[LB995 LB1042 LB1047 LB1077]

The Committee on Health and Human Services met at 9:30 a.m. on Monday, February 13, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB995, LB1047, LB1077, and LB1042. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and R. Paul Lambert. Senators absent: None.

SENATOR CAMPBELL: Good morning and welcome. It's amazing that I said good morning because we meet in the afternoons. Good morning, and thank you to all of you who probably had to rearrange a lot of your lives because of the snowstorm, and that's certainly why we are here today. I'm Kathy Campbell and I serve as the senator from the 25th Legislative District, which is east Lincoln and northern Lancaster County. And as is our custom here, we do self-introductions, so we'll start on my far right. Senator.

SENATOR LAMBERT: Good morning. I'm Senator Paul Lambert from District 2. I serve portions of Sarpy and Otoe Counties and all of Cass County.

SENATOR BLOOMFIELD: Dave Bloomfield, District 17, made up of Wayne, Thurston, and Dakota Counties in the northeast corner of the state.

SENATOR COOK: I'm Tanya Cook. I represent the 13th Legislative District, and that's in northeast Omaha and Douglas County.

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

MICHELLE CHAFFEE: I'm Michelle Chaffee. I serve as the legal counsel.

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

DIANE JOHNSON: And I am Diane Johnson, the committee clerk.

SENATOR CAMPBELL: And Senator Krist is opening on two bills across the hall, so most likely a number of you will not see him this morning. With us today are our pages Ben and Emily. Emily was our page, goodness, all of last year. So it's good to see Emily again. I'll go through some housekeeping announcements and then we'll start. If you have a cell phone, please turn it off or put it on silent, because it's very disturbing if you're testifying. Although handouts are not required in this committee, if you have handouts we'd like 12, and if you need assistance with that, the pages can help you. If you're testifying, we ask that you complete one of the bright orange sheets, print legibly, and when you come forward you can give it to the clerk with your handouts. And as you come forward and sit down, we do use the light system in the Health Committee, and we have five minutes. So it will be green for what seems like a long time and then it will

go to yellow. That means you have one minute. And then it will go to red and you'll probably look up and I'll be going, trying to get your attention. Since we don't have a roomful of people this morning, we'll be a little lenient on the time, but it helps if you keep it to five. When you sit down, we ask that you state your name and spell it. And a lot of people say, why do we do that; I mean, I gave you my name on the orange sheet. The orange sheet is for the clerk so that she can type it in correctly as she's keeping minutes as she goes. The spelling of your name as you begin testifying is for the transcribers so that they can get it correct as they transcribe all of this. I think that's all the announcements that we have. So we will begin the hearings this morning and open on LB995 which is Senator Heidemann's bill to change provisions relating to county medical facilities and public hospitals. Good morning. [LB995]

SENATOR HEIDEMANN: Good morning. [LB995]

SENATOR CAMPBELL: A good person to start right off with. [LB995]

SENATOR HEIDEMANN: (Exhibit 1) Let's hope so. Senator Campbell, members of the Health and Human Services Committee, my name is Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1 in the southeast corner of the state. I'm here today to introduce LB995. LB995 updates and consolidates the statutes pertaining to the county hospitals. By giving county hospitals more flexibility, the bill attempts to bring county hospitals more in line with their peer hospitals. LB995 would authorize county hospital boards to obtain a line of credit or borrow money secured by the facility or its revenues, replacing the outdated warrant system currently in statute. The bill also gives county hospitals the authority to encumber hospital property, but would require county board approval if the sale, lease, exchange, or encumbrance is all or substantially all of the county hospital's property. Under LB995, county hospital boards would have to receive approval from the county board, but not a vote of the people, for any improvements or additions to their facilities if the total cost is greater than 50 percent of the replacement cost of the facility. If general obligation bonds are to be used to build a new or replacement hospital, a public vote would still be required. LB995 amends the County Purchasing Act to remove purchases of personal property or services by county hospitals, thereby allowing them to participate in group purchasing organizations. The bill also authorizes county hospitals to open clinics in communities outside of their jurisdictions, as currently is allowed for hospital districts and nonprofit hospitals. These are the highlights of the bill and I'll let those that follow me explain in detail the contents of LB995, and they'll be able to do that a whole lot better than I am going to be able to. Late last year I was approached by Marty Fattig, the CEO of the Nemaha County Hospital, which is in my district. He explained the need for this bill. I agreed to introduce it; and he began working with Baird Holm, a law firm that has represented almost all the county hospitals from time to time. We have met with the Nebraska Hospital Association, the Chair of the Health and Human Services Committee, and legal counsel, which I'm very thankful that we were able to bring them

into the conversations and discussions, and thank you for all your help, as well as NACO, in an effort to work with interested parties. Marty has kept all the county hospitals updated on the status of LB995. I would like to offer an amendment to the committee, if we can get it distributed. I believe the amendment addresses the concerns that some county officials had with the bill. The amendment would require the approval of the county board for the issuance of revenue bonds. It also requires the county hospital board to file a copy of their bylaws with the county board. I urge the Health and Human Services Committee to look favorably upon LB995 with the amendment that I just offered. In the last several years, it has become more difficult for hospitals to remain viable. With the added unsureness of the federal healthcare reform, it is absolutely necessary to allow county hospitals to be able to compete with their peers. I especially want to thank Senator Campbell and Michelle for taking time with us on this issue. It is my intention to work with all interested parties in an attempt to get everyone on board, and I want to thank them for their willingness to work together. When Marty brought this to me last fall, we had indicated we were going to be short on time. They did go to the expense to get a law firm to help this to make sure that this was going to work. Sometimes when you introduce legislation, you start a conversation, you're thinking that maybe in a couple years you can accomplish something. Actually, in this instance, I really want to see something happen this year. There's been a lot of time and effort, and because they did hire the law firm there's been money spent on this. I feel like it would be wasted if we don't try to push something through this year, so it's actually my intention and I will hopefully be able to work with you, hopefully to get this out of committee. I am going to find somehow, whether it's my own or a different priority status, get a priority status so that we can talk about this on the floor. So hopefully we'll be able to. If you have concerns, we'll start working with you. If not, I would appreciate it, you know, to get it out of committee so that we can get my priority status to work. If you have any questions, I'll try to answer them, but the experts on these issues are sitting behind me and may be in a better position to respond. So with that I would take any questions. [LB995]

SENATOR CAMPBELL: Are there any questions from the senators? Senator Heidemann, I, too, would like to thank you for including us at the beginning, and we were able to ask some questions and hopefully clarify some of the points. Certainly what you and I had looked at are in the amendment. [LB995]

SENATOR HEIDEMANN: I'm a slow learner. It took me eight years to realize I need to talk with people right away, but. [LB995]

SENATOR CAMPBELL: I'm still trying to learn that, Senator. But thank you very much and we appreciated it. [LB995]

SENATOR HEIDEMANN: You bet. [LB995]

SENATOR CAMPBELL: Anything else? And will you be staying to close, Senator? [LB995]

SENATOR HEIDEMANN: Unless I come up, otherwise I'm going to waive closing. [LB995]

SENATOR CAMPBELL: Okay. [LB995]

SENATOR HEIDEMANN: Thank you. [LB995]

SENATOR CAMPBELL: All right. With that we will start with the first proponent on LB995. Good morning. [LB995]

LARRY DIX: Good morning, Senator Campbell and members of the committee. For the record, my name is Larry Dix, spelled L-a-r-r-y, last name D-i-x, and I'm here today in support of LB995. This bill, when we first saw it, this is just a great example of how legislatively working together with the senator we can come to a common ground of agreement. And I think certainly the reason we are in support of this bill is because of the amendment that Senator Heidemann introduced. We had our staff attorneys meet with the folks, with the legal folks from Baird Holm, and spend, you know, a couple hours going through it. Originally our concerns were the control that county boards have in regards to the county hospitals. Now there are not a tremendous number of county hospitals. But at the end of the day we've got all of our questions answered. With the amendment, that certainly has moved us to a position where we can support this bill. And as I started to state, it's always a pleasure working with Senator Heidemann and his staff, because we can have these conversations long before we get to the point where we introduce the bill and then we're up here saying, well, you know, on such and such page you've got to look at this and this and this. It's just one of those examples of the right way to do it, and we certainly appreciate Senator Heidemann in working with us on it. And so for that reason NACO is in support of what you will see in LB995. I would tell you I am certainly not an authority on county hospitals and exactly how that interacts with county boards, but I know the folks behind me that work specifically with county hospitals probably could answer those questions. But I'll be happy to try to answer anything that you may have. [LB995]

SENATOR CAMPBELL: Senator Gloor. [LB995]

SENATOR GLOOR: Thank you, Senator Campbell. Larry, do you know how many county hospitals there are? [LB995]

LARRY DIX: You know, we're probably to ten or fewer. There are not very many left out there, and they're scattered around the state. [LB995]

SENATOR GLOOR: What's the history? Has that come up at all as to why county hospitals operated under...? I mean, I'm sure once upon a time it was considered very progressive to have a county hospital and then the statute might have just stayed that way for literally decades and decades and decades. [LB995]

LARRY DIX: Yeah, it really has stayed that way for a long period of time. And I think, you know, what's happened over that course of time is, as we see from time to time, you know, everybody operates and things change, and so somebody changes their operating procedure and they're doing something differently, and then all of sudden somebody goes back and says, oh my gosh, we probably should look at the statute to make sure that our procedures are falling under what we're currently doing. And some of that you see in this bill. [LB995]

SENATOR GLOOR: But you've heard from those counties that have county hospitals, and they're comfortable with the changes in the provisions at this point. [LB995]

LARRY DIX: Initially, certainly we heard from Nemaha County. We heard from a hospital in Fillmore County. I've had contact with folks in Cherry County, so around the state. And I would be remiss in saying I've heard from every one, but these are the ones that said when they looked at the bill they had the concerns that we had addressed with Senator Heidemann, and those were the points that they brought up. And so we worked to address those issues. [LB995]

SENATOR GLOOR: Okay. Thank you. [LB995]

LARRY DIX: Sure. [LB995]

SENATOR CAMPBELL: Any other questions for Mr. Dix? Thanks for coming today. [LB995]

LARRY DIX: Thank you. [LB995]

SENATOR CAMPBELL: Our next proponent. Good morning and welcome. [LB995]

MARTY FATTIG: (Exhibit 2) Good morning, Senator Campbell. My name is Marty Fattig, M-a-r-t-y F-a-t-t-i-g. And Senator Campbell and members of the Health and Human Services Committee, I am Marty Fattig and I'm the CEO of Nemaha County Hospital located in Auburn, Nebraska, which has been established as a county hospital. I am here in support of LB995, which will update and amend the state statutes by which county hospitals abide. I have had the opportunity to lead two different county hospitals in my career, and I have found the regulations that govern them to be quite burdensome. Some of the statutes are archaic. Some are duplicative, and others simply make it very cumbersome to effectively lead a hospital. Let me state unconditionally that

I believe that since county hospitals are owned by the county, they should remain under the ultimate control of the county board. I also believe that county hospitals should not be able to encumber the county or pledge county assets other than their own in any way without the approval of the county board and/or the residents of the county as outlined in the proposed bill. But it makes it extremely difficult to operate a business under statutes that prohibit a county hospital from borrowing the money to purchase an expensive item such as a hospital computer system. LB995 expressly gives the county board the final say in any transaction that would result in the disposition or encumbrance of all or substantially all of the county hospital's assets. It also provides greater clarity in the relationship between county hospital boards and county boards, and resolves inconsistencies in the stated autonomous powers of the hospital boards and clarifies the circumstances under which county board authorization is required. LB995 recognizes the continued importance of county board involvement in county hospitals. In some respects, the role of the county board is actually enhanced by LB995. Current county hospital statutes require that each and every contract for the purchase or lease of equipment be ratified by the county board. The statutes also give no guidance as to how or when each contract is to be ratified. Many county hospitals are unaware of this requirement or, for reasons associated with the difficulty in obtaining county board authorization on short notice, interpret the law to allow ratification by presenting a capital budget to the county board. While county hospitals are units of county government, it seems impractical and unnecessary for county boards to review each and every equipment purchase and other county hospital contracts when the Legislature created a separate board of trustees to expressly govern and manage the hospital. There has also been a great deal of confusion about the county hospitals concerning the application of the County Purchasing Act to county hospital purchases. Because the county hospital is a unit of county government, the County Purchasing Act likely applies. As a result, all purchasees of equipment, supplies, and services, other than professional, are required to go through the bidding requirement and the dollar threshold of the act. However, few county hospitals are aware of the act and its impact on their operations. The fact of the matter is that the success of any county hospital is dependent upon its ability to control costs. While the act is designed to ensure that the county operations benefit from competitive bidding, the healthcare environment has moved well beyond this paradigm. The day-to-day purchase of county hospital supplies are significant, and the significant but occasional purchase of an MRI, for instance, are negotiated at the best rates possible given the economic and competitive healthcare environment. Many hospitals are already in group purchasing organizations which is incompatible with the competitive bidding process. Group purchasing organizations consolidate the purchasing power of a number of hospitals to negotiate volume discounts, but require that all supplies be purchased through the vendors with whom the county purchasing organization has contracts. Because of the unique environment within which county hospitals operate, LB995 amends the County Purchasing Act to remove purchases of personal property or services by county hospitals from the application of the act. As we look to the future of healthcare delivery models, it appears

that more formal collaboration will be required. The Affordable Care Act calls for the formation of something called Accountable Care Organizations, where a network of hospitals, physicians, and other providers will join together in an effort to improve the quality and reduce the cost of care provided by the defined population of people with an incentive being that the ACO will be awarded a portion of the savings. Under current law, county hospitals would not be allowed to participate in these arrangements. LB995 corrects this issue. The statutes by which county hospitals are governed have evolved over a number of years, and as with anything, the environment in which these hospitals must operate has changed. It is time to update the statutes so that they do not impede the innovation by which county hospitals any more than necessary. The 26 county hospitals in the state need to be able to compete with other governmental and nongovernmental hospitals on a level plying field. This will improve the operational efficiencies for county hospitals, which will potentially improve their financial performance and decrease the need for additional tax support to sustain their viability. Much thought has gone into LB995 and I believe that it will meet the needs of county hospitals for the foreseeable future. [LB995]

SENATOR CAMPBELL: Thank you. Senator Gloor, we've got your question answered. There are 26. [LB995]

SENATOR GLOOR: Twenty-six. [LB995]

MARTY FATTIG: Twenty-six. [LB995]

SENATOR CAMPBELL: Other questions from the senators? Senator Gloor. [LB995]

SENATOR GLOOR: Thank you, Senator Campbell. Marty, thanks for taking the time to be here. For the committee's benefit, I've known Mr. Fattig for a number of years, and he'd be one of the, if I can use the term "more senior" administrators in the state, and is well thought of and respected along those lines. So it's nice to have you here. I know there's...that brings a lot of credibility to me with this legislation. So the interpretation...and by the way, if you're more comfortable with somebody that you know is following you, asking...or answering the question, just let me know that and I'll be glad to hold off on it. But currently, the County Purchasing Act precludes people from being involved in purchasing organizations--but everybody is. [LB995]

MARTY FATTIG: Yes. [LB995]

SENATOR GLOOR: So what we're doing here is trying to make sure that people aren't putting themselves or their institutions in harm's way... [LB995]

MARTY FATTIG: Right. [LB995]

SENATOR GLOOR: ...by being in violation of the County Purchasing Act. [LB995]

MARTY FATTIG: If I may, where this kind of began was, Andy Kloeckner, an attorney with the Baird Holm law firm, health law attorney, gave a talk at the Nebraska Hospital Association Convention in October, and discussed county hospital statutes. And there were a number of people, hospital CEOs, present in that room that had no idea that they were under these statutes as Andy explained them. And at that time I thought, my gosh, we need to change this so that we're either operating within the law or find out other ways that we can...or change our processes so that we're operating within the law. [LB995]

SENATOR GLOOR: What do you currently have to get voter approval on? [LB995]

MARTY FATTIG: Voter approval now is for anything that is a general obligation bond. [LB995]

SENATOR GLOOR: Okay. [LB995]

MARTY FATTIG: Um-hum. And that does not change. [LB995]

SENATOR GLOOR: And that doesn't change. But being able to get county board approval would change if it was a bond over 50 percent of, what did I see? [LB995]

MARTY FATTIG: Yeah, 50 percent. [LB995]

SENATOR GLOOR: For improvements or additions to the facilities if the total cost is greater than 50 percent of the replacement cost to the facility. [LB995]

MARTY FATTIG: Um-hum. Exactly. [LB995]

SENATOR GLOOR Okay. Well, at 26, that's, I think, over a third of the hospitals in the state of Nebraska, so that's a large number. [LB995]

MARTY FATTIG: It's a little bit less than a third. It would be about 28-30 percent, someplace in there. [LB995]

SENATOR GLOOR: Yeah, that's... [LB995]

MARTY FATTIG There are, what, 85, 87 hospitals in this state, so. [LB995]

SENATOR GLOOR That's a lot more. I mean that's a lot more hospitals than I would have thought were still county hospitals. [LB995]

MARTY FATTIG Um-hum. Right. [LB995]

SENATOR GLOOR Why is it that, just saying, why don't we form a hospital district rather than maintain our county hospital status? I mean, do most county hospitals still get actual county dollars? [LB995]

MARTY FATTIG: Some...most of the 26 do. [LB995]

SENATOR GLOOR: Really. [LB995]

MARTY FATTIG: There are some exceptions. We happen to be one of the exceptions. The largest county hospital in the state is one in eastern Nebraska that many of you may not be aware of, and that's Fremont. And, of course, Fremont competing with Omaha and Lincoln, on the current statutes they're extremely handicapped by the statutes. [LB995]

SENATOR GLOOR: Okay. Thank you, Marty. [LB995]

MARTY FATTIG: Certainly. [LB995]

SENATOR CAMPBELL: Other questions? Senator Bloomfield. [LB995]

SENATOR BLOOMFIELD: Thank you, Senator Campbell. Marty, is there a list of where the county hospitals are that we can get our hands on? [LB995]

MARTY FATTIG: Absolutely. We can get that for you. [LB995]

SENATOR BLOOMFIELD: Can you get that for me? [LB995]

MARTY FATTIG: I'll make that available to you. [LB995]

SENATOR BLOOMFIELD: Thank you. [LB995]

MARTY FATTIG: Yes. Certainly. They're all over the state except for in Lincoln and Omaha. [LB995]

SENATOR CAMPBELL: Other questions? Do the county hospitals...I know you all belong to the Hospital Association, but do you meet separately, Mr. Fattig? [LB995]

MARTY FATTIG: No. [LB995]

SENATOR CAMPBELL: No. So you come together mainly when the Hospital Association meets. [LB995]

MARTY FATTIG: We do. Most of our needs are the same. It's just some of the statutes we have to abide by. [LB995]

SENATOR CAMPBELL: And I must say the conversation that we had when Senator Heidemann called Michelle and I, and said would you sit in on this conversation, I learned a lot about the county hospitals. We certainly had not had one in Lancaster. But a lot of the questions that have evolved with regard to the bonding and funding and Purchasing Act just really don't fit you after listening to your business model. I was really impressed with the amount of work that goes into a county hospital. [LB995]

MARTY FATTIG: Thank you. [LB995]

SENATOR CAMPBELL: And serving a great need across the state. [LB995]

MARTY FATTIG: They are. They really are. [LB995]

SENATOR CAMPBELL: Any other questions? Oh, Senator Howard. [LB995]

SENATOR HOWARD: Thank you, Senator Campbell. You said there isn't a county hospital in Omaha? [LB995]

MARTY FATTIG: The...Douglas County. [LB995]

SENATOR HOWARD: Douglas County Hospital. [LB995]

MARTY FATTIG: Right. Right. [LB995]

SENATOR HOWARD: So there is. [LB995]

MARTY FATTIG: Okay. Not a general hospital anymore, but they are still there. [LB995]

SENATOR HOWARD: Considered a county hospital. [LB995]

MARTY FATTIG: They are. [LB995]

SENATOR HOWARD: All right. Thanks. [LB995]

MARTY FATTIG: Yeah. [LB995]

SENATOR HOWARD: I wanted to make sure that they hadn't changed overnight. [LB995]

MARTY FATTIG: Right. I misspoke. I was talking about a general service hospital, and I think most of the mental health (inaudible). [LB995]

SENATOR HOWARD: Thank you. [LB995]

SENATOR CAMPBELL: It probably wouldn't come under the classification of a community hospital that has a full service, would they anymore? They're pretty...the Douglas County is pretty specified, is it not, Mr. Fattig? [LB995]

MARTY FATTIG: I would assume... [LB995]

SENATOR CAMPBELL: I think it's on mental health and long-term. [LB995]

MARTY FATTIG: ...that Senator Howard would know more about that than... [LB995]

SENATOR HOWARD: It's more long term. [LB995]

SENATOR CAMPBELL: Okay. Senator Bloomfield. [LB995]

SENATOR BLOOMFIELD: Thank you again. If the county hospital spends...apparently they can spend up to 50 percent of the value of the building... [LB995]

MARTY FATTIG: Um-hum. [LB995]

SENATOR BLOOMFIELD: ...without talking to the board. If they spend a bunch of money and things fall apart, is the county hung? [LB995]

MARTY FATTIG: Well, that is where...if I am correct, that is where Senator Heidemann's amendment comes in, is now that we are going to be having a revenue bond or encumbering the hospital, you know, borrowing money, that that must then go to a vote of the people. Am I correct there? [LB995]

_____: Vote of the (inaudible). [LB995]

SENATOR BLOOMFIELD: Vote of the county board. [LB995]

MARTY FATTIG: Vote of the county board, I mean. But yeah. [LB995]

SENATOR BLOOMFIELD: But does that go at the 50 percent level... [LB995]

MARTY FATTIG: No. [LB995]

SENATOR BLOOMFIELD: ...if you have a million-dollar facility? [LB995]

_____: It's (inaudible). [LB995]

SENATOR CAMPBELL: Senator Bloomfield, can you hold that question... [LB995]

SENATOR BLOOMFIELD: Certainly. [LB995]

SENATOR CAMPBELL: ...and then we'll have the attorney. Because the transcriber can't pick up this conversation, so if you will just hold that question,... [LB995]

SENATOR BLOOMFIELD: Certainly. [LB995]

SENATOR CAMPBELL: ...because I'm assuming that the attorney is going to testify... [LB995]

MARTY FATTIG: Yeah, Mr. Kloeckner can... [LB995]

SENATOR CAMPBELL: ...with the orange sheet in his hand. [LB995]

MARTY FATTIG: Yes. [LB995]

SENATOR CAMPBELL: Okay. Any other questions? Thank you very much. [LB995]

MARTY FATTIG: Thank you. And I appreciate your involvement in the beginning of this, Senator Campbell. [LB995]

SENATOR CAMPBELL: Our next proponent--who has the answer for Senator Bloomfield, I believe? Just a nice segue for you, isn't it. [LB995]

ANDREW KLOECKNER: Yeah. [LB995]

SENATOR CAMPBELL: Good morning, and welcome. [LB995]

ANDREW KLOECKNER: (Exhibits 3 and 4) Good morning. And thank you for having me, Senator Campbell and members of the Health and Human Services Committee. My name is Andrew Kloeckner; that's spelled A-n-d-r-e-w K-l-o-e-c-k-n-e-r. I'm an attorney with Baird Holm in Omaha. Baird Holm represents at least 21 of the state's 26 county hospitals on a wide array of legal and compliance matters, many times related to their ability or inability to take certain actions under the current county hospital statutes. LB995 seeks, first and foremost, to put the state's county hospitals on a level competitive playing field with their peer hospitals. Nebraska district and municipal hospitals and private nonprofit hospitals currently enjoy greater flexibility under the law to respond to the ever-changing and complicated healthcare environment. Placing

county hospitals on a level playing field is important to ensuring the continued viability of the state's county hospitals, and more importantly, to ensuring continued access to care for those Nebraskans who rely upon county hospitals for their healthcare services. Some examples of some of the significant changes in LB995: The current law effectively prevents the county hospital from lawfully obtaining a line of credit or encumbering any of its assets. For example, if a hospital needs to purchase a significant software package to implement an electronic health records system, it cannot presently do so through an arrangement where a vendor or a third-party finances the purchase and takes a lien on the software's collateral for the financing. The only method available is for a county hospital to obtain this is through the antiquated statutory warrant system. This system does not provide county hospitals with sufficient access to capital and puts them at a significant competitive disadvantage when compared to their peer hospitals. Certain county hospitals and lending institutions undoubtedly unaware of this legal impediment have obtained lines of credit or encumbered their assets without first obtaining legal advice. However, in order to remain competitive and respond to the rapidly changing healthcare marketplace, the need to secure financing and encumber the hospital's assets is absolutely crucial. Please note that even though LB995 would authorize county hospital boards to obtain financing and encumber assets, LB995 contains a requirement of county board approval to encumber all or substantially all of the county hospital's property. Thus, the county hospital board's unilateral authority under LB995 to encumber assets would apply principally to asset-specific transactions. As is currently the care, the county board maintains control over the ultimate disposition of the entire county hospital. LB995 does not change that result. The current Nebraska county hospital statutes also are occasionally duplicative and archaic. For example, in order to pay any bill or make payroll, the current law technically requires an order issued upon its treasurer, signed by the superintendent of the facility, and countersigned by the chairperson and secretary of the board of trustees. While fax signatures are permitted, it's not practical in today's world to require each and every payment to be made through this process. Traditional internal controls should suffice. There's also significant inconsistency among counties with regards to the level of communication, control, and influence county boards have over the operations of their county hospitals. Some county hospitals operate rather autonomously with communications between the hospital and county boards limited to those few annual reports that are required by statute currently. Other county hospitals are in constant communication with their county boards with county board liaisons attending hospital board meetings and the administrator of the hospital attending county board meetings and providing monthly reports. Under LB995, these reporting requirements do not change; but there is an added layer of communication that's required between the county board and the hospital board regarding the experience and expertise that the county hospital desires on its board. In addition to the County Purchasing Act revision that was mentioned by Mr. Fattig in his testimony, LB995 would also provide county hospitals with clear authority to open clinics and communities outside of their counties. Nebraska hospital districts already have that power to provide services beyond their jurisdiction, and of

course, nonprofit hospitals operate without boundaries. Allowing county hospitals the same power simply levels the playing field. Numerous county hospitals have already established clinics outside of their counties to address the health needs of neighboring Nebraskans and to improve access to care. In many instances, the neighboring counties do not have hospitals, leaving residents of those areas without local access to healthcare services. Establishing clinics in other counties also serves as a financial benefit to the county hospitals in that it generates additional referrals and revenues for the hospital, which has the effect of reducing the potential tax burden on the county's residents. The goal is expanding services outside of county boundaries to enhance the hospital's self-sufficiency and avoid its dependence on county tax funding. This is a benefit and not a burden to county taxpayers. In summary, LB995 seeks to put the state's county hospitals on a level competitive playing field and provides greater clarity to laws under which they currently operate. As touched on in my testimony here today, current hospital statutes are archaic and do not allow county hospitals the flexibility that's required in today's healthcare marketplace. These amendments sought allow county hospital boards to operate with significant autonomy over the day-to-day operations of the hospital without reducing the overall authority of county boards over their hospitals. The increased flexibility that would result from the enactment of LB995 would allow county hospitals to remain competitive and ensure continued access to healthcare services by a greater number of Nebraskans over the long term. [LB995]

SENATOR CAMPBELL: I think we have finally reached the real expert here, Mr. Kloeckner. Senator Gloor. [LB995]

SENATOR GLOOR: Thank you, Senator Campbell. And I would second Senator Bloomfield's request for not just the name but for those who are going to be responsible in the audience for coming up with this list. A map is probably going to be beneficial. [LB995]

ANDREW KLOECKNER: I have a map that I can distribute to you. Some copies would need to be made, so I can do that. [LB995]

SENATOR GLOOR: Well. And I see you reference 25 rather than the 26. My guess is Douglas County might be the difference on definition. [LB995]

ANDREW KLOECKNER: Yeah. And like was referenced, they're not really a full-service hospital. But keep in mind that these statutes, we call them county hospital statutes, but they really apply to nursing facilities any county can establish. It's not just the hospital. It could be other types of facilities as well--healthcare facilities. [LB995]

SENATOR GLOOR: Well, most of those hospitals...many of those hospitals also have attached long-term care facilities as part of them. [LB995]

ANDREW KLOECKNER: Many do. Many do. [LB995]

SENATOR GLOOR: I'm not going to play devil's advocate so much, but I'm trying to figure out in my own mind, okay, why were the statutes set up this way? I mean, you know, due diligence on this is why would the original statutes not have allowed county hospitals to set up clinics beyond their borders? Was it protectionism? I'm guessing anybody that knows the history, you're likely to be the person. [LB995]

ANDREW KLOECKNER: The issue...well, I wouldn't say that they are set up to not allow clinics beyond their borders. They're just silent on the matter. So when clients come to us and ask, can we set up a clinic in a town that's right across our border but it's not in our counties, we have up to this point in time been unable to tell them that with 100 percent certainty they have the authority to do so. Unlike if you look at the hospital district statutes, there's clear authority for them to set up and offer services outside of their particular district. So it's not that there's a prohibition on it under the current statutes, it's just that there's really no discussion on it. And so you're left to look towards Attorney General opinions and try to...and there's no real Attorney General opinion on it, but try to see if it's within the tenor of kind of the overarching statutory scheme as it currently exists as to whether or not they have the authority to go outside boundaries. So there's really not a clear answer that you can give to a hospital that's looking to make sure that it has the ability to do so. And, quite frankly, I think some of them just haven't asked the question and went ahead and did, that was kind of alluded to before, that, you know, operations of hospitals have changed over the years and to the extent some people are very surprised when they find out that there are certain statutes that apply to them. [LB995]

SENATOR GLOOR: I'm guessing it has to do with the loss of whatever revenue, and I'm assuming it's a pretty small dollar amount that the counties contribute. But was there discussion to just getting rid of this statute completely and folding all county hospitals under hospital district statutes, which would give them a greater degree of flexibility and maybe provide most everything else except maybe you couldn't count on the county as a revenue source then. [LB995]

ANDREW KLOECKNER: Well, I think...I don't know the discussion of doing that to the statutes has taken place. I think that there's some folks that have county hospitals and have desired--and I know of at least one not directly involved with it, but has created a hospital district where a county hospital actually exists. [LB995]

SENATOR GLOOR: I think I know that one. [LB995]

ANDREW KLOECKNER: But the problem there that they weren't aware of when they did this is that just because you create a hospital district doesn't automatically mean that the county hospital's assets go to the hospital district. And so there's the issue then you

still have all the issues that you would have in every other situation of how do we get the county hospital over, transfer title to everything, new license? I mean it's a new entity. So, I mean, I think folks have thought about that; but it's really a difficult and complicated legal process to...you're essentially selling a hospital to a governmental district that was just created and doesn't necessarily have funding and all that. So I think it's been thought of by some but it's a difficult process. [LB995]

SENATOR GLOOR: Do current statutes require county hospitals to have a board of trustees? [LB995]

ANDREW KLOECKNER: If they're under a certain size, yes. If they have...if the county that they reside, that they are located in, has a greater than, I think it's 200,000 residents, don't know the exact number, but it's a great number of residents, then there's the option for the county board to double as the board of trustees, but. [LB995]

SENATOR GLOOR: If there are two... [LB995]

ANDREW KLOECKNER: If it's a large county. So it would be, I think, Douglas County. [LB995]

SENATOR GLOOR: Would be about it. [LB995]

ANDREW KLOECKNER: Um-hum. [LB995]

SENATOR GLOOR: So they do have trustees but they're not required to have trustees. Is that...? [LB995]

ANDREW KLOECKNER: I think they're required to establish a board. I think the language is "shall." [LB995]

SENATOR GLOOR: Okay. Okay. Well, that's one of the things that I think we can't lose sight of in this is that this isn't just the county board that's paying attention to what's going on. They've also got a local board of trustees made up of business leaders who have a vested interest in going down to have coffee and having to justify expenditures and contracts they sign or don't sign. [LB995]

ANDREW KLOECKNER: Right. [LB995]

SENATOR GLOOR: I just think it's fascinating that given the fact that the standard practice in hospital business for a long time now, decades, has been purchasing groups, and that's been in violation of apparently the purchasing act, County Purchasing Act. [LB995]

ANDREW KLOECKNER: Um-hum. [LB995]

SENATOR GLOOR: Interesting. Thank you. [LB995]

ANDREW KLOECKNER: Um-hum. [LB995]

SENATOR CAMPBELL: Other questions? Senator Bloomfield. [LB995]

SENATOR BLOOMFIELD: I still have my original question: Is the county indebted if the hospital goes...makes a bad decision, buys a bigger piece of equipment than they can afford, and...? [LB995]

ANDREW KLOECKNER: Right. Well, right now, it depends on how the particular financing that the hospital has is structured. Right now, as it currently stands, there's no authority for a county hospital...no legal authority for a county hospital to issue what's called revenue bonds. So the only thing that they have the ability to do right now in terms of financing is to issue general obligation bonds, which by definition are secured by the taxpayers. And so if the county hospital goes under for some horrible reason, the county taxpayers are what end up being the at-risk party here. One of the changes that we seek to have here, and the amendment addresses the concern of some of the county commissioners, is they now have the authority as well to do, if it's to issue revenue bonds, in addition...as an alternative to general obligation bonds. And so that would be limited to those county hospitals that are financially able to do so, have a good...are a good credit risk. But that is an addition where essentially then all that would be at risk is the hospital itself. That's why they're called revenue bonds, not the general taxpayers, but typically what comes with that is a higher interest rate, and typically the market will only bear those types of bonds from hospitals that are financially well off. [LB995]

SENATOR BLOOMFIELD: Thank you. [LB995]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. Kloeckner. [LB995]

ANDREW KLOECKNER: Thank you. [LB995]

SENATOR CAMPBELL: (Exhibit 5) Other proponents? Other proponents? Those who are opposed? Anyone to testify in opposition? Anyone who would like to testify in a neutral position? Okay. We should note for the record that we received a letter of support from the Nebraska Hospital Association on LB995. Okay. Senator Heidemann, do you wish to close? Senator Heidemann waives closing, and we thank you for that. And we will move to the next hearing this morning. If you are leaving, please leave quietly and take all conversations to the hall. Our next bill is LB1047, Senator Howard's bill to require safe injection practices as described. Good morning, Senator Howard.

[LB995 LB1047]

SENATOR HOWARD: Good morning, Senator Campbell, on a snowy day,... [LB1047]

SENATOR CAMPBELL: Yes. [LB1047]

SENATOR HOWARD: ...and members of the committee. For the record, I am Senator Gwen Howard, that's H-o-w-a-r-d, and I represent District 9. LB1047 would require the Department of Health and Human Services to craft regulations to ensure Nebraska's healthcare providers are following the CDC guidelines for safe injection practices. In the last 12 years, the CDC has documented 45 hepatitis outbreaks, the vast majority of which were caused by unsafe injection practices. This number does not include the probable numerous instances of unsafe injections that go undocumented each year. The average person likely thinks of safe injection practices in terms of ensuring that a needle is only used one time. However, infections are caused most frequently when a healthcare worker changes a needle, but continues to reuse the syringe. Equally devastating is misuse, again by reusing the syringe, of large vials of medication on multiple patients. Many outbreaks occur in what we likely think of as the traditional medical settings; for example, the clinic that was involved in the 2002 tragedy in Fremont. And I don't want to minimize this. That was a horrible, horrible situation. However, these dangerous practices can occur in any setting where injections are given. For example, the source of a 2010 outbreak in West Virginia is believed to be a free dental clinic. Additionally, many outbreaks in the last 20 years have occurred in long-term care clinics. The CDC reports many of these were due to the reuse of diabetes testing equipment. There are several education campaigns geared toward promoting safe injection practices. One notably, the One and Only Campaign, which stands for "one needle, one syringe, only one time." However, I believe that regulatory requirement is essential to ensuring that all professionals are following proper injection procedures. LB1047 is crafted to allow the department leeway in tailoring requirements to ensure healthcare workers are using safe injection practices. Nevada has found success in requiring professionals to attest that they are knowledgeable of and practicing safe injection practices. Others have suggested making injection practices a continuing education requirement. This bill would allow the department to get the input of all stakeholders and carefully craft regulations that work for the providers and protect the patients. Infections and other adverse events spread by unsafe injection practices are 100 percent preventable. We must ensure that they are prevented. I thank you for your time and your attention to LB1047, and I believe there are others here that can give you more information on this topic. [LB1047]

SENATOR CAMPBELL: Questions for Senator Howard before we begin? Senator Gloor. [LB1047]

SENATOR GLOOR: Thank you, Senator Campbell. And I apologize, Senator Howard. I

had a note that I put someplace that I've forgotten, so I may visit with you later and ask. [LB1047]

SENATOR HOWARD: You don't remember what it was? Okay. [LB1047]

SENATOR GLOOR: But, in general, my question, which was a lot more specific, what does this bill do that will specifically improve what currently is out there? Regulations that the department has liability issues that come into play, accreditation standards that organizations have to have licenses that can be revoked? I mean there seems to be a lot of things that relate to a standard of care that already come into play. How will this improve the chances that we don't have a Fremont again; which, I think by all accounts, was a criminal act, not just a standard of care action. [LB1047]

SENATOR HOWARD: I would agree with you, that was definitely...and then the individual that was responsible left the country and no one was held accountable. [LB1047]

SENATOR GLOOR: Yeah. [LB1047]

SENATOR HOWARD: And no one was held accountable. For me, this really goes to education and training and an emphasis on what you need to do. Best practice. No different than in my field. I think people, we all need to be reminded constantly of what our actions, the effect they have on other people. And this is an excellent example of this. I, frankly, had no idea that just changing the needle wasn't sufficient. That if you reuse the syringe, you're standing an equal chance of spreading whatever is out there to another person. So for me it's really a matter of education and having that in the front of your mind all the time. I, frankly, wouldn't want to be subjected to a practice that reuses equipment. [LB1047]

SENATOR GLOOR: Okay. Thank you. [LB1047]

SENATOR CAMPBELL: Any other questions? Senator Bloomfield. [LB1047]

SENATOR BLOOMFIELD: Thank you. Back in the day (laugh) when you went in the military, they stood there with...well, we got the same needle even, at that time. [LB1047]

SENATOR HOWARD: Oh, lordy, lordy. [LB1047]

SENATOR BLOOMFIELD: You know, they would line up 100 or 200 of you and just give you the shot as you went in. But later on, they got to using that air gun where they don't use a needle. They put the gun on you and it blows in. Is that going to be affected by...? [LB1047]

SENATOR HOWARD: I think that would be a good question to save for someone that's coming after me that would have more knowledge of that. [LB1047]

SENATOR BLOOMFIELD: Okay. [LB1047]

SENATOR HOWARD: I'm glad that you're here and you weren't affected by the use of this same needle. That's a terrible thing to think about. [LB1047]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Howard. [LB1047]

SENATOR HOWARD: Thank you. [LB1047]

SENATOR CAMPBELL: We will open testimony on LB1047 for the first proponent. Good morning. [LB1047]

EVELYN McKNIGHT: Good morning. I'm Evelyn McKnight, E-v-e-l-y-n M-c-K-n-i-g-h-t. Chairman Campbell, members of the committee, public health officials, members of the community, fellow patients, thank you very much for allowing me to speak to you today. I am here as one of 99 Nebraskans who contracted a deadly disease through reuse of syringes in a medical clinic. We were all cancer patients. We sought medical care to fight one life-threatening disease--cancer, but came away with a second life-threatening disease--hepatitis C. Tragically, six of the 99 have died of hepatitis C, not from their cancer, and the remaining survivors continue to suffer physically, socially, emotionally, financially, even to this day. Although about 40 other outbreaks similar to ours have occurred in the United States in the past 12 years, the Nebraska outbreak has the ignoble distinction of being the largest. Let me explain in a little more detail why the Nebraska outbreak was so alarming. The outbreak occurred because a nurse reused a syringe that had been used on a patient with known hepatitis C. She used this syringe to draw saline from a large bag that was used for many patients. The syringe had drops of blood in it from the hepatitis C-infected patient, which contaminated the entire bag. As the saline from the bag was injected into patients throughout the day, all the patients were exposed to hepatitis C. In this way, at least 640 patients were exposed and received a letter from the Nebraska Health and Human Services which read, in part: Dear sir or madam, you have been exposed to HIV, hepatitis C, and hepatitis B. You need to go in and be tested. Of the 640, 480 were tested and 99 were diagnosed with hepatitis C. Of these 99, about one-third underwent the grueling treatment for the disease, which meant two-thirds found that the treatment was so taxing that they would not undertake treatment, and thereby, they chose to live with the fatigue, joint pain, and ultimately liver failure that could potentially shorten their lives. There was one liver transplant as a result of the outbreak, and as I mentioned before, six deaths due entirely to hepatitis C. Our Nebraska tragedy resulted in a financial, medical, and emotional disaster for those notified, for the victims, for the families, for the community, and in

many ways, for the entire state of Nebraska. Because hepatitis C is a chronic disease, the survivors continue to have their health jeopardized. Many are unable to attain life insurance or medical insurance. Lingering emotional trauma is unresolved. Approximately $16 million was paid out from the Nebraska Excess Liability Fund in settlement of the 89 lawsuits. This was a concern for healthcare workers because they worried that their malpractice insurance rates would increase. Private citizens worried that there would be an increase in taxes because of misinformation that was widely circulated that that was a possibility. The incredible thing about this tragedy is that it was entirely preventable, and the guidelines for the prevention are basic principles of medical practice that are well established and disseminated. As disturbing as the outbreak was, I find it equally disturbing that we have not examined in a systematic way at the state level what the causes, consequences, and possible policy options are that could prevent another such outbreak. My husband Tom, a family physician, and I founded a nonprofit patient advocacy organization that educates and raises awareness to prevent such senseless tragedies or (inaudible) events from occurring again. The result of this effort is Hepatitis Outbreaks National Organization for Reform, or HONOReform. We have worked with the CDC and other professional patient and industry partners to develop and implement a national educational campaign to prevent these outbreaks from occurring. It's called the One and Only Campaign--one needle, one syringe, and only one time. We are proud to report that we have educated hundreds of thousands of patients and professionals throughout the United States about the vital importance of safe injection practices. And yet, without an undergirding of effective policy, education, and awareness, it's ultimately minimally effective at best. We know this to be true because the outbreaks continue to happen across the United States. In 2011, there were nine outbreak notifications that affected 6,000 Americans. This is from one end of the country to the other, including an outbreak at the Mayo Clinic in Florida. Anecdotally, our healthcare partners tell us that they still see unsafe injection practices occurring even in Nebraska. Without clear policy ensuring that safe injection practices are adopted by all healthcare providers, we are gambling that another such disastrous outbreak will occur again in Nebraska. We have not put in place at a state level any policies that would ensure that another outbreak will not happen. As a survivor of the outbreak of 2002, I am compelled to speak about the need for an effective state policy that would prevent such a catastrophe from occurring again. Through HONOReform, we have been part of a legislative process of reform that has taken place in other outbreak states, such as New York, New Jersey, Nevada, Michigan, Ohio, and North Carolina. A year ago, Nevada enacted a law in which healthcare providers attest to using safe injection practices at no additional cost to the state. They now have in place a method to prevent another such horrific outbreak. In Nebraska we do not. Thank you again for allowing me to testify on behalf of all Nebraskans to empower Nebraska Health and Human Services to put in place effective reform that will prevent another calamity such as the Nebraska hepatitis C outbreak. [LB1047]

SENATOR CAMPBELL: Thank you very much for your testimony. Are there questions? Senator Gloor. [LB1047]

SENATOR GLOOR: Thank you, Senator Campbell. And thank you for taking the time to testify. Clearly, you're an advocate, and as unfortunate as this is to have occurred to you and to others, and for you to take your advocacy...or take the situation and turn it into advocacy is a wonderful thing and you're to be congratulated for that. [LB1047]

EVELYN McKNIGHT: Thank you. [LB1047]

SENATOR GLOOR: The nurse involved in this, was she an RN or an LPN? [LB1047]

EVELYN McKNIGHT: She was an RN. [LB1047]

SENATOR GLOOR: She was an RN. So she's got a degree and trained and still does this. She lost her license, didn't she? [LB1047]

EVELYN McKNIGHT: She voluntarily surrendered her license. [LB1047]

SENATOR GLOOR: Did she surrender her license? I'm guessing though that had she not, there's a good chance she would have lost her license. So she has paid a price herself for this. Had the training. So I'm going to ask you basically the same question I was asking Senator Howard. What is it about this bill that makes you more comfortable that that situation wouldn't repeat itself, where you have somebody who is a trained professional, went to school, knows...supposedly knows that what she was doing was inappropriate and yet does it anyway? How will this bill help make sure that we don't have a repeat again? [LB1047]

EVELYN McKNIGHT: Healthcare providers give licensure, you know, great import. It is very important. That's how we can carry on our livelihood. And to have that reminder in a very powerful way, every other year when you apply for a reissue of license, I think is very meaningful, very powerful to see that and have it, if that is how the Nebraska Health and Human Services would promulgate this regulation. To have it tied to licensure I think is very powerful and a strong reminder and one that gives utmost importance to the practices. [LB1047]

SENATOR GLOOR: Is the One and Only Campaign geared towards that sort of appropriateness in regulation to try and address the problem? We have a letter from the Department of Health and Human Services, and their concern is they don't think there's enough specificity in the bill as it's set up to help them understand what they have to put into regulations. So I'm just trying to flesh this out so that we do a better job if this bill passes, giving them what's needed to come up with regulations that can make a difference. And so maybe One and Only has information that can help along those lines.

I mean this is in trying to make sure that the bill, if it becomes law, does make a difference. That's the reason for my line of questioning. So tell me a little bit about the One and Only Campaign. [LB1047]

EVELYN McKNIGHT: The One and Only Campaign is a patient and provider educational campaign. It is in four states now in the country. It has a very strong provider educational piece which is grounded on the CDC guidelines for best practices--safe injection practices. It can be and has in some states been modeled into a continuing education piece so that there is a pretest and posttest that is given as part of that as a way of ensuring that the provider, you know, understood all of that information. So it can be designed, and has been, as a continuing education unit. [LB1047]

SENATOR GLOOR: Do provider groups and institutions then just sort of embrace this voluntarily and have folks go through the training, or is it required training by some entities? [LB1047]

EVELYN McKNIGHT: It has both. I spoke in Holdrege, Nebraska, last summer, and they do require that the new hires view the training video and complete that unit as part of their requirement for employment. [LB1047]

SENATOR GLOOR: How long does it take to sit through the training or the video? [LB1047]

EVELYN McKNIGHT: About an hour. [LB1047]

SENATOR GLOOR: Okay. Thank you. [LB1047]

EVELYN McKNIGHT: You're welcome. [LB1047]

SENATOR CAMPBELL: Other questions? Senator Howard. [LB1047]

SENATOR HOWARD: Thank you, Senator Campbell. Thank you for coming in. I know this is painful for you to relive this, and I wanted to tell you I got about a third of the way through the book that you gave me, a year, maybe it was two years ago now, and what I appreciated about the book was that it made it personal. It really explained every day what went on in that clinic in Fremont. And the thing that was so hard for me in reading that was realizing how preventable that was and how that didn't have to happen. And I know that in working with you and talking with you, you'd be available to provide guidelines, references, information. And what better source that someone that's actually been there? So thank you so much for coming in today. [LB1047]

EVELYN McKNIGHT: You're welcome. And I agree, I would be most willing to help

provide any help that I can. [LB1047]

SENATOR HOWARD: Thank you. [LB1047]

SENATOR CAMPBELL: Senator Lambert. [LB1047]

SENATOR LAMBERT: I'd like to echo Senator Howard's words, and Mrs. McKnight has been a family friend for many years, and as in small towns when some bright, young people leave the community, they are followed. And the community followed some of the tragedies that you went through, and I feel so bad for that, but I'm so proud of you being here and what you're doing. Thank you very much. [LB1047]

EVELYN McKNIGHT: Thank you. And what we can bring from this tragedy is we can be a leader for the rest of the country to ensure that it doesn't happen again. You know, it is happening, and we...this is something completely preventable. We have to stop it. We're better than this. We can do something about this. [LB1047]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Lambert. Senator Howard. [LB1047]

SENATOR HOWARD: Just a quick question, Senator Campbell. I have to ask you, why do you think this happened? I mean, as Senator Gloor pointed out, this nurse was trained, and I kept asking myself all the way when I was reading this book, why did this happen? [LB1047]

EVELYN McKNIGHT: The nurse said in deposition that she was trained this way and that's the way we've always done it and that's the way we're going to do it, when it was pointed out to her repeatedly that this is not safe. The doctor did not come back from Pakistan for a deposition, so we don't know his side of the story. [LB1047]

SENATOR HOWARD: Okay. Thank you. [LB1047]

SENATOR CAMPBELL: Any other questions or comments? Thank you for sharing your story. It's very powerful. [LB1047]

EVELYN McKNIGHT: Thank you. [LB1047]

SENATOR CAMPBELL: Our next proponent. Anyone else in the hearing room who wishes to testify on LB1047? Those in opposition to LB1047? Good morning. [LB1047]

DAVID BUNTAIN: (Exhibit 6) Good morning, Senator Campbell, members of the committee. I want the committee to listen clearly to what I'm about to say. We agree with everything that the proponents have said about the basis for this bill and what the

bill is trying to accomplish. But this is not the way to go about it. Basically, what this bill does is say...enact into law the standard of practice for healthcare providers that already exists. And this is not...this is something that the Medical Association has opposed in several different areas, and this is just consistent with what our position is. And I guess I should start out by saying I'm David Buntain, and it's B-u-n-t-a-i-n. I'm a lobbyist for the Nebraska Medical Association. I agree with Senator Howard's comments. What happened in Fremont was an outrage. It was horrible. It violated the standard of care, and the physician community was as outraged as everyone else was in this state. We also agree that medical providers should follow the CDC guidelines, not just in this area, but in all areas as far as preventing transmission of infectious diseases within the treatment of patients. Where our disagreement comes is in the policy decision for the state to selectively adopt or enact into law the standard of care for medical practice, or for all healthcare providers. We have raised this issue earlier this session in a bill in the Banking, Commerce and Insurance Committee, LB876, dealing with mammography. Two years ago this committee had the pulse oximetry bill where there was an attempt to define what the standard of care is for using pulse oximetry with newborn children. LB370, 2005, was a bill in the Insurance Committee to establish standards for colorectal screening. All of these bills have the same problem, and that is the standard of care is set...it is a changing standard of care. It's not something that you can just put into statute, and it's better left to the multitude of regulatory entities that deal with standard of care issues, including the CDC. What you are being asked to enact is a statement that it's within the scope of practice of all persons who provide injections to follow the safe injection practices published in the "Guideline for Isolation Precautions..."--and I won't read the rest of it. What I have handed out today is an excerpt from a 225-page document, which is what this law refers to, and it's the "Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings." The guidelines that this refers to is one page of this 225-page document. We submit that healthcare providers, to meet their standard of care, should follow the CDC guidelines, not simply the one page that would be referenced in this law; but all of these guidelines. But we don't think it's appropriate for the Legislature to go in and wholesale adopt standards of care or selectively adopt standards of care. And what...I didn't give you the whole 225-page document, but let me just walk you through what I did give you. This is the cover of it. The full document can be found at the address that's shown at the bottom of the first page. I just put that on there so if you want to find the document. The next three pages are the table of contents showing what all is included. It's basically about 90 pages of background which includes then about 50 pages of what the standards are. The one...the information about safe injection practices starts on page 68 and carries over to 69. That is the portion of this that you're being asked to adopt. We don't think this is the right way to go about addressing this issue. We will work with the proponents of safe injections. I know that there's been contact with...between the Medical Association and Dr. and Mrs. McKnight about this issue. We want to address it. But whether or not this bill passes will not prevent someone from ignoring what's sound medical practice, whether it's set in the standard of care or a state law or the CDC. We

can do things to educate people about that, and I submit that what the McKnights and their foundation are doing is...it's an excellent response, and we really commend them for how they have responded to this. It's a very positive outcome from this, and we would be happy to work with them on that. [LB1047]

SENATOR CAMPBELL: (Exhibit 9) Are there questions for Mr. Buntain? Mr. Buntain, we received a letter from Dr. Schaefer, and I'm going to quote from that to see whether you want to add anything to it. "We believe that current law provides sufficient authority to hold health professionals accountable for conformance with acceptable and prevailing standards of practice, including adherence to safe medication injection...," and then Dr. Schaefer goes on and cites the sections for disciplinary action. So you're saying that the standards of care are set in the rules and regulations in a scope of practice? [LB1047]

DAVID BUNTAIN: This is a nonexclusive list. But let me...standards of care are established by hospital bylaws. They are established by regulation. They are established by...and by regulation I mean state regulation, federal regulation. They're established by research. They're established...I mean it...there are a number of things that go into the standard of care that are already existent, and they define standard of care in all kinds of practices. The other element of standard of care, which is definitely an enforcement mechanism, is the medical liability system. The test that a physician or other healthcare provider faces if there has been an incident such as what happened in Fremont, is did they violate the standard of care in that community? And it's...I mean it's undeniable that the standard of care was violated. Most rational healthcare providers recognize, number one, that standard of care is the right way to practice; and number two, that knowingly going against the standard of care is foolhardy because it creates the potential for the kind of liability that we had in this case. We cannot completely protect against irrational conduct. What we can do is hopefully narrow and diminish as much as we can situations like this occurring. [LB1047]

SENATOR CAMPBELL: Senator Gloor. [LB1047]

SENATOR GLOOR: Thank you, Senator Campbell. I'm in agreement with you, the fact that institutional practice is such that there are a whole host of issues, whether it's accreditations, whether it's liabilities. It does a pretty good job, I think...does a very good job. But, I mean, let's go back five months, six months. We're driving down the street here in Lincoln someplace and we see a sign that's been stuck in the ground next to a drugstore that says the flu vaccine is in; come in and get your flu vaccine...get your flu shot. Who gives those shots? Are these RNs, are they pharmacists, are they technicians behind the counters? And so where I get interested in this piece of legislation isn't because of the more formalized training and education that may be out there. It's the fact that it seems like a lot of folks can go around sticking needles in people in this day and age. But that's where my concern would be. [LB1047]

DAVID BUNTAIN: This won't address that. I mean that has to be addressed through the regulation of pharmacies or wherever those practices are occurring. I mean it has...and we think that needs to be done. I agree that that...but passing this would not prevent someone from ignoring it. I mean it's not...it says "thou shalt not," but... [LB1047]

SENATOR GLOOR: It doesn't say how (inaudible.) [LB1047]

DAVID BUNTAIN: ...but by the time it's violated it's too late. [LB1047]

SENATOR GLOOR: So the problem is it doesn't say how we would stop that. It just says it shouldn't be done. Is that what you're saying? [LB1047]

DAVID BUNTAIN: Correct. That is correct. And if someone is...I mean anyone who is a licensed healthcare professional should understand...and should be trained and should understand that reusing a needle is, you know, strictly prohibited. I mean it...but, you know, unless someone from the state is there watching every time they give an injection, I mean we do rely on people to live up to this. And I...if there are things we can do to better educate practitioners. Not...I mean I don't mean to single out pharmacists, but all across the board about this problem, we're...you know, we're very interested in doing that. [LB1047]

SENATOR GLOOR: Okay. Thank you. [LB1047]

SENATOR CAMPBELL: Mr. Buntain, I probably should have asked Mrs. McKnight this question; but in the situation that we had in Fremont, were there any complaints about this prior to when all this was discovered? [LB1047]

DAVID BUNTAIN: I don't... [LB1047]

SENATOR CAMPBELL: That came to the attention. I mean you could make a complaint to the department, the Health Department. And I want to make sure, if you can explain. All right, if I saw this practice and I called...I'm assuming I would call the Health Department... [LB1047]

DAVID BUNTAIN: Right. [LB1047]

SENATOR CAMPBELL: ...then what would happen? [LB1047]

DAVID BUNTAIN: Well, two...let me answer the first part of that,... [LB1047]

SENATOR CAMPBELL: Okay. [LB1047]

DAVID BUNTAIN: ...which I am not...I was familiar in a general way with the litigation. I don't know the factual background well enough to know how this information came to the attention of the authorities. The way the system should work would be if you go into an office and suspect that there has been a problem, you can file a complaint with the Department of Health and Human Services, Dr. Schaefer's area. They take those complaints anonymously. I would expect on something like that where there is a risk of immediate health risk that they would be right on it and they would do an investigation. They have the authority to act basically without a hearing to issue a cease and desist, so that...we do...assuming that a complaint is made, and that's really...I mean it's got to be triggered by a complaint. Or if not that, there, within institutions, you would hope that there are other review mechanisms that if there were a practitioner doing something like this, there would...you know, you encourage the nurses to complain about it and raise the issue. I mean there's...you've got to have people in the vicinity feel comfortable stepping forward and saying, you know, this isn't right. So it's...you know, you would hope that that would occur. And I don't know what the sequence was in Fremont. [LB1047]

SENATOR CAMPBELL: And we can certainly go back to Dr. Schaefer to explain some of that in specific detail. Other questions? Senator Krist. [LB1047]

SENATOR KRIST: Yeah. I'm awfully glad I finished up and got back for this one, because I have a real interest in it. In the case of the Fremont oncology clinic, the doctor was not overseeing the best practices in the clinic, and it was the nurse who was fully trained, established within her credentials and in her community, and her best practices were not being overseen, and she was continually exposing patients to insane practices and reuse of equipment within the clinic. There were several complaints. I mean, for gosh sake, they were located in the hospital building. This goes back to, in my mind, and you know, not pertinent I don't think in this issue, but I'm going to say it anyway; we have freestanding clinics around this state that there is no oversight--best practices oversight. And it's criminal and we're going to have another one of these happen and I...I guarantee you. So your position in my mind is, although I respect your opinion, if you don't have somebody looking out for best practices in these clinics, the doctor...it should have been the doctor in this case... [LB1047]

DAVID BUNTAIN: Absolutely. [LB1047]

SENATOR KRIST: ...who now is in a foreign country, which speaks to the freestanding clinics that we allow to happen in this state. But it should have been the doctor. The proposition here, though, is it should have been, could have been, would have been. And here we are. We're at a point where the question is, do you allow these things to happen even if there is proper training, without someone overseeing the process and best practices being monitored continually...? [LB1047]

DAVID BUNTAIN: Yeah. [LB1047]

SENATOR KRIST: And I'll shut up and let you talk (inaudible). [LB1047]

DAVID BUNTAIN: And I don't disagree with anything that you've said. I'm just saying this bill does not get to that issue. Just simply saying that this is the scope of practice that you follow these guidelines. The nurse should have known that then. Certainly the physician should have known it. It was the physician's clinic. He is responsible for running that clinic, and he should have been involved in it. I mean I don't really disagree with... [LB1047]

SENATOR KRIST: Okay. [LB1047]

DAVID BUNTAIN: ...any of your premises as it affects this issue. [LB1047]

SENATOR KRIST: Thank you. [LB1047]

SENATOR CAMPBELL: Any other questions? Senator Bloomfield. [LB1047]

SENATOR BLOOMFIELD: Thank you. I get a little blunt from time to time and a little more plain-spoken than I maybe should. Is it your opinion that this does nothing except make us feel better about having passed something? [LB1047]

DAVID BUNTAIN: (Laugh) That's a little blunter than I would have said. [LB1047]

SENATOR BLOOMFIELD: (Laugh) [LB1047]

DAVID BUNTAIN: I think this is more symbolic than real as far as what the effect of it is. I don't really think it will change anything. This is not the way to encourage and educate people about safe injection practices. [LB1047]

SENATOR BLOOMFIELD: Thank you. You are much more diplomatic than I am. [LB1047]

SENATOR CAMPBELL: Senator Lambert. [LB1047]

SENATOR LAMBERT: Thank you, Chairman Campbell. Are you saying we're better off without this law than with it, would you say? [LB1047]

DAVID BUNTAIN: I'm not saying...I guess what I'm saying is I don't think it really accomplishes anything, and I am concerned about the practice, the general practice of trying to put into statute what standard of care is--selectively. I mean we have...I mean we could talk for days about all the things that, you know, are the standard of care for

health practice. This is one piece of it, but there are many things. [LB1047]

SENATOR LAMBERT: In your opinion, do we have a problem? Is this something that we need to address, in your opinion? [LB1047]

DAVID BUNTAIN: Well, I hope we...I mean...if there is any reuse of needles in any healthcare facility in this state, we have a problem. There should be zero tolerance for that. I don't know if that's going on. This won't prevent it from going on, so. But I do think everything we can do to educate people and to have oversight in place to the extent we can is important. [LB1047]

SENATOR LAMBERT: I guess, you know, I kind of apply this to transportation. You know, if a plane crashes, we look at it and we change some policies or we see what caused it and we work harder to avoid it. Are we going to work harder to avoid this, or are we saying, well, we've got everything in place and we're just going to move ahead as we did before? [LB1047]

DAVID BUNTAIN: Well, it's interesting, because actually I think the guideline document that I passed out is, in part, a response to what happened in Fremont. There is a reference in the policy that they want to adopt it as a standard of care to there having been four large outbreaks of hepatitis B and hepatitis C, and I think one of those was the Fremont case. I didn't go back through the footnotes. So this...I mean this is nationally a response to what happened in Fremont and elsewhere, and it is, you know, a guideline that establishes the standard of care. So there has been a response. [LB1047]

SENATOR LAMBERT: Okay. So you feel that's a step in the right direction and a response towards this terrible crash that happened in Fremont. [LB1047]

DAVID BUNTAIN: Well, there has to be two pieces of it. You have to have the guidelines, but then you have to let everybody know that these are the guidelines. To be honest with you, they should have known before the Fremont case and before these guidelines that this was the standard of care. [LB1047]

SENATOR LAMBERT: Okay, thank you. [LB1047]

SENATOR CAMPBELL: Any other comments? Thank you, Mr. Buntain. [LB1047]

DAVID BUNTAIN: Thank you. [LB1047]

SENATOR CAMPBELL: (Exhibits 7-10) Anyone else in opposition to LB1047? Those in a neutral position? Okay. Senator Howard. While she is making her way to close on the bill, we will note that we received a letter from the department on LB1047 and outlining

concerns. We received a letter from the Nebraska Pharmacists Association on a neutral position. We received a letter of support from the Nebraska Hospital Association, and a letter of support from the Nebraska Nurses Association. Senator Howard. [LB1047]

SENATOR HOWARD: Thank you, Senator Campbell. I'd like to comment on some of the things that David Buntain mentioned. And no, these bills are not the same. This bill is not the same as the bills he's referenced. One of the primary concerns, as I recall, we have it on those bills was cost. And there is no cost on this bill. I would say he makes a very good point in that if those are the guidelines that were in place, people should have known that, which goes to the heart of this matter, which is education and training. I feel quite sure that if we didn't educate people about the consequences of shaking the baby, people would continually shake the baby to get him to be quiet. We have a responsibility...if anyone has the responsibility, we have the responsibility to ensure that our health professionals are trained and are practicing safe methods. It's not only needles. Again I'm going to emphasize that it's not only needles. It's also syringes. And I thought it was very interesting that Mr. Buntain continually referred to needles when that's commonly thought of as the area that you'd find the problem, when, in fact, it's also the syringes. So possibly a little more education called for there as well. Ninety-nine Nebraskans at a cancer treatment center in Fremont were infected with hepatitis C because healthcare workers at the clinic were reusing syringes; and these people, each and every one of them, trusted the healthcare professionals that were treating them. Each one of these victims of this outbreak suffered needlessly because of the gross negligence of a few people. Infections and other adverse events spread by unsafe injection practices are 100 percent preventable. We worked with the Health Department, Dr. Schaefer's department. I worked with her in the past. We worked with her on this issue. They simply would not tell us what should be included in this bill. We wanted them to ensure best practice, but they didn't like the ideas that we brought to them. So to keep this open, we've left this entirely to their discretion to decide what educational safe practices should be included. LB1047 would ensure that our healthcare workers are educated on and practicing safe injection practices. We can't afford to let another injection-practice-related tragedy occur in Nebraska. We have already had one too many. And I appreciate Senator Gloor's comment. I've often driven past drugstores and wondered the very same thing, which is why I go to the visiting nurses for the flu vaccination. Thank you. [LB1047]

SENATOR CAMPBELL: Senator Krist. [LB1047]

SENATOR KRIST: I can't quote the bill or the year, but Senator Janssen reduced the overhead structure of the Department of Health and Human Services, which reduced the oversight from the department to the freestanding clinics and in areas like this. When we reduce that, if you read the court case and you read the state's defense of the Fremont situation, you will see over and over and over again monitoring best practices, monitoring best practices, monitoring best practices. If they don't have the manpower to

do that, then they need to come up with a system that at least entails proper training. And again, it's not needles. It's not just syringes. There are freestanding clinics out there that are performing procedures that are creating health issues for Nebraska citizens. The department needs to look at this bill as the first in the line of ultimatums, in my mind, that says you do something to restore best practices or the Legislature will help you restore best practices and the oversight of those best practices. Pretty strong words from a one-eyed fat man, but that's the way I feel about it, so. [LB1047]

SENATOR HOWARD: I couldn't agree with you more. Either that, or we need to insist that clinics post notices that we don't have the...the Department of Health and Human Services doesn't have the staff to ensure this is a safe environment to get this procedure done. [LB1047]

SENATOR CAMPBELL: Any other questions? Senator Howard, I guess I only have one comment and that us that I...and I think that perhaps we will add this to one of our briefings, but I do think that we need to sit down and visit with the department. I particularly want to know what they do with regard to compliance. And so we'll visit with you about that. [LB1047]

SENATOR HOWARD: Thank you. Compliance and training on these issues. [LB1047]

SENATOR CAMPBELL: Right. Because if it's already covered at some point, that's the part we need to know. So thank you. [LB1047]

SENATOR HOWARD: Yeah. And in fact if these guidelines are so commonly known, why does this continue to happen? And I would say that dealing with it after the fact--dealing with it after the fact--is putting a lot of people are risk. [LB1047]

SENATOR CAMPBELL: With that, Senator Howard, thank you very much, and we will close the hearing on LB1047 and proceed to LB1077, Senator Howard's bill to require certain healthcare facilities to offer vaccinations to residents and patients. Senator Howard, you can open once again. [LB1047 LB1077]

SENATOR HOWARD: (Exhibit 11) Thank you, Senator Campbell and members of the committee. For the record, I am Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. Influenza is the largest vaccine-preventable killer in the United States. It is the eighth leading cause of death and it kills 36,000 people each year. It is especially deadly among our most vulnerable populations. Ninety percent of the flu deaths occur in individuals over 65 years of age. To protect our most vulnerable citizens, LB1077 would require that each general acute hospital, immediate care facility, nursing facility, and skilled nursing facility must offer annual flu vaccinations if available to all residents or patients who are being discharged. And I want to emphasize this: must offer if available to everyone who is being discharged from the facility. These vaccines would be offered

during the flu season, which generally is defined between October 1 and the first of April. I want to stress again that this bill only requires that hospitals and nursing facilities offer the vaccines. There is no requirement that the facilities pay for the vaccines. They can continue to charge for vaccination as they currently do. Additionally, the requirements of LB1077 only apply when there is no national vaccine shortage. Both the Nebraska Hospital Association and the Nebraska Health Care Association were involved in the drafting of this bill. And I'm going to tell you that there are people here who can speak to the specifics on this bill. Also I do have an amendment. Again, so many things go back to dollars and cents. The amendment simply says that "Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section." [LB1077]

SENATOR CAMPBELL: Thank you, Senator Howard, for both your bill and the amendment. Are there any questions? Senator Gloor. [LB1077]

SENATOR GLOOR: Thank you, Senator Campbell. Is there a penalty, Senator Howard? What's the...if they don't, what are the ramifications of somebody who doesn't? [LB1077]

SENATOR HOWARD: I would say...not to delay the answer to your question, but I would suggest you ask it to someone that's coming after. I don't have a...as far as I'm aware, there's not a penalty proposed in this. But certainly that could be another amendment. [LB1077]

SENATOR GLOOR: Thank you. [LB1077]

SENATOR CAMPBELL: Senator Bloomfield. [LB1077]

SENATOR BLOOMFIELD: And this too, and if so, tell me, may need to go to somebody else. We're aware of the doctors and the hospitals are paid by Medicaid less than sometimes it costs to give the shot. Are they...if they offer it here, are they going to offer it to a Medicaid person and say, well, the state doesn't pay enough so we're not going to give it to you because it costs us? [LB1077]

SENATOR HOWARD: I think it's...the concept of this bill is it will be offered to everyone--everyone that's being discharged from a facility. [LB1077]

SENATOR BLOOMFIELD: So it could end up costing the hospital some more money. [LB1077]

SENATOR HOWARD: It's not going to cost the hospitals. They're going to bill through Medicaid like they do for anything. [LB1077]

SENATOR BLOOMFIELD: But Medicaid doesn't pay quite the cost of the medication at times. [LB1077]

SENATOR HOWARD: I'd say that's probably a federal...I'll be dealing with that on a federal level. No, I can't. (Laugh) [LB1077]

SENATOR BLOOMFIELD: Okay. Thank you. [LB1077]

SENATOR HOWARD: Thank you. [LB1077]

SENATOR CAMPBELL: Thank you, Senator Howard. How many in the hearing room wish to testify on LB1077? Oh, okay. All right, we'll go with the proponents for LB1077. Good morning. [LB1077]

WALT RADCLIFFE: (Exhibit 12) Good morning, Senator Campbell and members of the Health Committee. My name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of Sanofi Pasteur in support of LB1077. I think I'm "the people" that Senator Howard referred to that would be following. (Laugh) So with that in mind, let me respond...begin if I may by responding both to Senator Gloor's and Senator Bloomfield's questions. Senator Gloor, there isn't a specific penalty. It would just simply be a violation of the practice act, whatever, or...and the licensing act, as would other requirements that we have related to vaccines that you've done in the past. And I think you're familiar with how that would work. And Senator Bloomfield, the vaccines are provided through the Health Department by the feds, and so therefore, the one on the Medicaid, there is not a cost incurred, if I'm correct. So we're not...certainly not trying to make anybody do this and lose money. And furthermore, I believe the amendment that Senator Howard has further clarifies as far as the payment and the responsibility for that. I'd like to just touch on a couple of things. Sanofi Pasteur is a company who internationally manufactures flu vaccines. They've come before this committee before with various vaccination legislation. I would hasten to add that they have no exclusivity. It's just simply a product or one of their product lines that they sell. And so therefore, they do what they can to promote that. The fact that this is permissive from the standpoint of whether or not the patients accept it or not I think is probably about as easy as you can make it. I would like to address a letter that you have from the Metro Immunization Task Force that supports the bill. And I'd like to talk about two, "suggestions" that they make at the bottom of the bill (sic--letter.) And, very honestly, I don't really understand...and they didn't provide any examples of amendments as far as the clarification that's required. Maybe if committee counsel sees something there I'd be happy to work with her. But I just...I don't understand their point. I'm always open to any suggestions they have, and this has been a very good group to work with. They've come in, in the past, in support. The other thing that they raise in (2) with regards to CDC and ACIP annual compliance is, as the members of this committee know, you cannot delegate the incorporation of federal rules and regulations that have not yet

been enacted. So as far as the standard is concerned, I think those would apply as they do now; but we simply can't incorporate them by statutory reference in the future. So the points are both well taken, and I did want to address those, and we certainly, certainly appreciate the support. I'd also like to thank Bruce Rieker and Brendon Polt for their assistance in working through this with us. We tried to talk to the affected and impacted parties. I have really nothing to add to Senator Howard's testimony nor to the statistical data that's in the letter you've received. I'd be happy to attempt to answer any questions...and "attempt" may be the word, but I'll give it a try. [LB1077]

SENATOR CAMPBELL: Senator Gloor. [LB1077]

SENATOR GLOOR: Thank you, Senator Campbell. I don't know that I have very many questions, but we see so little of you in this particular committee, it would be a shame to let you get out of here and may not at least...through my entire career, this may be the only time I get a chance to ask you a question. [LB1077]

WALT RADCLIFFE: Well, perhaps the reason you see so little of me is, Senator, I prefer to send my clients that know what they're talking about. [LB1077]

SENATOR GLOOR: (Laughter) I'm sure that's not true. Here's one of the questions I have, and it gets back to the issue of implementation, and maybe Mr. Polt is the one I need to visit with about this. But sometimes the reason there ends up being vaccine shortages is they get spread around to so many places where they're not used that the public health departments and physician clinics that might be able to use them regularly don't have the access. So I would want to make sure that we don't have a lot of vials scattered around the nursing homes across the state and they don't get used, yet some of the locales that could give it out on a regular basis are running short. And I know... [LB1077]

WALT RADCLIFFE: That's one of the reasons, Senator Gloor, that we put in that "when available" language. Now as far as what the, I guess for lack of a better word, return policy is on medications, I honestly can't speak to that. I can't imagine that facilities would request more than they would have as far as patients go. And I don't know what the compliance rate or what the rate is as far as people availing themselves of the opportunity to take the vaccinations concerned, but, I mean, that would be available to the facilities that request it, so. [LB1077]

SENATOR GLOOR: Yeah. I mean I think it's a good bill. Certainly the intent behind it would be helpful to stop flu epidemics, although I would imagine we're not talking about a lot...usually not talking about a lot of discharges from these facilities. [LB1077]

WALT RADCLIFFE: No. [LB1077]

SENATOR GLOOR: But that may also fall under the category of rehab, and the reason for rehab facilities is for people to get rehabbed and, in fact, be discharged. I'm just trying to think of the supply versus the demand and some of the locales that are out there, and so I'll ask a few more questions. [LB1077]

WALT RADCLIFFE: One thing I might just mention that I forgot, Senator Campbell, and I wanted to address this to Senator Bloomfield. A couple years ago, Senator, we had a vaccine bill that was similar in nature, and you had some questions with it, and we incorporated some amendments that you had. Those amendments would be applicable here as well. I just wanted to point that out. I should have done it off the mike but I wanted to be sure and point that out to you. [LB1077]

SENATOR CAMPBELL: Any other questions for Mr. Radcliffe? Thank you very much. [LB1077]

WALT RADCLIFFE: Thank you, Senators. [LB1077]

SENATOR CAMPBELL: The next proponent. Anyone else? Anyone in opposition to LB1077? Anyone in a neutral position? Good afternoon...no, good morning. Sorry. I knew I would do that. [LB1077]

RON JENSEN: It should be afternoon, but it isn't this time. Senator Campbell and members of the Health and Human Services Committee, my name is Ron Jensen and I'm the lobbyist appearing before you this morning on behalf of LeadingAge Nebraska, which is an organization that's made up exclusively of nonprofit and publicly owned nursing homes and assisted-living facilities. And my organization is neutral on the bill itself. You can...I've done a little informal research in this, and what I found is that I can't find a member that isn't already doing this, and you can take that two ways. You can say, well, if you're already doing it anyway, regulation won't hurt. Or you can say if you're already doing it anyway, why do we need the regulation? I'm willing to let you choose between those. (Laugh) I do think there are a couple of words in the bill that are very important to us, and one is the word "offered." There is not unanimity among people on flu shots. There are people that never get them. There are people like I who get one every year. So it is important that we understand that the individual has to give his permission to treat in order to do that inoculation. The other thing is, and I don't have it in front of me, but the bill speaks to consistent with the policies, I believe, or the policy procedures of the facility, and I think it's very important that that provision be given the meaning and give us license for the very occasional individual for whom this kind of inoculation could be contraindicated in the judgment of the facility staff or the treating physician. So with those provisos, we're comfortable with what you determine to do with the bill. [LB1077]

SENATOR CAMPBELL: Senator Gloor. [LB1077]

SENATOR GLOOR: Thank you, Senator Campbell. Mr. Jensen, are your members able to get the vaccines usually from the Health Department at no charge? [LB1077]

RON JENSEN: You know, I honestly don't know that. I can't answer that. [LB1077]

SENATOR GLOOR: I would think so, but just wondering. Would they be likely to have an administration charge? Can they have an administration...I mean, even if they get the vaccine for free, can they charge for giving the vaccine? [LB1077]

RON JENSEN: Well, they can. And whether they do or not, and I suspect that's a judgment of the facility. I mean nursing homes particularly are pretty aggressive in this, and I know from personal experience... [LB1077]

SENATOR GLOOR: Not in charging. But aggressive in giving the immunization. [LB1077]

RON JENSEN: Aggressive in protecting against flu outbreaks. Okay? [LB1077]

SENATOR GLOOR: Yeah. Okay. [LB1077]

RON JENSEN: I just from a personal experience when my mom was in the facility at Friend. And in the five years she was there, more than once I'd come to visit in the winter and there would be a sign on the door that they weren't admitting visitors at that time because there was flu in the community. So I can't...I'm sorry, I'm not able to answer your question. I could find out for you. [LB1077]

SENATOR GLOOR: I would be curious about whether... [LB1077]

RON JENSEN: Sure. [LB1077]

SENATOR GLOOR: ...we're able to get the vaccines to some of these facilities, you know, from the Health Department. [LB1077]

RON JENSEN: I've never heard that discussed, so I'm just not able to respond to it. [LB1077]

SENATOR GLOOR: Thank you. [LB1077]

SENATOR CAMPBELL: Any other questions for Mr. Jensen? Thank you very much. [LB1077]

RON JENSEN: Thank you. [LB1077]

SENATOR CAMPBELL: Anyone else in the hearing room in a neutral position? If not, Senator Howard, do you wish to close? [LB1077]

SENATOR HOWARD: I'm going to do just a very brief closing on this bill. One of the things that occurred to me in listening to the testimony, and I will say that when we have Mr. Radcliffe here, he does have the answers that many people would be bringing us. So thank you, sir, for coming in. When a person is discharged from either an acute, a general acute hospital, an immediate care facility, a nursing facility, skilled nursing facility, those people tend to be very fragile and very vulnerable; and if they're not offered this, if this is not available to them upon discharge, I would think the next alternative would either be a trip to a physician's office to get this done, especially during the intense flu season, October 1 to April 1, or possibly a drugstore on the way home. Which I don't see those alternatives as being as beneficial to the patient as being offered the vaccine when they're leaving the facility. [LB1077]

SENATOR CAMPBELL: Senator Gloor. [LB1077]

SENATOR GLOOR: Thank you, Senator Campbell. I ask this question for the record. I think I know your answer, but it's probably a good idea for both of us to have it there. Your intent, if somebody, as Mr. Jensen pointed out, was a resident and had been given that flu vaccine in the course of their stay there, you're not looking to have them give and being given a vaccine once again. It's to make sure that by the time they're discharged, one way or another they have had an opportunity to have that vaccine. [LB1077]

SENATOR HOWARD: Well, absolutely. I don't think we have to be foolish in our medical care. (Laugh) If you've been vaccinated for something and that vaccine is effective for the period of time that you'd be needing it, that it be required, that would be ludicrous to offer that again. But thank you for the question just to make it sure...to make it clear on the record. [LB1077]

SENATOR CAMPBELL: You know, one thing that we might want to mention is I did go to my local neighborhood pharmacy, but I said: And what are your credentials for giving this? So one thing that we might want to make sure that people do is to ask who is this person that's giving the shot. And that's certainly a personal responsibility that we could get people to know. But I did ask. [LB1077]

SENATOR HOWARD: You know, that's an interesting... [LB1077]

SENATOR CAMPBELL: I wanted to make sure the clerk wasn't giving it. (Laugh) [LB1077]

SENATOR HOWARD: Good. That's interesting you should bring that up, because I go to the same pharmacist in the grocery store that I frequent. And I've asked this question: How do we know that the person giving the injection is really skilled in giving the injection? And his response is: Anybody can do that. [LB1077]

SENATOR CAMPBELL: That's why I asked. (Laugh) Thank you, Senator Howard. [LB1077]

SENATOR HOWARD: Good. Thank you. [LB1077]

SENATOR CAMPBELL: (Exhibits 12 and 13) Thank you, Senator Howard. Any other questions, I'm sorry, before we close the hearing? Before we close the hearing we should note we received two letters of support for LB1077 from the Nebraska Hospital Association and the Immunization Task Force Metro Omaha. Okay? And with that, we'll close that hearing and we'll turn...and now, Senator Gloor, while I make my way to the chair. [LB1077]

SENATOR GLOOR: We will move to LB1042. And Senator Campbell, when you settle in, you're welcome to start. Please be sure and state and spell your name. [LB1042]

SENATOR CAMPBELL: It's a good thing you remind me of that, Senator Gloor. Good morning, colleagues, on the Health and Human Services Committee. I am Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, and it is a pleasure to introduce LB1042 because it authorizes nurse practitioners to pronounce death and to sign death certificates. The Nebraska Nurse Practitioners Association asked me to introduce this bill. Nurse practitioners can be primary care providers. In the event a nurse practitioner's patient passes away, the nurse practitioner cannot sign the death certificate even if the deceased was his or her patient for many years. Statute requires the medical portion of the death certificate to be signed within 24 hours of the death by a physician or physician assistant. If neither is available, the county attorney must be notified. This can make a difficult time for family even more stressful. Section 71-605, which is part of the Vital Statistics Act, provides authority for signing death certificates. Section 71-605 was amended in 2009 to authorize physician assistants to sign death certificates. LB1042 amends 71-605 to include nurse practitioners. LB1042 also amends Sections 38-2301 and 38-2315 which deal with nurse practitioners' function and scope. You may notice that Section 3 of LB1042 includes language on disciplinary action for failure to comply with requirements on signing death certificates. Section 3 is modeled on language adopted in 2009 to authorize physician assistants to sign death certificates, and we thought it was reasonable to adopt the same disciplinary provisions for nurse practitioners. Others are here today who have more detailed and technical background on this subject, and I emphasize more technical background on the subject. And I would like to defer technical questions to them, otherwise I'd be happy to answer any questions. And we do have several people here who certainly are nurse practitioners

and can answer your questions. [LB1042]

SENATOR GLOOR: Are there any questions for Senator Campbell? And Senator Campbell, I want to make it...I want to make sure I understand. Currently, physicians and physician assistants can sign death certificates. [LB1042]

SENATOR CAMPBELL: Yes. [LB1042]

SENATOR GLOOR: But not yet nurse practitioners. [LB1042]

SENATOR CAMPBELL: Correct. [LB1042]

SENATOR GLOOR: Thank you very much. [LB1042]

SENATOR CAMPBELL: Thank you. [LB1042]

SENATOR GLOOR: We'll now move to other proponents. If you would please step forward. [LB1042]

SENATOR CAMPBELL: Good morning. [LB1042]

MARY CHRISTENSEN: (Exhibits 14 and 15) Good morning, Chairman Campbell and members of the Health and Human Services Committee. My name is Mary Christensen, M-a-r-y C-h-r-i-s-t-e-n-s-e-n. I am a geriatric nurse practitioner here in Lincoln, Nebraska. And on behalf of the Nebraska Nurse Practitioners and our more than 700 members, I would like to offer our support for LB1042 as introduced by Senator Campbell. This hearing marks an important opportunity for nurse practitioners across our state to share our perspective on the importance of allowing a nurse practitioner to sign a death certificate. As a healthcare professional, nurse practitioners enjoy that our practice is focused on collaboration with other nurses and with our physician partners. Nurse practitioners work in communities across the state in clinics, in hospitals, and nursing homes to provide our patients with timely access to high quality healthcare. We believe that this is a relationship that should not end with the death of our patients. As you will hear in later testimony, many of our members, especially those in rural areas, have experienced issues with the current statute which prevents them from signing death certificates for patients who have been in their care for many months and even years. Currently, only physicians and physician assistants are allowed to sign death certificates. In their absence, the county attorney must sign the document. As family and friends focus on burial arrangements and other details, the last issue they should be concerned with is finding someone to sign a death certificate for their family member if his or her primary caregiver was a nurse practitioner. Personally, I have experienced issues related to death certificates and cremations in particular. I have unfortunately dealt with patients' families and their frustrations that I am not able to sign a death

certificate for their family member even when I was the one overseeing the care of that patient prior to their passing. Quite simply, there are not enough primary care physicians to care for today's aging population. We must all work together in a continuum of providers to keep patient care affordable, accessible, and high quality. The ability for nurse practitioners to sign death certificates through the passage of LB1042 marks the end of an unnecessary and undue barrier for the care of their patients and their families. I have also passed around a letter of support for LB1042 from our national affiliate, the American Academy of Nurse Practitioners. Thank you again to Senator Campbell for introducing this legislative proposal and to the committee for your time and your service, and at this time I would be happy to answer any questions that I might be able to for you. [LB1042]

SENATOR CAMPBELL: Senator Cook. [LB1042]

SENATOR COOK: Thank you, Madam Chair. What kinds of problems do the families run into when they don't have a signed death certificate? [LB1042]

MARY CHRISTENSEN: Well, for instance... [LB1042]

SENATOR COOK: Yeah, what, do they have to wait around for a physician and a physician assistant... [LB1042]

MARY CHRISTENSEN: To sign it. [LB1042]

SENATOR COOK: So what would be a barrier for them? [LB1042]

MARY CHRISTENSEN: I had a patient that I had taken care of in hospice and had taken care of the orders and had passed away and signed imminent orders, and the patient had passed away that night. The next day the physician that I practice with had surgery, so she wasn't available that day. Obviously, she had had surgery, and the next day she was gone. This family was not...they wanted their loved one to be cremated, and this family was not able until that death certificate was signed to have their loved one cremated. And it really presented a problem. The family couldn't understand why I couldn't sign the death certificate because they thought it was absolutely, you know, ludicrous that I couldn't. So it was a real problem for them. And most cremations, I believe, have to be done within 24 hours. [LB1042]

SENATOR COOK: Okay. Thank you. [LB1042]

SENATOR CAMPBELL: Other questions? There's just a great number of...you don't realize until someone close to you dies how many copies of that death certificate you need to almost do many things--insurance and for the funeral. I mean there are just a lot of copies that you have to make, and I can understand the angst of that family very

much. Thank you, Ms. Christensen, for your testimony today. [LB1042]

MARY CHRISTENSEN: You bet. Thank you. [LB1042]

SENATOR CAMPBELL: Our next proponent for LB1042. Good morning. [LB1042]

CATHERINE CLARK SYBRANT: (Exhibit 16) Good morning. Chairperson Campbell and members of the Health and Human Services Committee, my name is Cathy Clark Sybrant, C-a-t-h-y C-l-a-r-k S-y-b-r-a-n-t, and I'm a practicing nurse practitioner in Basset, Nebraska. I am here today to ask your support for LB1042 and share how this bill would positively impact healthcare services across the state, and in particular, rural areas. First, I'd like to thank Senator Campbell for introducing this important legislation which would reduce a barrier to healthcare services for patients and their families facing the challenge of a loved one passing on. I live in a town of approximately 700 people with a small county-owned hospital. In terms of access to healthcare providers, we have one physician and four nurse practitioners. Three of the nurse practitioners share around 75 percent of the hospital acute care, emergency room, and long-term care facility call. In smaller counties, our county sheriff is also charged with duties of county coroner, and he can pronounce people dead. If a person dies in our emergency room or long-term care facility when a nurse practitioner is on call, legally the physician or the county sheriff must come to that location to pronounce the death and sign the death certificate. I believe all nurse practitioners I work with will feel more than competent to determine if a person is still living, due to our education, training, and credentialing in healthcare. An additional problem that my inability to sign death certificates creates is related to morticians and the cremation process. Our closest crematory is more than 100 miles away; but if a person is not embalmed, they must be at the crematory within 24 hours. If a physician is not readily available and a mortician is attending a funeral or wake services, then that 24-hour window and a 100-mile drive can get pretty short. I believe that the education we have for the preparation of our licensure, nurse practitioners are trained and competent to provide this service. I have also passed around letters of support from other nurse practitioners who share my frustrations regarding the current death certificate statutes. As you will read, each story highlights how this legislation would positively impact nurse practitioners from all areas of the state. Thank you again, Senator Campbell, for introducing this legislative proposal and for the committee for your time and service. At this time I would be more than happy to try to answer any of your questions. [LB1042]

SENATOR CAMPBELL: Are there any questions for Ms. Clark? Senator Howard. [LB1042]

SENATOR HOWARD: Thank you, Senator Campbell. Just a quick question. Do other states use this practice? [LB1042]

CATHERINE CLARK SYBRANT: I think there was like over 20 states have nurse practitioners. [LB1042]

SENATOR HOWARD: Okay, thank you. [LB1042]

CATHERINE CLARK SYBRANT: And physician assistants can do it actually. I think they've had less... [LB1042]

SENATOR HOWARD: But in this case this is regarding the nurses, so other states do... [LB1042]

CATHERINE CLARK SYBRANT: Have nurse practitioners that can. [LB1042]

SENATOR HOWARD: Okay, thank you. [LB1042]

CATHERINE CLARK SYBRANT: Anybody else? [LB1042]

SENATOR LAMBERT: Senator Howard. [LB1042]

SENATOR CAMPBELL: Oh, Senator... [LB1042]

SENATOR LAMBERT: No, I was just going to say I see in this one letter 20 states and the District of Columbia... [LB1042]

SENATOR HOWARD: Oh, there's a letter that addresses that. Good. [LB1042]

SENATOR LAMBERT: ...already have regulatory framework in place to allow NPs to sign death certificates in 20. [LB1042]

SENATOR GLOOR: Including Iowa. [LB1042]

SENATOR CAMPBELL: Madam Clerk, you received a package so all these will be listed in the record. Okay. I won't read them, the names, as long as the clerk has them. Good morning. [LB1042]

TIMOREE KLINGLER: (Exhibit 17) Good morning, Senator Campbell, members of the committee. My name is Timoree Klingler. That is spelled T-i-m-o-r-e-e, last name is spelled K-l-i-n-g-l-e-r. I'm here as the executive director of the Nebraska Nurses Association. The NNA supports this bill because it is one more healthcare best practice initiative that provides quality care for family members of a person who dies. In many settings, especially rural settings, the nurse practitioner is the primary provider and is the individual that the family member has been interacting with in the final weeks, days, and hours of life of their now-deceased family member. The family appreciates and

values the same health provider being able to provide the necessary legal, appropriate, and timely postmortem care without the introduction of an unknown other health provider. By having a nurse practitioner sign a death certificate who has been the deceased patient's primary care provider, there is less cost to the healthcare, legal, state, and estate systems as unnecessary referrals to physicians or others, and unnecessary autopsies are prevented. Nurse practitioners have the education, competencies, and skills to sign death certificates. The NNA believes this bill furthers best care for patients in Nebraska. Thank you for your consideration of this legislation, and I would be happy to answer any questions. [LB1042]

SENATOR CAMPBELL: Are there any questions? Thank you very much. [LB1042]

TIMOREE KLINGLER: Thank you. [LB1042]

SENATOR CAMPBELL: Our next proponent. Good morning again. [LB1042]

DAVID BUNTAIN: That's right. I'll get it right this time. I'm David Buntain, B-u-n-t-a-i-n. I'm the registered lobbyist for the Nebraska Medical Association, and I'll be very brief. We had similar legislation in 2009 that was brought by the physician assistants. It was probably an oversight at that time not to include nurse practitioners as well. Physician assistants and nurse practitioners practice in many of the same types of practice settings, and in fact, practice side by side in many practice settings, and their training and practice is pretty similar. They both practice under practice agreements with physicians, and so it would make sense to include them as well as physician assistants. And one of the interesting things about the death certificate statute is it does provide that if a physician or PA, currently PA--this would add nurse practitioners--isn't available, then the county attorney who is not trained in any way generally as a healthcare provider can sign the death certificate. So it seems to me that's another reason why it makes sense for someone who has been treating the patient and is trained to make that determination. So the Nebraska Medical Association is supportive of the efforts to amend the death certificate law and pass LB1042. [LB1042]

SENATOR CAMPBELL: Any other questions or comments? Thank you, Mr. Buntain. [LB1042]

DAVID BUNTAIN: Yes. Thank you. [LB1042]

SENATOR CAMPBELL: (Exhibit 18) Anyone else in the hearing room who wishes to testify in favor of LB1042? Anyone in opposition? Anyone in a neutral position? We will note for the record that we received a letter of support from the Nebraska Hospital Association. And I will waive closing on LB1042 and we will close the hearings for the day. [LB1042]