those bills that will go away simply because I think and know what is happening within the healthcare industry as that as more and more healthcare facilities go on-line. That from a marketing standpoint you'll be able to find out if you want to have an appendectomy, usually you're in the emergency room when you find that out, but if you want to have an appendectomy, have a broken wrist fixed, whatever you want to have done, you can go on-line and that

institution will be able to give you an estimate of what it's going to cost you or what it's going to cost your insured. And if there's a global fee, that will be in there, estimates on what it might mean out-of-pocket based upon your individual deductible or whatnot. There's an inevitability here that this information is out there and as more and more healthcare facilities become more and more electronically driven, both their medical records as well as their bill processing records, and then it will become a market issue. Then as people go on-line and start searching, healthcare institutions will want to be able to provide that information because not doing so will put them at a tremendous competitive disadvantage. [LB290]

SENATOR HOWARD: Good. Good. [LB290]

SENATOR GLOOR: So I do think this is a problem now, but the reassurance for the consumer is, I think, where the market forces are pushing this is and where the electronic technology is pushing this, it will go away. It will be there at some point in time. [LB290]

SENATOR PANKONIN: And, Senator Gloor, I appreciate that but I also appreciate the fact that...and I know you agree, it's a 80-20 principle, but a high percentage of healthcare costs are spent on folks that are 65 or over, you know, as the age goes up, the percentages go up. And a lot of those folks aren't on-line and they still need a way to get this information. But I mean, over time, it will probably resolve, yeah. [LB290]

SENATOR GLOOR: I agree. I do agree. [LB290]

SENATOR CAMPBELL: Senator Bloomfield. [LB290]

SENATOR BLOOMFIELD: I have a question again, Senator, on a reasonable description. Is that not a layman's nightmare and a lawyer's dream? (Laughter) [LB290]

SENATOR PANKONIN: Senator, that's...you know, that's one of those words that is hard to define and I understand that. Well, we were trying here and, obviously, the committee comes up with better words, better description, how we want to do it, I just think, you know, we had a person that...my hunch is it's not only Mrs. Orr. And she's the one that was persistent enough to bring it and you mentioned that, you know, this is an issue. This is a problem. So I know the committee has...your committee has much weightier topics, except if you're in her situation it's a big deal. And it's a big deal to any of us that are in...have these problems. But I do appreciate you listening. I appreciate you considering any way we can improve Senator Howard's original bill, and from what we heard today, I don't think it's quite being followed the way it was intended, so maybe we can improve it. [LB290]

SENATOR CAMPBELL: Thank you, Senator Pankonin. And we'll just let you and Mr.

Wesely work at some language and anyone else and we'll get back to you. [LB290]

SENATOR PANKONIN: Thank you. [LB290]

SENATOR CAMPBELL: (Exhibits 13 and 14) With that, I want to note for the record that we received a letter in support of LB290 from the Nebraska Medical Association and a letter in a neutral position from the Nebraska Hospital Association. And we'll close the hearing on LB290 and proceed to open the hearing on LB401, Senator Howard's bill to require assisted-living facilities to provide written information to applicants for admission. Senator Howard. [LB290]

SENATOR HOWARD: Thank you. Good afternoon, Senator Campbell and members of the committee. For the record, I am Senator Gwen Howard, that's spelled H-o-w-a-r-d, and I represent District 9. I am introducing LB401 at the request of the AARP but also because I recognize how important the issues of aging are and how urgent they will become in the future. I have to applaud AARP's willingness to meet Nebraska's assisted-living facilities more than halfway on this issue and I will tell you, I've worked on this issue over the summer. The AARP representative has worked on them. The constituent who, although she's not my personal constituent, who has been valiant in trying to address this has been working on these issues. I would suggest to you that the constituent, while is not being paid to do this, as some people that will come and testify, certainly has been devoted to this cause. Nebraska's assisted-living facilities are there to assist those that need to move in. They've always been open to finding a middle ground with our individuals that need this care and assisting that the laws and regulations to protect Nebraska's elders are in place, but ideally this should be done in a way that is the least restrictive to the families that need the service. It is my hope that Nebraska's assisted-living facilities share this interest in protecting our elders who are, after all, the very reason for their existence. LB401 is an attempt at a compromise. It seeks to ensure that individuals who have entered assisted-living facilities or are looking at entering these facilities are aware and informed of what these facilities can and will do in a way that does not force facilities to be regulated like nursing homes. This bill really is about expectations. Many Nebraskans enter assisted-living facilities expecting that they're going to be able to continue to live there for years to come. Sometimes they're not aware that certain medical problems may force them to be in a position where they have to move to a facility that offers a higher level of care. And I think it's important to reflect on when people are looking at moving a loved one, say into a facility, they're not always in the most objective frame of mind. There are a lot of emotional issues that go into this, and I think it's very important to be sensitive to that aspect. When citizens and their families make decisions for later in life, they must be equipped with as much information as possible. Statute should reflect how important this is. Citizens must know the kind of service assisted-living can provide. They must be told whether or not the facility will accept residents who are eligible for medical assistance and whether there will be space available. Most critically, they must be

informed of when they would be asked to leave a facility or their loved one would be asked to leave a facility and when and how the resident service agreement can be changed. Additionally, when Nebraskans and their families make decisions about care for dementia, they deserve to have a complete and accurate picture of the services provided to persons with dementia. This is the information that LB401 would mandate. And I don't want to sound critical of care facilities but I think care facilities have an obligation not only to their own financial bottom line but to be sensitive to people as they age. People consider these care facilities to be their home and that implies a pretty serious relationship. So I'm going to end this with that and I have some folks here that will testify as to how this has affected them. [LB401]

SENATOR CAMPBELL: Thank you, Senator Howard. We know that you will be here for closing. [LB401]

SENATOR HOWARD: I will be here. [LB401]

SENATOR CAMPBELL: You will be here and we'll then let you make any comments. [LB401]

SENATOR HOWARD: And I will be listening. [LB401]

SENATOR CAMPBELL: I'm sure you will. [LB401]

SENATOR HOWARD: Thank you. [LB401]

SENATOR CAMPBELL: All right. With that, we will open the hearing for the first proponent. [LB401]

MARK INTERMILL: (Exhibit 15) Good afternoon, Senator Campbell... [LB401]

SENATOR CAMPBELL: Good afternoon. [LB401]

MARK INTERMILL: ...and members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l. I'm battling a little bit of laryngitis today, so I'll go as long as I can and as long as the red light doesn't come on here. As Senator Howard said, this bill is about expectations and it's also about information, which seems to be a theme of today's hearings. It's an attempt to assure that the expectations of people who are considering moving into an assisted-living facility are aligned, to the degree possible, with care that an assisted-living facility can provide. We believe that assisted-living provides an important part of a long-term care system and it's because we believe that, that we think it's important that people who enter an assisted-living facility have good information that will allow them to identify the facility that best will meet their needs. We're not asking assisted-living facilities to provide more services. We recognize that

assisted living is a new industry and needs to be allowed to innovate. But we do think it's important for those people who enter the facilities to understand those things that Senator Howard mentioned that really will affect their ability to stay in those facilities and to age in place. We've identified a set of factors and those are the things that have been included in the bill that we think really do have some bearing on a person's ability to age in place. Those are essential elements. Those are the things that really will depend on whether or not...things like being able to get the services that a person needs, to be able to understand the charges that a facility will make and how those are structured, to understand whether or not Medicaid is...will be allowed to cover the care in the event that a person's assets are drawn down. But probably one of the biggest items is whether or not...what sort of changes in a person's condition will require a person to leave the facility. We do see from time to time if there are certain circumstances under which a facility can no longer care for a person, I think it's important for that to be understood up-front. These are not unusual laws. Consumer disclosure laws are not unusual, and I've included a sample of an instrument from Texas that they're using as a consumer disclosure law. It just covers some of the things that they have identified. It's...there are several consumer disclosure types of activities that are taking place nationally. I did pick up a copy of a national instrument that's under development at this point. It's a 17-page document which is probably longer than we need and covers some things that may not be necessary, in our opinion, in terms of making that decision as to whether a person can age in place in the facility. We do have a couple of amendments that we would like you to consider. One, the first one, addresses more of the procedure for how the consumer disclosure information would be collected and also to make sure that it's provided to consumers in a standardized format so we can, to the degree possible, make apples-to-apples comparisons. The second amendment is maybe a little bit...takes a little bit different direction but it's something that we feel very strongly needs to be considered as we look at assisted-living regulations and the rules that govern them, and that's to move away from the current interpretation of the rules that indicate that a nurse is not allowed to practice nursing if they're employed by a facility in all circumstances. This is something that I think we'll have several other people discuss as we go forward. I'd also like to draw your attention to a letter that we've received from Rick Grimes, president and CEO of the Assisted Living Federation of America, in support of LB401. ALFA recognizes that having good state regulations will help prevent the need for federal regulations, which is something that they have great concerns about. So we need to have the protections in place to make sure that those state regulations can provide the protections that are needed. And with that, I would try to answer any questions that the committee might have. [LB401]

SENATOR CAMPBELL: Questions for Mr. Intermill? Senator Gloor. [LB401]

SENATOR GLOOR: Thank you, Senator Campbell. Mark, help me understand something about this and that is the registered nurse issue. There is no prohibition from a home care nurse for making a call in an assisted-living facility, just as would be the

case if they were in their home. Is that correct? [LB401]

MARK INTERMILL: That's true. [LB401]

SENATOR GLOOR: So the prohibition is that the RN we're talking about here is an employee of that very same facility? [LB401]

MARK INTERMILL: Correct. [LB401]

SENATOR GLOOR: Well, let me play devil's advocate here, which is we see the need for this because we have a concern that there may be clients that may be residents of assisted-living facilities who could use the services of a nurse. And on the other hand, we recognize that an assisted-living is supposed to be at the very bottom of that tier of long-term care services. Aren't we running the risk of blurring what an assisted-living facility does versus an intermediate care facility versus working up to skilled and eventually acute care? I mean I worry about an unintended consequence of people saying, I can stay in the assisted-living facility because there's an RN here, when what they really need is a 24-hour RN on site versus an occasional RN who comes in. [LB401]

MARK INTERMILL: And I can tell you in other states that there are RNs on staff. It's kind of...I would say that not having staff RNs is probably the exception when you compare state regulations. I'd also point out the proposal we're looking at is in a section of the law that lists the types of services an assisted living can provide, including health maintenance activities. What the amendment would say was that nothing in this law is interpreted to prevent a registered nurse employed by an assisted-living facility from providing health maintenance activities, so that's really what we're focused on is the services that an assisted-living facility is able to provide, can be provided by any employee of that facility. [LB401]

SENATOR GLOOR: Well, and I'm not the...I want to make it clear, nobody from the long-term care industry has visited with me about this... [LB401]

MARK INTERMILL: Uh-huh. [LB401]

SENATOR GLOOR: ...but it doesn't take, sadly, it doesn't take much for me to jump to, if we're having problems already with some assisted-living facilities, unscrupulous assisted-living facilities saying we're just like a skilled nursing facility, we have an RN who's here, and in fact that RN may only be there 4 hours of the week as opposed to 24 hours in the day. But then people have unrealistic expectations of what services are going to be provided in that assisted-living facility. I just want to make sure we're not setting ourselves up for an unintended consequence here when, in fact, we're trying to provide even better care for assisted-living residents. [LB401]

MARK INTERMILL: Yeah. And, Senator, I guess I would respond, I think there are 113 nurses who are employed by assisted livings today and so we may already be setting up those unrealistic expectations. But this would allow them to actually engage in the practice of providing those health maintenance activities. [LB401]

SENATOR GLOOR: Okay. Thank you. [LB401]

SENATOR CAMPBELL: Other questions? That was a key question. Thank you, Mr. Intermill. [LB401]

MARK INTERMILL: Thank you. [LB401]

SENATOR CAMPBELL: Next proponent. Good afternoon. [LB401]

CLAYTON FREEMAN: (Exhibit 16) Good afternoon, members of the committee. Thank you very much. My name is Clayton Freeman, C-l-a-y-t-o-n F-r-e-e-m-a-n, and I'm a representative of the Nebraska Alzheimer's Association. The Alzheimer's Association of Nebraska supports LB401, requiring assisted-living facilities to provide specific information regarding facility capabilities, rules, and certain admission criteria. Currently, assisted-living facilities in the state do not formally disclose staff qualifications and services, costs associated with those services, admission and discharge policies, information about participation in Medicaid and other programs. Such an annual disclosure process consistent across the state would allow consumers a uniform template for choosing a care facility that best fits their needs. The Alzheimer's Association places special emphasis on facilities that have Alzheimer's special care units. Assisting livings that provide specialized care for individuals with dementia is increasingly becoming the best option when considering long-term care. It is important for families to distinguish between the dementia care programs offered by each facility so they can make the best choice for the person with dementia. At a minimum, the facilities should disclose the following information to each prospective resident prior to admission: the facility's philosophy of the special care program; the process and criteria for placement in and transfer or discharge from any specialized unit; the process for assessing residents and establishing individualized service plans; additional services provided and the costs of those services relevant to the special care program; specialized staff training and continuing education practices relevant to the care program; how the physical environment and design features are appropriate to support the functioning and safety of residents with the specific condition; the frequency and types of activities offered to residents; options for family involvement; and the availability of family support programs. For more than 25 years, the Alzheimer's Association has been committed to advancing Alzheimer's research and enhancing care, education and support for individuals affected by this disease. In order to ensure that Nebraska citizens with Alzheimer's disease and other dementias are given the best care possible

and provided information in a standardized format that allows the consumer valid comparisons of services offered by assisted-living communities, we ask that LB401 be advanced. Thank you. [LB401]

SENATOR CAMPBELL: Questions from any of the senators? Thank you, sir, for your testimony today. [LB401]

CLAYTON FREEMAN: Thank you. [LB401]

SENATOR CAMPBELL: Next proponent. Good afternoon. [LB401]

ROSALEE YEAWORTH: (Exhibit 17) Good afternoon. [LB401]

SENATOR CAMPBELL: Do we have your sign-in sheet there? You do? [LB401]

ROSALEE YEAWORTH: Yes, I handed it to her before I came up here. [LB401]

SENATOR CAMPBELL: You're way ahead of me. I thought I saw... [LB401]

ROSALEE YEAWORTH: (Laugh) Clay just got ahead of me. [LB401]

SENATOR CAMPBELL: See, I thought I saw an orange paper and so I thought, well, maybe I better check. [LB401]

ROSALEE YEAWORTH: Yeah. Senator Campbell and members of the Committee on Health and Human Services, I am Dr. Rosalee Yeaworth. As of this summer, I will have been a licensed registered nurse for 60 years. I am testifying in favor of LB401. A decision to place a loved one in assisted living is usually made by families. Both families and the person to be admitted need full disclosure of the services provided and what will only be provided if they're willing to pay extra cost. They also need to know for what reasons they may be discharged against their will, since forced moves can be very detrimental to older persons, even leading to death. Despite all my nursing background, I admitted my husband, who had early onset Alzheimer's, to a dementia unit in assisted living, fully believing that an RN would direct that unit. As it turned out, an RN did direct his care but I was that RN, and he often had to leave the assisted-living facility to get the care he needed while we paid full rate to hold his room in assisted living. That's when I started trying to get this deceptive and unfair practice changed, so I've been coming here frequently. (Laugh) About 1 million Americans live in assisted-living residences. The number of licensed assisted-living facilities in Nebraska grew from 134 in 1998 to 287 today. The federal government regulates nursing homes, but regulations governing assisted living are legislated by the individual state. And I have here a copy of the "Assisted Living State Regulatory Review," which comes out every year from the National Center for Assisted Living, and summarizes the regulations of each state. And

it says, and I quote: A long-term care option preferred by many individuals and their families because of its emphasis on resident choice, dignity, and privacy, assisted living continues to grow while adapting to changes in consumers' wants and needs. The same publication states: At least 22 states reported making statutory, regulatory, or policy changes in 2009 and in the first few weeks of 2010. Unfortunately, I don't believe Nebraska has been willing to adapt to changes in what the consumer wants, needs, and expects they will get. I have been amazed at how many people believe they go to assisted living to get nursing care. The Nebraska consumer believes that nursing services are provided and they want and need them. Most states, including Nebraska, now allow for Medicaid waiver programs in assisted living. It's less costly to the state than having people in nursing homes. The regulatory review that I referred to, quoted above, states that 1.3 percent of the million people living in assisted living receive assistance under the Medicaid Program. According to Nebraska statutes, an assisted-living facility cannot receive reimbursement for care provided to a Medicaid-eligible individual over the age of 65 unless that individual meets the criteria for skilled or nursing home care. So they aren't going in just for assistance with daily living. I'm attaching a page to the testimony from the National Center for Assisted Living 2010 Resource Center. One of the publications marked as new is "Assisted Living Nursing: A Manual for Management and Practice." It can be purchased on-line from the American Health Care Association publications and it includes such things as visual/hearing impairment, dizziness, pressure ulcers, personality disorders, substance abuse, and a wide range of topics on illnesses. If this is a population to write legislation to ban nursing services as part of the routine services, why would the parent organization prepare and sell such a publication for $75? There's also an American Assisted Living Nurses Association which offers specialty certification and provides scope and standards of practice. So I believe that in Nebraska the assisted living has not been responding to consumer wants and needs and that there's actual interference with nursing's legislated scope of practice. The Legislature gives a legal scope of practice to RNs on one hand, and then in another statute takes it away in the assisted-living statute, says you can't practice it in assisted living. The recently published Institute of Medicine report on the future of nursing listed as its number one recommendations that all nurses should practice to the full extent of their education and training. And I urge you not only to support LB401 but to amend it to remove any language that is a barrier to professional RN practice in the AL statute. Thank you. I'd be happy to answer any questions. I had to skip some because that red light was getting in my eyes. [LB401]

SENATOR CAMPBELL: I know and I was watching it. [LB401]

ROSALEE YEAWORTH: You were about to tell me. [LB401]

SENATOR CAMPBELL: I was close, but you did a great job summarizing, Doctor. [LB401]

ROSALEE YEAWORTH: Thank you. [LB401]

SENATOR CAMPBELL: I much appreciate that. Questions? Yes, Senator Wallman. [LB401]

SENATOR WALLMAN: Yes, thank you, Senator Campbell. Yes, Doctor, thanks for coming. I have two aunts, three aunts in assisted living; they're in their 90s and they're taking pretty good care. One is in Illinois and a couple in Nebraska, and I'm quite happy with them. And one of them was in Kansas. So it is pretty tough when they call you up, you know, you've got a different assessment now, you have to move. And I hear what you're saying here and we got that...I got that notice within a week, (inaudible) within a day so I had to go from assisted living to skilled nursing. And when that happens, it's tough. [LB401]

ROSALEE YEAWORTH: It is, and we've done studies actually on moves of older people. It was a thesis of one of my graduate students, and we found that, you know, then they had falls because it was an unfamiliar place. Some of them died... [LB401]

SENATOR WALLMAN: Or a stroke. [LB401]

ROSALEE YEAWORTH: ...when they were moved, when they didn't want to move or feel that they needed to move. [LB401]

SENATOR CAMPBELL: Senator Gloor. [LB401]

SENATOR GLOOR: Thank you, Senator Campbell. First of all, Dr. Yeaworth, you very unassumingly introduced yourself as a nurse, but you are in fact an educator of thousands of nurses across this state and a mentor to even more I would imagine, so thank you for your service... [LB401]

ROSALEE YEAWORTH: Thank you. [LB401]

SENATOR GLOOR: ...to healthcare in this state. You bring up a good point when it comes to the concerns you have about nurses being able to be nurses, except that I think we're in a bit of a trap here, that being, as best that I can determine, we made a decision long, long time ago that the differentiation between different levels of skilled care is, and this is a compliment to nursing, the amount of time the nurse spends in that facility. Skilled care, you get the most intensive, short of acute care, and some would argue in this day and age maybe even more in some skilled facilities, in some acute care facilities services of an RN. And when you move to intermediate care, that level of intensity drops. And so then we get to assisted living and I go back to my concern that if we begin to...do we begin to blur the lines, do we begin to set unrealistic expectations

and do we make it easier for those operators not as interested in quality of care to take advantage of families and patients by saying but we do have nurses, we do have professional nurses and they'll take care of your needs, when in fact they won't be providing that same level of care? [LB401]

ROSALEE YEAWORTH: Some people, some facilities do that now, and Mark said 113, it's 123 as of 2008 and we don't have the 2010 figures of nurses employed in assisted living, RNs, and they advertise that they have an RN or a full-time RN on staff. They have that RN show people around the facilities when they come to learn about them. Now what kind of an expectation do you think that sets up but when something happens, your loved one falls, vomits and aspirates food? I mean people don't have to be in hospital beds to get nursing care. A lot of it is preventative. What do they do? They call 911 and send them to the hospital. My husband had...he was in four years before he died and three or four times I had to admit him to the hospital with pneumonia where actually early, you know, antibiotics and such might have taken care of it. I found him with a severe urinary tract infection and I was with him the day he had a pulmonary embolism, which was eventually what killed him. But healthy? When you get people who are 85 years old, they have an average of three or four medical conditions. And I'm not saying that they ought to be, you know, suctioned and tube-fed and all that kind of thing in an assisted living. I'm saying that somebody ought to be there when they have some symptoms or they fall or those kinds of things and ought to be there to oversee their overall health and the interactions of the different medications. Most of the persons in a dementia unit are taking psychotropic drugs. Now some people don't metabolize those well at all and the medication aide doesn't know what the drug is supposed to do. They don't know when there are signs of interactions. They are just taught to give the right pill to the right person at the right time (inaudible). [LB401]

SENATOR GLOOR: Well, I'm again struggling with this issue and only that component of the bill, but I am also trying to decide if maybe we have moved from assisted living needing to be more than it was when it was first established because of the ability of people to stay in their homes longer, whether it's medications, whether it's community support, whether it's technology that allows that. Maybe assisted-living facilities are in fact at a point where we need to elevate the level of care they provide just as the level of care can be provided in an intermediate care facility that's much higher than it used to be and skilled and so on and so forth. [LB401]

ROSALEE YEAWORTH: They didn't used to take Medicaid patients, you know,... [LB401]

SENATOR GLOOR: Yeah. Yeah. [LB401]

ROSALEE YEAWORTH: ...and other states have changed. Other states don't make that differentiation. You couldn't make the differentiation on the basis of what the person

needs. I mean if they can make a decision that they have to be moved out, they could make the decision, you know, that they shouldn't be moved in, in the first place. [LB401]

SENATOR GLOOR: Thank you for your help with that. [LB401]

ROSALEE YEAWORTH: Uh-huh. [LB401]

SENATOR CAMPBELL: Thank you, Doctor. [LB401]

ROSALEE YEAWORTH: Thank you. [LB401]

SENATOR CAMPBELL: Other proponents for LB401? Good afternoon. [LB401]

CAROL McSHANE: (Exhibit 18) Good afternoon. Members of the committee, my name is Carol McShane, C-a-r-o-l M-c-S-h-a-n-e. I am president and clinical director of Nebraska Nursing Consultants, which is a registry of nurses in private practice. Nebraska Nursing Consultants provides independent professional care management services, and most of our clients are elderly people who live in the Lincoln area whose families are unavailable to advocate for them. Many of them live out of town; many of our clients have no family whatsoever. Our clients live in private homes, retirement communities, assisted-living facilities, nursing homes, etcetera. The care management that we provide involves advocating for our clients and monitoring to be sure that they get the best possible care. It's private pay. It is nursing service but it is not Medicare assisted. We visit them at home, we go to the doctor with them, and if they go to the emergency room we go too. I speak to you from my experience. I've been a nurse for almost 50 years and one of my master's degrees in nursing focuses on gerontology. I have been providing private care management services since 1991. We do have clients who live in or move to assisted-living facilities. We used to advise clients to choose the assisted-living facility with the most RN presence, because in our experience people don't move to assisted-living facilities until they can't make it at home alone any longer. They're usually over 80 years old and, although on the day they walk in they are not candidates for nursing homes, they do have chronic illnesses. But then I reread the Assisted-Living Facilities Act and I learned that although the assisted-living facilities may have an RN present, that RN is somehow forbidden by the act to function as an RN. Now in theory...I can guess at the theory behind this. I think the act was meant to provide a social versus a medical model for elderly care and assure that an ALF, an assisted-living facility, doesn't become a mini nursing home. Fair enough. But in practice, I find that the statute is interpreted differently from one ALF to another and from one ALF chain to another, but this...in my experience, this is what usually prevails. Health monitoring--that an RN practicing within the scope of practice would be responsible for health monitoring. This is simply not being done. You can't do health maintenance without doing an assessment. RNs do assessments but, under this act, they can't act themselves. Medication aides are neither qualified nor prepared to

monitor the slippery slope of decline that accompanies old age. And as I say, the ALF Act somehow limits the RN from doing what his or her scope of practice says she must do, and I put "somehow" in here because I have no idea how this bill got out of any committee way back when you...when assisted livings were created because it is in direct conflict with the nursing scope of practice. So on a day-to-day basis, the chronic health conditions of an elder who lives in an ALF are not monitored and little problems become big problems. What happens when these problems occur, the staff responds as per the policy. They call 911. They have to. That's what their instructions are. So the ALF residents are trucked off to the emergency room. It might be a simple problem of inadequate hydration. It might be a low blood sugar. Sometimes a glass of orange juice fixes this. It might be a small stroke for which little can be done, And it might be that the person doesn't want to go to the emergency room. No matter, the ALF policy supersedes. And even if there is an RN there, he or she cannot act on an assessment, so cannot intervene. So this says a lot about the cost of healthcare today. We have people in emergency rooms that honestly don't need to be there. When one of our clients is in an ALF--whoops, the yellow is on--we and the client's family instruct the staff to call us when they see changes. They don't have to make a diagnosis, they only have to note the change, but the staff is very reluctant to call us. And we ask them to call us before they call 911 and this rarely happens, and I'm imagining that this is because of liability issues. So at the very least that can be done to disclose to residents and potential residents that if the facility does have an affiliation with an RN and if that RN by...they must disclose that that RN is very limited in what they can do, they should disclose not only that they have an affiliate, not only how many hours the affiliate is available, but just what the RN can do. This is definitely a misconception, intended or otherwise. Thank you. I would hope that you would support this bill. And on the other page, I include another page. [LB401]

SENATOR CAMPBELL: You go ahead, summarize for us. [LB401]

CAROL McSHANE: Okay. Just on the other page, I don't like to only be negative and there are other ways to do this that could make the distinctions that Senator Gloor is concerned about that could keep people happy and healthy, and other models from other states that are very, very interesting, one especially the PACE model. And someday when you have nothing to do, you might want to look at those. Any questions? Yes. [LB401]

SENATOR CAMPBELL: Oh, questions, sorry. [LB401]

SENATOR WALLMAN: Thank you, Senator Campbell. [LB401]

SENATOR CAMPBELL: I was reading...I was skimming the last page so I make sure we didn't miss anything for... [LB401]

SENATOR WALLMAN: (Laugh) Well, I read some of this stuff and I think, Lincoln, you have a day-care center at Madonna. [LB401]

CAROL McSHANE: They have a...Madonna has a day-care center for people with Alzheimer's disease. [LB401]

SENATOR WALLMAN: Yeah. [LB401]

CAROL McSHANE: And there are other day-care centers. But you could have something like a day-care center within the assisted living. You could have it freestanding. [LB401]

SENATOR WALLMAN: Uh-huh. We don't have any of that, huh? [LB401]

CAROL McSHANE: No, and it's hard. They're few and far between. Because in the PACE model that is spoken of here, the occupational therapists, the physical therapists, the nutritionists come to the day-care center. The nurse practitioner is there. The people go home at night. Transportation is provided. It's just another model for another day. [LB401]

SENATOR WALLMAN: Thank you. [LB401]

SENATOR CAMPBELL: Thank you, Ms. McShane. We are still on proponents to LB401. [LB401]

DON WESELY: (Exhibits 19 and 20) Madam Chairman, members of the Health and Human Services Committee, I'm Don Wesely, D-o-n W-e-s-e-l-y. I'm actually wearing two hats. One is representing the city of Lincoln, the other representing the Nebraska Nurses Association. I've got two handouts which you'll get probably about the time I leave but essentially one handout is from June Pederson, who's the head of Aging Partners, and she is in support of the bill. And because of its disclosure in the original bill, which talks about letting clients know the policy of an assisted-living facility in terms of Medicaid medical assistance program, and it's good for people to know that because as her letter will indicate, people go into a nursing home, people go into an assisted-living facility, their money runs out perhaps and then they get dropped. You know, they're told there isn't any more space for them and then they're moved out. So knowing before you go in what their policy is, is just something that's helpful to people and ought to be shared. The second item deals with the amendment. And I apologize, I actually haven't seen the amendment, but this is from the Nebraska Nurses Association. It's a letter from Linda Stones, who is the head of our Commission on Advocacy and Representation, and it talks about the scope of practice for RNs. And it talks about the desire to allow them to perform services to patients and clients in assisted living to reflect their scope of practice. And I understand Senator Gloor's point about we've had

this tier and it's been around a long time and if the restrictions on RNs were the result of a bill of mine back long ago, I apologize. I don't remember. (Laugh) It's quite likely I had something to do with it so you can blame me. But at this time, the situation is that nobody is coming in here saying you must hire RNs. We're saying if you have an RN, why not let them perform duties under their scope of practice. That only...it just doesn't make sense currently. If we were in here saying, assisted living, you must hire RNs, you must increase your costs, you know, that would be a different situation. We'd like to see more RNs in there. But if they choose to have an RN, why would we not allow the RN to carry out their abilities and their scope of practice? It doesn't make sense the way it's set up right now. So we're asking support for the amendment and for the bill. [LB401]

SENATOR CAMPBELL: Okay. Questions for Mr. Wesely? The sins of the father always come back to haunt you. [LB401]

DON WESELY: (Laugh) I'm trying to correct it. [LB401]

SENATOR GLOOR: That's a better term than bad penny. [LB401]

SENATOR CAMPBELL: I guess so. The bad penny, we won't bring that one up. (Laughter) [LB401]

_____: Thank you. [LB401]

SENATOR CAMPBELL: Good afternoon. [LB401]

BARBARA McCABE: (Exhibit 21) Good afternoon, Senator Campbell and members of the committee. My name is Barbara McCabe and I am a doctorally prepared gerontological nurse, and that is a nurse who specializes in care of older adults. I have taught and conducted research in long-term care settings and specifically on issues pertaining to the care of older people with dementia. I am here today to voice my support for the proposed changes in LB401. I applaud Senator Howard's recognition and willingness to support the concept of full disclosure about conditions and services provided to residents in assisted-living facilities. Assisted-living facilities were designed and are promoted as an alternative, least restrictive environment for individuals who can no longer safely and independently manage activities of daily living. Theoretically, there is no age restriction as to who may or may not reside in the ALF. In fact, the majority of individuals' average age is 84. As a gerontological nurse, I know of the vulnerabilities that accompany the aging process. While it is important to recognize, age alone does not in itself bring disability, and all of you who visit here and work here know Sally Gordon and she is an unbelievable example of healthy aging. However, increasing age does alter the body's response to stress and physical illness. Age-related changes are compounded by the many chronic health conditions experienced by older adults. It takes longer to recover from illness. It takes longer to adjust to changes in the

environment. The common cold in a young adult is an annoyance that can be ignored, more or less. In an older adult, the common cold can become a life-threatening event. Response to illness is different in the older adult. It is safe to say that the majority of persons who are considering a move into an ALF are those individuals whose ability to respond and adapt to change is compromised. To support the health and well-being of those who live in assisted living, there should be no surprises as to what constitutes day-to-day living in the facility. The prospective resident, family member or other authorized person needs full information in order to make an intelligent choice as to whether assisted living is the right place for them. Therefore, it is essential that the prospective resident and/or the authorized representative be given specific written information about the practices of assisted-living facilities as specified in the amendment. I thank you for your attention. Do you have any questions? [LB401]

SENATOR CAMPBELL: Any questions of Ms. McCabe? Diane, did we get the spelling on the last name? [LB401]

BARBARA McCABE: Oh, this is my first time to testify. [LB401]

SENATOR CAMPBELL: Oh, you're doing just really, really well. I just want to make sure that I don't get that black mark at the end of the day. [LB401]

BARBARA McCABE: Okay. It's M-c-C-a-b-e. [LB401]

SENATOR CAMPBELL: Okay. Diane, do you have everything then? [LB401]

DIANE JOHNSON: Thank you. Uh-huh. Thank you. [LB401]

SENATOR CAMPBELL: Okay. Thank you, Ms. McCabe. You did great. [LB401]

BARBARA McCABE: Thank you. [LB401]

SENATOR CAMPBELL: Other proponents? Those who wish to testify in opposition? [LB401]

RON JENSEN: (Exhibit 22) Senator Campbell, members of the Health and Human Services Committee, my name is Ron Jensen, R-o-n J-e-n-s-e-n. I'm a registered lobbyist appearing before you this afternoon on behalf of LeadingAge Nebraska, which was formerly the Nebraska Association of Homes and Services for the Aging, which is an organization that is made up of nursing homes, assisted-living facilities, and adult day services that are all nonprofit or publicly owned, government owned. This bill or some version of it seems to come with every new Legislature. Two years ago when we considered it I said that I don't for a moment doubt the sincerity of purpose or, particularly in the case of Mark, that these folks don't actually believe that there's a need

for it and that it would help assisted living. And I believe that today but I still don't like their bill two years later. I first of all, for selective admissions to assisted living, should have the information that's been discussed here today. They need that to make a decision because they're not all alike in Nebraska, on purpose, and guess what, they get it. By regulation of the Division of the Public Health, it's required to be part of the resident services agreement that's executed upon admission. It's not very long but I prefer not to use my time to read it into the record. I'll be happy to give it to the clerk if that would suffice. And if that regulation is insufficient or there's additional information that needs to be in that agreement, it's not that hard to change a regulation, a lot easier than it is to change the law. The nursing issue, and I don't know whether I should admit it in this crowd or not, but I think we have one of the best assisted-living statutes in the country, and notwithstanding the fact that I was on the task force that wrote it some 15 years ago. The toughest thing that we wrestled with in doing that law, and we had nurses on that task force, we realized we had to separate or there had to be some disembarkation of assisted living from nursing homes. Roger Keetle was a member of that task force and he coined the phrase, we need a bright line between assisted living and nursing homes. The one we came up with, I don't know if it's the best we could have but I think it's worked pretty well, is complex nursing intervention. And the law is written in such a way if you look at it--I think it's kind of elegant actually--you can go be anywhere in here up to that bright line, up to Roger's bright line. You can provide as complete or incomplete an array of services and supports as you care to in your facility as long as you're not crossing the line of...and there are certain complex interventions that are allowed by regulation, but by and large, no, a nurse can't practice her full scope in an assisted-living facility. And Senator Gloor hit it exactly on the head. We needed that bright line for two reasons. We did not want assisted-living facilities caring for individuals who really needed and required nursing home care. Nursing homes have 24-hour professional coverage. Assisted-living facilities in Nebraska, although many of them do employ nurses, are not required to have nursing coverage, they're certainly not required to have it for 24 hours of every day. The other reason that we thought that was important is that we wanted...we hoped we could prevent a kind of healthcare mission creep so that over time assisted-living facilities would move up to and past that and eventually become nursing homes. Assisted living is a wonderful program. Residents there have more dignity, they have more privacy, they have more independence than they could enjoy in a nursing home. Their lives aren't driven by the institutional clock and, guess what, it costs about half as much. We want to preserve all those things. We don't want assisted living in Nebraska turned into kind of a junior nursing home. And if that needs to be revisited it can be, but I think we need to have and will continue to need to have some clear delineation between the two kinds of facilities. I'd be happy to try to answer questions if there are any. [LB401]

SENATOR CAMPBELL: Questions? Senator Wallman. [LB401]

SENATOR WALLMAN: Thank you, Senator Campbell. Yeah, welcome to this

committee, Ron. [LB401]

RON JENSEN: Thank you. [LB401]

SENATOR WALLMAN: I agree with you, this clear line, like Kansas, you get assessed by a hospital, you know, if you have to go, if you have a stroke or dementia... [LB401]

RON JENSEN: Sure. Sure. [LB401]

SENATOR WALLMAN: ...or Alzheimer's. And we have something almost like that I think, don't we? [LB401]

RON JENSEN: Well, I'm not sure what you're referring to but we do...I did want to say we do have adult day services within assisted living facilities. One that I know of is New Cassel Retirement Center in Omaha. The PACE Program is about to get off the ground in Nebraska. There's been an RFP issued. Immanuel Senior Living has responded to that. So there are a variety of settings, supports. [LB401]

SENATOR WALLMAN: Thank you. [LB401]

SENATOR CAMPBELL: Senator Bloomfield, did you have a question? Okay. Seeing no other questions, thank you, Mr. Jensen. [LB401]

RON JENSEN: Thank you. [LB401]

SENATOR CAMPBELL: Those wishing to testify in opposition? Good afternoon. [LB401]

HELEN CRUNK: Hi, Senator Campbell and the committee. My name is Helen Crunk, H-e-l-e-n C-r-u-n-k. I actually didn't come here today with any prepared testimony. I was prepared to just kind of sit back and listen, and obviously I'm not doing that very well. So I had a couple comments that I wanted to make but, first of all, let me tell you kind of a little bit of my background so you know where those comments are coming from. I am a registered nurse. I'm a registered nurse and a provider of assisted-living services. I've been doing memory support, dementia-related care, assisted-living services solely for 15 years. I am the president of the Nebraska Assisted Living Association. I am on the board of the National Center for Assisted Living. I am on the National Center for Assisted Living policy and finance committee, and the National Center for Assisted Living Quality committee. I'm quite passionate, obviously, about the services that we provide in assisted living facilities and, like I mentioned when I opened, I am a registered nurse. I knew when I took the job in assisted-living facilities 15 years ago that my scope of practice would be limited when I took that role. I think all nurses know that. I'm not saying that I don't want full disclosure to the residents, their legal representatives

and such forth. I am absolutely for that. It's already in the regulations. It's already part of the Alzheimer's Special Care Disclosure Act that you have to have and abide by in order to run a memory support facility. We do all of those things. The American Medical Directors Association has recently been putting a focus on assisted living in putting out standards and protocols for assisted-living nurses to kind of follow and go by to provide us with some guidance to help clear up those, you know, those gray areas of what is a complex nursing intervention, what is not. Regulation already says that the nurses can do an assessment to find out if that person is appropriate to move into the facility and an assessment to see if they're appropriate to remain in the facility. So those are just kind of some of my thoughts. I would be happy, with, you know, with my background, to answer any questions you may have to help you make the best informed decision on what you think is best. [LB401]

SENATOR CAMPBELL: See questions? Could you, of the...as president of the Assisted Living Association, how many of your facilities have an RN on staff? [LB401]

HELEN CRUNK: I don't know the exact number off of the top of my head, but I would say a very good number of them, 75 percent maybe. I don't know. I don't know factual statistics. I'd be happy to find out for you... [LB401]

SENATOR CAMPBELL: That would be great. [LB401]

HELEN CRUNK: ...but I just don't know off the top of my head how many actually employ an RN. [LB401]

SENATOR CAMPBELL: And so at this point, I mean they're not practicing that full scope of practice. [LB401]

HELEN CRUNK: Correct. [LB401]

SENATOR CAMPBELL: But your sense and obviously from your national perspective, you're making it that that's their choice. [LB401]

HELEN CRUNK: Correct. I knew that when, you know, when I took the position in this profession in this, you know, specific industry, as do the other nurses that work beside me. We know. You know, we know the rules, the regulations that we have to follow to practice. We know when those are limited and when those are not and we make that conscious decision to work in this profession knowing that there may be things we're not able to do even though we're knowledged, you know, we have the education to do, we have the license to do. [LB401]

SENATOR CAMPBELL: In light of some of the national trends or where we think we're going in the future, do you think we need to change that? [LB401]

HELEN CRUNK: Change? [LB401]

SENATOR CAMPBELL: To allow the full scope in assisted living? [LB401]

HELEN CRUNK: Uh-huh. You know, Senator Campbell, I really don't know. I'm not going to sit here and say that I don't believe our profession is evolving, because it quite obviously has, you know. Independent livings have evolved, skilled nursing facilities have primarily evolved into postacute rehabs. Assisted livings are, you know, they're evolving as well. But I think before we go and rush into any regulatory changes or legislative changes that we don't know the full ramifications of what it's going to do to the profession, I would really like to think...to have us focus on things like public education campaigns and making sure the consumer completely understands what an assisted-living facility is and what it is not. And all of those that may be either for nurses in assisted living or those against or neutral or whatever, I want us to come together and talk about, you know, what does that mean for us as a profession, what does that mean for our industry, what outcomes are we expecting, what are we wanting to get to and how can we do that best by working together. [LB401]

SENATOR CAMPBELL: Okay. Senator Gloor. [LB401]

SENATOR GLOOR: Thank you, Senator Campbell. Thanks for your testimony. To be a member of your association, does it make any difference whether your members also have an ownership piece in other long-term care facilities? [LB401]

HELEN CRUNK: No. [LB401]

SENATOR GLOOR: I mean what differentiates your members or, if you own an assisted-living facility, you could be a member, period? [LB401]

HELEN CRUNK: Absolutely. [LB401]

SENATOR GLOOR: That's it. [LB401]

HELEN CRUNK: You can pay your dues; you can be a member there. [LB401]

SENATOR GLOOR: How many of your members do you think are participants in the long-term care industry in another capacity--owners of an intermediate care facility? I keep using that term. I don't know if that's a (inaudible). [LB401]

HELEN CRUNK: That's a good question also. Wow, again, it would be speculation. [LB401]

SENATOR GLOOR: Actually, the fact you don't know kind of answers my question. I'm just trying to get a... [LB401]

HELEN CRUNK: Yeah. Maybe 50 percent of the providers have assisted living and they also have skilled nursing facilities. There's, you know, quite a few freestanding facilities but they may be owned by chains. You know, I don't know how many people do both levels of care, quite a few but I don't. [LB401]

SENATOR GLOOR: I would imagine most are proprietary as opposed to charitable or not for profit. [LB401]

HELEN CRUNK: Sure. [LB401]

SENATOR GLOOR: Yeah. Okay. Thank you. [LB401]

SENATOR CAMPBELL: Senator Bloomfield. [LB401]

SENATOR BLOOMFIELD: Senator Campbell, thank you. I would merely like to ask an extension of your request for information on how many. [LB401]

HELEN CRUNK: How many facilities in this state employ an RN, I will get... [LB401]

SENATOR BLOOMFIELD: I would like to know if you can find out roughly how many of them have somebody there 24 hours a day, which ones or how many... [LB401]

HELEN CRUNK: Sure. I will tell you... [LB401]

SENATOR BLOOMFIELD: ...how many hours they are there. [LB401]

HELEN CRUNK: Yeah. I will tell you the number that has an RN there 24 hours is very low, but I'll find out. [LB401]

SENATOR BLOOMFIELD: Thank you. Or what hours they, you know, do they have them there four hours, are they there ten hours? [LB401]

HELEN CRUNK: Sure. [LB401]

SENATOR CAMPBELL: Great follow-up. Any other questions? Thank you for coming today and providing testimony. [LB401]

HELEN CRUNK: Thank you. [LB401]

SENATOR CAMPBELL: Anyone else who wishes to testify in opposition to the bill?

Anyone in the room who wishes to testify in a neutral position? Good afternoon. [LB401]

BRENDON POLT: (Exhibit 23) Good afternoon. Think I'm playing cleanup. My name is Brendon Polt, B-r-e-n-d-o-n P-o-l-t, representing the Nebraska Assisted Living Association, which is part of the Nebraska Health Care Association. Helen is a board member of our organization and she came and she testified, but it's the same organization. I may be able to provide some of the data, but I'll have to go look in a database to get some of that. But anyway, first of all, I really want to stress that we think as an organization, Senator Howard and AARP, we were brought a bill that our members considered quite a bit more onerous than the green copy bill during the summer, and I really felt like Senator Howard listened to us and listened to our members. As an association, we don't have a position on any bill. We send it to our members and say, you as providers, what do you think of this. Regarding the items contained in the green copy, we have absolutely no problem at all with the intent, as we understand it. I will point out a couple of technical concerns our members have. I want to point your attention to this handout that I have paper-clipped to my testimony and a lot of what I'm going to say, I don't want to repeat Ron Jensen, but I absolutely agree with the testimony he provided in terms of the requirements in the bill already being referred to, maybe not verbatim, but covered under the regulations. So what I've done here is in the left column I have the provision from the bill, and in the right column I have the regulatory text that's already law but in regulations. The red, I've color-coded it, the red refers to sections pertaining to what's called a resident service agreement. It's a contract with the resident and it says here's what we do. It's very prescriptive. And then in blue I have where there are requirements pertaining to the same item that are in what's called the resident rights section, and you'll see that in terms of the services being offered, conditions upon which one would need to transfer, just really line by line in every case there is a requirement in regulation that refers to the exact same item. So that's why we were neutral, at least on the general level. Now we do have a couple of concerns that we point out from the technical standpoint in the wording of the bill. There's...in (b) the requirement under the bill says the number of staff employed by the assisted living. Well, that number would change with turnover or minor staffing changes that we don't believe are really relevant to a resident that's trying to determine whether or not to move into a facility. If I tell a prospective resident that wants to visit my facility, "Polt Manor," and I say we have 74 employees, that doesn't really help them in any way. The current regulation text we actually think is superior. It asks the facilities to provide the types of services and by whom they're being provided, so you get a feel for what sort of expertise levels they are. So anyway, we feel that the regulation probably as it is, is superior to just the way this is worded. The other issue is under this proposed language in the bill, facilities would have to provide the number of beds that are set aside as waiver or Medicaid beds, and that actually doesn't exist. And I don't know that the intent is to have facilities determine X number of beds are waiver beds. A nursing facility, on the other hand, has a number of certified Medicare beds, certified Medicaid beds, and there is a number. In assisted living we just don't have that. In practice, it's

determined by occupancy, by the ability to treat a person. At one point there might be half the...I don't want to say half, you might have 10 to 12 Medicaid waiver residents, but that doesn't mean that's your policy always to have that same number. We sent out what the concept was for the amendments proposed by AARP to our members. Our members, for the reasons that Helen mentioned, are quite staunchly against the notion of bringing complex nursing interventions into assisted living. It really changes completely the identity of an assisted living. And it has been pointed out in other questions, clearly we have a residential model. It's not a healthcare facility model in assisted living. We believe that consumers like that. We're not hearing that from the consumer community, from our membership, and so we would like to preserve what we have in our model and think it's working quite well. I'm happy to answer any questions. [LB401]

SENATOR CAMPBELL: Any questions for Mr. Polt? Thank you, Brendon, very much. Anyone else who wishes to testify in a neutral position? Senator Howard, would you like to close on your bill? (See also Exhibit 24.) [LB401]

SENATOR HOWARD: I would. Well, I think we've had a number of things presented here to us today and I think it's important that we kind of stay on task with what this bill is about and I think I'll begin by saying, while I appreciate that the nurses who would agree to work in these facilities understand that their scope of practice is limited and they seem to be just okay with that, I'm not so sure the consumer knows that they are limited in their scope of practice. I haven't had to assist anybody going into a nursing care facility yet, but my thought would be most likely they are told there is nursing staff (laugh) and I don't know if they would get the specifics on how many hours they are there. I appreciate Senator Bloomfield's question regarding that. I strongly do suspect that when a person is looking at a facility for their loved one and they're told there's nursing staff, it's kind of like Taco Bell saying, yes, we have meat in our burgers in our Taco Bells, but meat to them may not be quite the same thing it is to us when we drive through to buy something. The second thing is I appreciate that it was brought up that things are changing. This was 15 years ago that this was put in. We're very fortunate to have the former Chair of Health and Human Services Committee here to testify and I appreciate that he's here testifying in support of this bill because he has some very valuable reflection on what was originally put in. Yes, things have changed over 15 years. People are able to stay in their homes longer and that's a good thing. There are programs in place to assist them. Home Instead comes to mind. That's a good thing. I think we all have to look at the movement forward and look at what we need to do in terms of our thinking as things change. LB401 is about making sure that individuals and their families have the complete picture of what nursing...assisted-living facilities...I say nursing because I'm getting really...assisted-living facilities with nurses or anybody else can offer, and that means the individual facility, what do they have to offer you that's going to meet the needs of your loved one and what they cannot. There comes the question. Nebraskans deserve to have as much information as possible when they

make a long-term care decision for themselves and their families. And I urge you to think this over carefully, because you know something, one day we're all going to be there. So thank you. [LB401]

SENATOR GLOOR: We hope. (Laughter) [LB401]

SENATOR CAMPBELL: Yeah. Thank you, Senator Howard. And with the closing, unless there's any other comments or question, we'll close the hearing on LB401. And that is the end of the hearings for today. [LB401]