[LB231 LB261 LB338]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, March 6, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB231, LB261, and LB338. Senators present: Kathy Campbell, Chairperson; Bob Krist, Vice Chairperson; Tanya Cook; Sue Crawford; Mike Gloor; Sara Howard; and Dan Watermeier. Senators absent: None.

SENATOR CAMPBELL: Welcome to the Health and Human Services Committee. I'm Kathy Campbell and I serve District 25, which is east Lincoln and eastern Lancaster County. And I'm going to go through some procedures first so that everybody kind of knows the operations here. If you have a cell phone with you today, would you please ensure it's on silent or turned off, even better, because it's so disruptive if it starts to ring. And I'm about ready to have a big penalty if it rings, so. I see my colleagues start to laugh. They know I'm not going to do that. If you're coming up to testify today, we do need you to complete one of the bright orange sheets that are located on either side of the chambers here. And if you don't want to testify, but you just want to leave a note on how you feel, a position on that, you can write on the white sheets and leave your name and your comment. As you come forward to testify, you can bring your orange sheet. If you have handouts, just give everything to the clerk, Diane Johnson, who is to my far left there, and she and the pages will distribute them for you. As you sit down, please state your name for the record and spell it. This is for the transcribers who listen. They need to ensure that they have the correct spelling of your name, too. I think that may be all the procedures that we need. Oh, the lights. Yes, we do use the lights in the Health Committee. You have five minutes. You'll start out on green and you think you have a fairly long time. You do; you have four minutes. You're going to get to yellow and then you only have a minute left. And when you get to red, someone, probably me, will be trying to get your attention to close up and finish off your comment. With that, we'll have introductions by the senators. We'll start on my far right.

SENATOR WATERMEIER: I'm Dan Watermeier from Syracuse, the southeast corner, District 1.

SENATOR HOWARD: I'm Sara Howard. I represent District 9 in midtown Omaha.

SENATOR COOK: I'm Tanya Cook. I represent Legislative District 13 in northeast Douglas County and Omaha.

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

SENATOR CRAWFORD: Good afternoon. My name is Sue Crawford and I serve LD45, which is Bellevue, Offutt, eastern Sarpy County.

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

SENATOR CAMPBELL: And our pages today are Deven and Kaitlyn and they are two of the very best, so we're glad...we're awfully glad to have them because they take good care of you and they're very mindful of what you might need help with. So with that, we will open today's hearing on LB231, Senator Nelson's bill. Senator Nelson's bill would establish a uniform reimbursement rate for adult day-care services. Welcome, Senator Nelson. We had an interim study, I believe, this summer on this topic... [LB231]

SENATOR NELSON: Yes, we did, Senator. Yes. [LB231]

SENATOR CAMPBELL: ...and a good one. Had good testimony. So welcome back. You can start right in whenever you're comfortable. [LB231]

SENATOR NELSON: We are especially pleased to be back to provide current and additional information to the committee. Good afternoon, Chairman Campbell and members of the Health and Human Services Committee. My name is John Nelson, spelled J-o-h-n N-e-l-s-o-n, and I represent District 6 in central Omaha. We are here today to introduce LB231, or reintroduce, which will establish a uniform reimbursement rate for adult day services, also known as adult day care. I introduced a similar bill in the previous session and we held, as you know, an interim study on the subject this last fall. Almost 1,000 Nebraskans currently attend adult day care, and the Department of Health and Human Services reimburses providers at two different rates. Patients can qualify for reimbursement under the Aged and Disabled Medicaid waiver or the Social Services Aged and Disabled Block Grant. The reimbursement rate under the Medicaid waiver is $32.97 per day, and the reimbursement rate under the block grant is $17.34 per day. Last year, only 72 people using adult day services qualified for the higher Medicaid waiver rate while more than 850 qualified for the lower block grant rate. HHS set the original rates, but these are subject to change by the Legislature. The state should provide a uniform reimbursement rate by increasing the block grant rate to $32.97 per day. This increase will ease the burden facing undercompensated providers and encourage others to participate in adult day services instead of relocating to facility-based care. Adult day care plays a key role in helping elderly citizens remain in their communities while providing needed respite to family caregivers. These services are an effective and less expensive alternative than relocating to nursing homes or assisted living. In 2011, the average annual cost to Nebraska's Medicaid program for a senior living in a nursing facility was $86,000. In contrast, the annual cost for a senior to attend adult day care is about $13,000. An increased use of adult day services in lieu of nursing facilities or assisted living will drastically decrease Nebraska's healthcare spending on the aged. Indeed, the Nebraska Legislative Planning Committee's 2012 report emphasized the need to curb Medicaid costs, and in particular, the number of nursing home placements. As members of the baby-boom generation turn 25 during the next 20 years, Medicaid's average monthly expenditure on Nebraskans over age 65

was $1,583 in 2011, while its average monthly expenditure on children was only $220 in the same year. Thus, even a small increase in the aged population has a disproportionately large impact on the Medicaid budget, and the number of seniors in Nebraska is expected to increase by 67 percent in the next 20 years. The Planning Committee report placed special emphasis on the need to delay or eliminate nursing home placements in coming years. It stated, and I quote, the most effective way to delay or eliminate nursing home placement is to develop alternatives with home- and community-based services. The report offered solutions, such as providing direct financial support to family caregivers and developing microenterprises as a new homecare work force. While these may be valid ideas, I would suggest that encouraging an increased use of adult day services is a more efficient and immediate solution. Creating a uniform reimbursement rate will require no new startup programs or training, and according to the fiscal note, it could increase the use of adult day services by 10 percent in the next two years alone. In closing, Nebraska needs to encourage the care available to its elderly citizens through adult day services. Currently, the block grant reimbursement rate is simply too low. I urge the committee to advance LB231. And with that, I'm willing to take questions. [LB231]

SENATOR CAMPBELL: Questions for Senator Nelson from any of the senators? Senator Nelson, I have to say I paid attention when you talked about the baby boomers there, and I think that you meant to say the baby boomers, when they turn 65. You said 25. I'd loved to be turning 25. That's why I paid such close attention. [LB231]

SENATOR NELSON: All right, thank you. Okay. [LB231]

SENATOR CAMPBELL: So if you could do that... [LB231]

SENATOR NELSON: All right. Okay. Very good. [LB231]

SENATOR CAMPBELL: ...there's probably a job for you and a lot higher pay if you...(laughter). [LB231]

SENATOR NELSON: I would accept that job (inaudible). [LB231]

SENATOR CAMPBELL: Yeah, I'm sure. We all would, wouldn't we, Senator Nelson. Thank you. Will you be staying or do you need to go to another committee? [LB231]

SENATOR NELSON: I will remain during the hearing and would possibly close. [LB231]

SENATOR CAMPBELL: Okay. That would be great. Thank you. All right, we will take our first proponent for LB231. Good afternoon. [LB231]

JULIE KAMINSKI: (Exhibit 1) Good afternoon. My name is Julie Kaminski, J-u-l-i-e,

Kaminski, K-a-m-i-n-s-k-i. And I'm the executive director for LeadingAge Nebraska. And LeadingAge Nebraska, we represent the nonprofit providers of senior housing, and services with adult day services being one of those components. And, you know, we're here today to support LB231 and asking to equalize those two rates. And I think it's safe to say that most of us in this room have some sort of experience with long-term care, whether it's caring for a family member, being in a nursing home or assisted living, you know. And what we know is baby boomers. I teach an intro to gerontology class, and that's what we talked about last night, was baby boomers, that they want a radically different look at long-term care than we have right now, and one of those pieces is staying at home and aging in place for as long as possible. And that's where adult day service really allows that to happen. It allows the senior to have a respite and the caregiver to have that respite, so they would go to the adult day service. And I've got providers after us who are going to talk about what the program actually looks like. But when we look at how adult day service is reimbursed, there's those two components. One is the Med waiver which is the $32.97, and then the block grant is $17.34. And as Senator Nelson mentioned, most of the seniors are reimbursed under that $17.34 rate as opposed to the higher rate. You know, I was on a conference call, so LeadingAge is part of a national association with some other people, and we are the fourth lowest in the entire United States when it comes to adult day service reimbursement, which, you know, we talked about this kind of in jest, but when I take my dog to adult day care it costs more than what we're reimbursing the $17.34. So I just feel like for our Nebraska seniors we can do better than this, in this reimbursement rate. I've put the link to that study if any of you want to see it. There's a Web link on there to see that shows that Nebraska is the fourth lowest in all of the states. You know, I'm sure you guys would be rich if you had a dollar for every time someone says this will save you money down the road. But this is truly something that can save you now. You know, if you look at the second page, it kind of shows a graph--because I'm a visual person more so than words--that shows the continuum of long-term care, the different...how much this costs from a Medicaid standpoint. So you've got adult day service all the way up to nursing home. And so for that Medicaid waiver rate, you have to be nursing home level of care to tap that rate. So we know those are individuals who would be living in a nursing home at $147 a day as opposed to even that $32-a-day rate. So this is something that if we can reimburse our providers, you know, their cost is right about $50 a day, so most of them are doing it at a loss, and they'll talk about that a little later. But this is something that I think can really save us now as opposed to down the road. So I just respectfully ask that you consider to equalize these two rates and, you know, give our providers that chance to innovate. Like I said, the baby boomers, you know, having my mom and dad that my mom said, feet first is how I want to come out of this house, so you figure out how you you're going to get me to age in place. And this is one of the vehicles to make that happen. So thank you for your consideration. If there's any questions... [LB231]

SENATOR CAMPBELL: Thank you, Ms. Kaminski. Questions from the senators? I have a question. So in other...to draw down that waiver, your testimony I think I heard you

say, you have to be nursing home-eligible. [LB231]

JULIE KAMINSKI: Correct, for the Medicaid waiver. [LB231]

SENATOR CAMPBELL: So that "but for this service," this person could be in a nursing home. [LB231]

JULIE KAMINSKI: Correct. [LB231]

SENATOR CAMPBELL: Okay. [LB231]

JULIE KAMINSKI: Exactly. [LB231]

SENATOR CAMPBELL: What is the eligibility then, or criteria, for the block grant person? [LB231]

JULIE KAMINSKI: That is income based. Yes. [LB231]

SENATOR CAMPBELL: Okay. [LB231]

JULIE KAMINSKI: I don't think there's an acuity rate with that, is there? They might be able to answer that. I'm pretty sure that's just income based only. [LB231]

SENATOR CAMPBELL: Okay. So do you happen to know off the top of your head is it 200 percent of the federal poverty level or...? [LB231]

JULIE KAMINSKI: I don't, but they might know behind me. [LB231]

SENATOR CAMPBELL: We'll see. Somebody behind you probably knows it... [LB231]

JULIE KAMINSKI: Yeah, yeah. [LB231]

SENATOR CAMPBELL: ...because it's probably benchmarked against the federal poverty level. [LB231]

JULIE KAMINSKI: Right, right. And I don't know if that's at 150 percent or if it's 200 percent. I don't know. [LB231]

SENATOR CAMPBELL: Okay. Is there also an age? [LB231]

JULIE KAMINSKI: Yes. Yes. And it's the 65. [LB231]

SENATOR CAMPBELL: It's at 65? [LB231]

JULIE KAMINSKI: Um-hum. [LB231]

SENATOR CAMPBELL: Okay. Because some programs... [LB231]

JULIE KAMINSKI: But it is one that you can tap into through the League of Human Dignity, and again, they might...the providers I think, if you'd ask that question. [LB231]

SENATOR CAMPBELL: Okay. Sure. [LB231]

JULIE KAMINSKI: And if not and we don't know that answer, we'll get it for you. [LB231]

SENATOR CAMPBELL: Because some programs, you know, might be eligible. Like Social Security, you can start drawing at age 62, and I just didn't know... [LB231]

JULIE KAMINSKI: At a decreased rate. Right. [LB231]

SENATOR CAMPBELL: ...whether it was tied to the Social Security rate, the date age. [LB231]

JULIE KAMINSKI: Right, right. [LB231]

SENATOR CAMPBELL: Okay. Any other questions from the senators? Oh, Senator Crawford. [LB231]

SENATOR CRAWFORD: Thank you, Senator Campbell, and thank you for your testimony. So what I just think I heard you say was that the waiver is for people who qualify because they otherwise would be in a nursing home, and the block grant is more income and age qualification. [LB231]

JULIE KAMINSKI: Correct. Right. [LB231]

SENATOR CRAWFORD: So are the services currently provided different in those two...for those two populations? [LB231]

JULIE KAMINSKI: They would be very similar, the services that both are getting. And I think that's the concern is that the services are still the same, but the reimbursements are different. So you still might have individuals who still need the additional care and activities and nursing services as well. [LB231]

SENATOR CRAWFORD: But that they just weren't able to qualify. [LB231]

JULIE KAMINSKI: They were not able to qualify, because you have to have three of

your five ADLs that you need assistance with to be nursing home level of care. [LB231]

SENATOR CRAWFORD: Okay. [LB231]

JULIE KAMINSKI: So maybe they need two ADLs as opposed to three, so they're still needing that assistance but don't quite have that third one at that point. [LB231]

SENATOR CRAWFORD: So in your practice and from what you see from the day-care centers, are they often mixed centers or do some centers specialize in the waiver-type of care while others do block grant care? [LB231]

JULIE KAMINSKI: No. No, it definitely would serve both. But we have many providers, in fact, one that's, you know, that they won't take the block grant just because they cannot...it doesn't meet their costs, so they have just stopped taking the block grant altogether. You know, on the VA rate, right now, is on average $45-50 a day, is what the VA rate pays. So even that is above what our Medicaid block grant is. [LB231]

SENATOR CRAWFORD: Thank you. [LB231]

SENATOR CAMPBELL: Any other questions? [LB231]

SENATOR COOK: I have a question. [LB231]

SENATOR CAMPBELL: Oh, Senator Cook. [LB231]

SENATOR COOK: Thank you, Madam Chair. And maybe I'm just not seeing it on this paper or within the proposal. Do you want it all to be reimbursed at $32...where's the number you all want it to be at? [LB231]

JULIE KAMINSKI: $32.97. [LB231]

SENATOR COOK: $32.97 [LB231]

JULIE KAMINSKI: Yes. [LB231]

SENATOR COOK: So when you're asking for parity, you're not asking it to all go down to $17.34. [LB231]

JULIE KAMINSKI: No. No. (Laugh) [LB231]

SENATOR COOK: I couldn't find it... [LB231]

JULIE KAMINSKI: Yes, yes. [LB231]

SENATOR COOK: ...and that just might be me. Thank you. [LB231]

JULIE KAMINSKI: No. To have all of it come up to that $32.97. [LB231]

SENATOR CAMPBELL: Okay. Thank you very much for coming today. [LB231]

JULIE KAMINSKI: Okay. Thank you. [LB231]

SENATOR CAMPBELL: Our next proponent? That was a nice trick, Senator Cook. Good afternoon. [LB231]

JOSEPH SCHULTE: (Exhibit 2) Good afternoon. My name is Joe Schulte, J-o-e S-c-h-u-l-t-e. I am the administrator of New Cassel Retirement Center in Omaha, Nebraska. New Cassel was started in 1973, and in 1985 we started the Franciscan Adult Day Centre. I think you all may know of someone, an elderly person who really wasn't very eager to go to a nursing home. You probably also know of someone who was caring for that person and the troubles that they went through and the stress that they felt in being a caregiver. This is one of the great things about adult day services: Adult day services takes care of both of these people. It takes care of the client and it takes care of the caregiver. They both benefit. Since the Franciscan Centre was opened, it has served 1,343 elderly people. It is open from 7 a.m. to 6 p.m. The Franciscan Centre provides activities, meals, bathing, medication administration, in a secure environment. For the caregivers, we have support groups. Adult day centers are wonderful programs, as I said, because they serve both the client and the caregivers. They are popular alternatives to nursing homes in most other states where the average reimbursement averages about $65 a day. At the Franciscan Centre, our revenue comes from four different sources: private pay, Veterans Administration, Medicaid, and Title XX. Private pay and veterans pay is $50 a day for our services. Medicaid pays us $32.97. Title XX pays us $17.34. I want to repeat that: $17.34. The actual costs of taking care of a client during the day is close to $50 a day. At the Franciscan Centre, we take care of about 25-30 people on a daily basis. Currently, we have 11 Title XX clients. Adult day services save the Medicaid program significant amounts of money. A nursing home would probably cost these 11 people $150 a day. It is uncertain how long we can continue to operate at this low reimbursement. In recent years, hospitals in Omaha and Lincoln both have closed their adult day centers. Financially, for the last several years, the Franciscan Day Centre has operated in the red. The low reimbursement of $17.34 is a financial hardship. In recent years, we have offset these losses by the positive gains in other programs, mainly the assisted-living facility. We're not asking for $50 a day reimbursement. We're just asking to raise the Title XX rate to the same as the Medicaid rate. Thank you. [LB231]

SENATOR CAMPBELL: Senator Krist. [LB231]

SENATOR KRIST: My mother spent the last few years of her working life as a registered nurse at New Cassel, and I don't think it's changed much. It's probably gotten better. You've got a wonderful facility. I'm just sorry it's not in my district, but that's okay. My question is this: Obviously we've heard over and over again in this committee, we cannot continue to work at this rate or how much longer we can work at this rate. It should go on record knowing you're actually fund-raising or you're bringing in a different activity, if you will, to try to subsidize this program as it exists today. [LB231]

JOSEPH SCHULTE: We also have a foundation which raises money. [LB231]

SENATOR KRIST: So again we're relying on the nonprofits and the fund-raisers to do our job as a state. So thank you very much for your testimony--and a good facility. [LB231]

JOSEPH SCHULTE: Thank you. [LB231]

SENATOR CAMPBELL: Mr. Schulte, I just want to double-check, and Ms. Kaminski was pretty sure but we're just going to make doubly sure. So in other...to draw down that $32.97, a person has to be 65 years of age... [LB231]

JOSEPH SCHULTE: Yes. [LB231]

SENATOR CAMPBELL: ...and eligible for nursing care. [LB231]

JOSEPH SCHULTE: Yes. [LB231]

SENATOR CAMPBELL: Long-term care. And in the Title XX block grant, they have to be 65... [LB231]

JOSEPH SCHULTE: Yes. [LB231]

SENATOR CAMPBELL: Okay. So they'd have to be the same age, and it's income-based. [LB231]

JOSEPH SCHULTE: Yes. [LB231]

SENATOR CAMPBELL: Do you know the percentage of poverty? [LB231]

JOSEPH SCHULTE: No, I do not. [LB231]

SENATOR CAMPBELL: Is it based on that? [LB231]

JOSEPH SCHULTE: I'm sure it is. These would be questions probably for a caseworker. [LB231]

SENATOR CAMPBELL: Okay. Glad to do that. Thank you so much for your testimony. [LB231]

JOSEPH SCHULTE: Okay, thank you. [LB231]

SENATOR CAMPBELL: Our next testifier. Good afternoon. [LB231]

JEANETTE DENSON: (Exhibit 3) Good afternoon. My name is Jeanette Denson, J-e-a-n-e-t-t-e, Denson is D-e-n-s-o-n. I am here to discuss the rural impact of adult day services. I am the director of Custer Care in Broken Bow. Broken Bow has a population of 3,500 people, located in Custer County, with a population of 12,000 people. Custer Care was started in 1991. We started out as a freestanding adult day service, but have had to change. We've had to add other services of assisted living, home care, and transportation to keep our adult day service open. Adult day care is a vital part of our community. We have been serving people for the last 22 years. In the past two years, we've had 15 people enrolled, with 8 people using the Title XX block grant funds of $17.34, and we've had two using the Medicaid waiver. Seven of those people have used the adult day services for five years or more. If you figure that the state paid $364.44 for one of those persons a month, if they had been in the assisted living or nursing home the cost would be $2,175 for assisted living or $5,010 for the nursing home. If you would...and Custer Care has saved the state for that one person, in one year, $152,133 if they had been in assisted living, and over $390,000 if they had been in the nursing home. The one thing that I...I am the smallest adult day service in Nebraska. I'm the most rural. But I believe that if adult day services could be started across the state of Nebraska, we could save the state a lot of money. But the most important thing is, is the clients we serve. We had a 71-year-old person who started in adult day services. They were given...brought there by adult protective services. And he has been coming to the adult day-care center for five days a week for eight years. He's developmentally disabled, but able to stay in the community and do the things that he's wanted to do. He goes to football games. He goes to every community event. He couldn't do that if he was in assisted living or the nursing home because he wouldn't have any way to get there. So without the center, he wouldn't be safely able to stay in his apartment, and that's what the important part of adult day services is to me. You were asking about rates for people, the age. You do not have to be 65 to be a Medicaid waiver. They have Medicaid waiver for the 65 and older. For under that, the League of Human Dignity also serves people and they also can come to adult day services. So we do serve people under the age of 65. Our youngest right now is 44. Then also Title XX can also--the block grant--can also serve people under the age...our adult day service people, 19 and over. So there could be a lot more people in adult day services. I have served as the secretary of the Nebraska Adult Day Care Association for the past three

years and have been a member since 1990. There have been so many adult day cares--and I wish I knew exactly how many--have closed because they can't afford to stay open because of the rates that we're charging. So I'm asking you to please consider raising the rates for adult day services so that more people can be served, so that the rest of us can be able to keep our centers open. Okay? [LB231]

SENATOR CAMPBELL: Okay. Senator Krist. [LB231]

SENATOR KRIST: Is the gentleman that you...thank you, Chair. Is the gentleman that you talked about, who is a person of special needs, is he...are you dipping into the...he's SSI, I would assume? He's getting SSI? [LB231]

JEANETTE DENSON: Yes. Right. Um-hum. [LB231]

SENATOR KRIST: Okay. Are you dipping into that day services in terms of where he's at? [LB231]

JEANETTE DENSON: No. [LB231]

SENATOR KRIST: You're not. [LB231]

JEANETTE DENSON: No. No. He's... [LB231]

SENATOR KRIST: I was just curious if anybody knows out there what that rate is as opposed to... [LB231]

JEANETTE DENSON: For SSI? [LB231]

SENATOR KRIST: Right. For... [LB231]

JEANETTE DENSON: I think...I'm not sure on that either. [LB231]

SENATOR KRIST: We'll figure it out... [LB231]

JEANETTE DENSON: Yeah, yeah. [LB231]

SENATOR KRIST: ...but it's a different pot of money though. [LB231]

JEANETTE DENSON: Yeah, it is. [LB231]

SENATOR KRIST: But you're not accessing that? [LB231]

JEANETTE DENSON: No, no. [LB231]

SENATOR KRIST: Have you ever accessed that person with special needs in terms of day cares...day day care? [LB231]

JEANETTE DENSON: Well, the SSI, you mean the...when they qualify for assisted living under the Medicaid block grant funds,... [LB231]

SENATOR KRIST: Right. [LB231]

JEANETTE DENSON: ...they gave you so many days at the $17.34. [LB231]

SENATOR KRIST: Okay. All right. [LB231]

JEANETTE DENSON: So, yeah. [LB231]

SENATOR KRIST: Okay. Thank you. [LB231]

JEANETTE DENSON: Uh-huh. [LB231]

SENATOR CAMPBELL: Any other questions? Senator Cook. [LB231]

SENATOR COOK: Thank you, Madam Chair, and thank you for your testimony today. As I am looking at the emboldened second paragraph, kind of that third to the last sentence, gives me a question. [LB231]

JEANETTE DENSON: Un-huh. [LB231]

SENATOR COOK: Do you do an assessment in terms of your potential clients before they enter your program? [LB231]

JEANETTE DENSON: Yes. Yes. [LB231]

SENATOR COOK: And I was just thinking that I happen to be a caregiver with folks. One, kind of can't transfer and needs some more help. The other one, if you let her, would do a lot more. [LB231]

JEANETTE DENSON: Yes. Yes. And that is... [LB231]

SENATOR COOK: So there is... [LB231]

JEANETTE DENSON: There is a variety of people. Yes. [LB231]

SENATOR COOK: There is an assessment to say whether or not the client can feed

himself,... [LB231]

JEANETTE DENSON: Right. [LB231]

SENATOR COOK: ...transfer...all of that stuff. Go to the bathroom. [LB231]

JEANETTE DENSON: Right. Yes. And we do care plans as well for the people that come. So we try to get the best care as we can for each one of those people. We do care plans every six months on those people, so. [LB231]

SENATOR COOK: Okay. [LB231]

JEANETTE DENSON: To make sure that their needs are being met. [LB231]

SENATOR COOK: Okay. [LB231]

SENATOR CAMPBELL: Any other questions? Senator Crawford. [LB231]

SENATOR CRAWFORD: Thank you. So you do care assessments and care plans. What percent of the...or a rough percent of the people who you assess who are on these block grants now do you think really would be in a nursing home or assisted living if they weren't in your day-care center? [LB231]

JEANETTE DENSON: Well, just like this gentleman would have had to go somewhere else because he couldn't safely stay in an apartment by himself because he needs activities during the day and that kind of thing, it all depends. You know, we have had people that have been on the block grant and then, later on, as their needs got higher they went on to Medicaid waiver because of the service needs. To tell you a percent, I would say...I'm just thinking the people we're serving right now that have Title XX, probably most of those would be in assisted living or a nursing home had it not been for the adult day service. [LB231]

SENATOR CRAWFORD: So they come to your facility? [LB231]

JEANETTE DENSON: Yes. [LB231]

SENATOR CRAWFORD: This is in a facility...service (inaudible) in a facility. [LB231]

JEANETTE DENSON: Uh-huh. Yes. They come to the facility for the day and then they go back home at night. [LB231]

SENATOR CRAWFORD: Okay. And is there any difference at the facility in terms of services people receive who are getting the two different types of reimbursement?

[LB231]

JEANETTE DENSON: No, no. We give most...both of them, we help with medication, we help with meals. And that's mostly the reason they come is because they're not able to handle their medications at home; they're not able to get the nutrition and the foods that they need for themselves. So yes, and we could... [LB231]

SENATOR CRAWFORD: Now other people have... [LB231]

JEANETTE DENSON: Go ahead. [LB231]

SENATOR CRAWFORD: ...testified that the cost is closer to $50 a day. So if...obviously, $32 is probably better than $17, but I guess we still have the sustainability question. Do you feel like your service would be sustainable at $32 a day? [LB231]

JEANETTE DENSON: It would sure help, because like I said, we would have been closed long ago had I just continued with adult day services. But since we went into assisted living and home care and those kind of things, we can cover the cost of the adult day services. [LB231]

SENATOR CRAWFORD: Subsidize across. And you still will have those services. [LB231]

JEANETTE DENSON: Yes. [LB231]

SENATOR CRAWFORD: But probably other people in rural areas would have to have some other kind of... [LB231]

JEANETTE DENSON: They would have to have something else. [LB231]

SENATOR CRAWFORD: ...cross-subsidizing service as well to make this rate go, but. [LB231]

JEANETTE DENSON: Um-hum. Or more private pay people, you know. [LB261]

SENATOR CRAWFORD: Right. Okay. [LB231]

JEANETTE DENSON: Yeah, because we've charged $10 an hour for private pay people, so. [LB231]

SENATOR CRAWFORD: Oh, okay. Thank you. [LB231]

SENATOR CAMPBELL: Any other questions? Thank you for your testimony today.

[LB231]

JEANETTE DENSON: You're welcome. [LB231]

SENATOR CAMPBELL: Our next proponent. [LB231]

MARK INTERMILL: (Exhibit 4) Good afternoon, Senators. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today to testify in support of LB231. We do support LB231. We think that the current rates for Social Service Block Grants are ridiculously low, and I've included in my handout some information from the Genworth survey of long-term care rates that provides you a sense of what long-term care costs are in the state of Nebraska. The average rate for adult day care for the state, the median is $61 a day. You'll see that Lincoln does have some lower rates than Omaha and the rest of the state, but it's difficult to be able to provide a service to consumers at this low of a rate. We think this is a service that caregivers use and can really benefit from. A lot of the adult day care that we have seen is provided to persons who need long-term care who are living at home with a caregiver who either works during the day or needs respite. These caregivers are really our front line in helping prevent higher costs of long-term care. So we think this is an important service that we need to make sure that we support. And you've heard the thoughts that this could save the state money, and I firmly believe that. The second attachment to my statement is just a list of the Medicaid vendor payments over time in the state of Nebraska. The growth rate has been very modest from FY 2000 forward. The highest rate has been 2.3 percent. This is for services to people over the age of 65. This is subsequent to a long-term care plan that was drafted in 1997 and implemented in 2000 that really began to take a look at how we can provide services to people outside of institutions. The Genworth survey also indicates the cost of nursing home care as well. So all of these things lead me to conclude that providing reasonable reimbursement rates that consumers...that will encourage providers to provide a service that consumers will use will help us to make sure our Medicaid system is as efficient as possible, and I would urge you to support this bill. [LB231]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. Intermill. Our next proponent. [LB231]

BETH DANKERT BABB: (Exhibit 5) Senators, thank you for your time today. My name is Beth Dankert Babb, B-e-t-h D-a-n-k-e-r-t B-a-b-b, and I am representing the Friendship Program in Omaha. I am here today to ask for your consideration for raising the rate of reimbursement for adult day services. Adult day service programs provide services primarily to seniors and their families to assist them to remain in their homes. Participants rely on these services for health monitoring, nutritional support, social support, recreation, and case management needs. Families rely on these services for respite, for safety of the participants while they're away, and advocacy for needed

benefits. As you're aware, the current reimbursement is $17.34 per day. To show how far this funding goes, I'd like to just talk about staffing. Nebraska state regulations say that staffing must be sufficient to meet the needs of the participants being served. The National Adult Day Services Association recommends a staff-to-client ratio of 1:6. So far this year, the program has served an average of 56 participants per day. At the current reimbursement rate, this equals $971 per day. We have about 9.5 staff to meet the staff-to-client ratio with an average staff salary of $12.84 per hour. Per day salary costs are approximately $976. This cost does not cover activity supplies, utilities, or staff benefits like insurance. As you can see, the current rate does not even cover an average day of service. And on the handout, you can see just a comparison of the different services that a person could be eligible for. Trends in aging services include community-based services that support people in remaining in their own homes as long as it is feasible. In the continuum of healthcare services, adult day services play a very important role. To give you an example of how adult day services can impact people's lives, I want to talk about two people served by Friendship. First is Alice. Originally, Alice was in a nursing home, but they felt that she could be in a more independent living situation. With coordination between the nursing home and Friendship Program, she was able to move into a family home. Because her caregiver works during the day and she has some cognitive issues, she is not able to stay home alone. Alice receives assistance with coordinating medical appointments, health and mental health maintenance, and social and recreational support. If she did not attend the program, she would be isolated in her home. Alice has been attending the program for seven point five years. She states, "I love all my friends here." Next I'll talk about June. She first came to the program shortly after her husband died. She was living with her daughter. At first, she was fairly independent, but as time progressed she required more assistance with her medications, with coordination of medical appointments, and with coordination for community resources. Her daughter had a home-based business and having June attend the program allowed her to continue this business. June died this past July. When her daughter called to inform the program of her death, she said, "you all helped us so much and took such good care of her." June was 97 years old when she died and she had been coming to the program for almost 17 years. That's the kind of impact an adult day service can have on people. Many people want to remain in their own homes and there are many family members and caregivers who want to assist them in doing that. Adult day programs are cost-effective services that can support them in doing that. Thank you. Are there any questions? [LB231]

SENATOR CAMPBELL: Questions? Thank you very much for your testimony. [LB231]

BETH DANKERT BABB: Thank you. [LB231]

SENATOR CAMPBELL: Our next proponent. Anyone else? Okay. Those who are opposed to the bill? Those who wish to give neutral testimony? Senator Nelson, I think we're back to you. [LB231]

SENATOR NELSON: That's good news. Thank you, Senator Campbell. The number 65 has been important today. I'm going to go off Senator Krist here a little bit. We have some similarities. He's well under 65; I'm slightly over 65. (Laugh) We both had mothers in nursing homes or assisted living, and...but, however, I am blessed because New Cassel is in my district and only about two point five miles away from my home. So that may be a place that I will wind up in a few years. I just...and that would be good, as against a nursing home or assisted living, for day care. I...nothing...we talked about the cost-effectiveness of our proposal. But I just want to refer to the fiscal note which will probably come up before the committee. And you will see the most recent note shows expenditures of slightly over $1 million for the first year and $1.3 million the second year. That does...that, we think, perhaps sets a little high; but we'll accept that. But I want to point out to you in...when you compare the cost of the study that we referred to by the Legislature's committee...if we accept the figure of $86,000 a year for a nursing home and weigh that against $13,000 a year, it only takes about 25 persons that you can keep out of a nursing home to break even on that figure. And if we can do even better, then we're starting to save a lot of money for Health and Human Services and the cost that we have to bear. And I'm willing to take the bet from an appropriations standpoint, even though we may have to put out this additional money from General Funds, in the long run we're going to benefit very much fiscally if we can raise the rate and keep these providers from closing, because they simply can't afford to do it. So with that, I want to encourage the committee very much to take this under serious consideration and move it out to the floor so that we can talk about the benefits of LB231 at that time. And I want to thank you for your attention. [LB231]

SENATOR CAMPBELL: Senator Krist. [LB231]

SENATOR KRIST: Senator Nelson, I guess the department is in support of this because they're not here saying anything against it, so we'll get it out for you. (Laughter) [LB231]

SENATOR NELSON: They're not here today, but I know in the past they've...I don't blame them for trying to keep their expenses down wherever they can; but here's a program that I think has a lot of possibility for helping us out financially. [LB231]

SENATOR KRIST: You make a great fiscal argument, that's for sure. Thank you. [LB231]

SENATOR CAMPBELL: Senator Nelson, do you...in the research that you've done, do you have available...and we can certainly get it from the department so I don't want you to spend a lot of time on that, but according to the testifiers there were, I think, four criteria that had to be met in terms of the Medicaid eligibility--and I'm seeing someone nod in the audience. And so I'd really like to see maybe those four criteria, because I don't think they're listed in the bill, because as I read your bill, the four criteria would not

have to be met. Would that be accurate? I mean, the fee would just go up so they wouldn't have to meet the criteria. Because at this point the difference...if I heard the testifiers right, the difference was that in the $17.34 it was income-based and age. But in the $32 there were four criteria for the eligibility. So I'm assuming...and I'm not saying that's bad. I'm just saying that as I read the bill, you wouldn't have to have the criteria. [LB231]

SENATOR NELSON: I can't say definitively that, but I will get that information, for sure, and get it to the committee so that you can be satisfied as to what we're doing here with the bill. [LB231]

SENATOR CAMPBELL: Right. Right. And I think at this point...I mean, I think what a lot of your folks are saying is that the service is probably the same whether they're meeting the four criteria or they're meeting the age, but we probably ought to know that for you, particularly, and if I'm reading the bill right. [LB231]

SENATOR NELSON: Fine. We will get that information to you, Senator. [LB231]

SENATOR CAMPBELL: That would be great. Great. We had such a good hearing this summer, and we continue to keep filling in the details. So thank you much for your work. [LB231]

SENATOR NELSON: All right. Thank you very much. [LB231]

SENATOR CAMPBELL: Oh, I'm sorry. Senator Howard. [LB231]

SENATOR HOWARD: I apologize. I had a question for the department, but I figured I'd just get it on the record and then you don't have to answer it, but maybe we can figure out a way to answer it. Annually, we exhaust our funds in the Social Services Block Grant, right? [LB231]

SENATOR NELSON: Right. [LB231]

SENATOR HOWARD: But do you know, between TANF Block Grant and our Social Services Block Grant, we can actually take TANF funds and move it over to the Social Services Block Grant to the tune of about 10 percent. And so I was curious as to whether or not you knew if the department does that annually to shore up our Social Services Block Grant? [LB231]

SENATOR NELSON: I don't have the answer. I know that they talk in terms of overspending beyond the grant. [LB231]

SENATOR HOWARD: Right. And right now, we have a TANF rainy-day fund,... [LB231]

SENATOR NELSON: Right, right. [LB231]

SENATOR HOWARD: ...so that's why I'm confused, is that we have a lot of money in TANF and we're allowed to move it to the Social Services Block Grant that we exhaust. And so I was wondering if there was a way to get to the bottom of that. [LB231]

SENATOR NELSON: We'll do the best we can to get to the bottom of it. [LB231]

SENATOR HOWARD: Thank you. [LB231]

SENATOR NELSON: I don't have the answer here today. [LB231]

SENATOR HOWARD: Thank you. [LB231]

SENATOR NELSON: All right. [LB231]

SENATOR KRIST: Excellent question. [LB231]

SENATOR CAMPBELL: Actually, Senator Nelson, I agree with Senator Howard. If the department had been here I would have addressed my question to them, so. [LB231]

SENATOR NELSON: All right. [LB231]

SENATOR CAMPBELL: And we can still do that for you and work with your staff if need be, because those are questions that we need to know. [LB231]

SENATOR NELSON: Okay. Yes, Mr. McHale will be glad to work with you on that. [LB231]

SENATOR CAMPBELL: So it's not your fault that you don't know. (Laughter) [LB231]

SENATOR NELSON: (Laugh) Thank you. [LB231]

SENATOR CAMPBELL: I just don't want you to walk away thinking, I should have known that. [LB231]

SENATOR NELSON: It's a good trade-off in a way that they didn't come in today for me. [LB231]

SENATOR CAMPBELL: Well, at some point we'll all know the answer. So thank you, Senator Nelson. [LB231]

SENATOR NELSON: All right, thank you. [LB231]

SENATOR CAMPBELL: (See also Exhibit 6) All right, we will close the public hearing. If you are leaving, we ask you to leave very quietly and take all conversations to the hall. All right, we will move and I think that we better make sure that...oh, he's taking his water. Okay. We will go ahead and open the hearing on LB261, Senator Gloor's bill to adopt the Medicaid Insurance for Workers with Disabilities Act. And Senator Gloor, we need to make sure you've got your water available because I know you've had this nasty cough. [LB231 LB261]

SENATOR GLOOR: Thank you. What I need is a little tea and sympathy, and the sympathy I'm looking for, as Senator Cook knows, doesn't come with a pat on the head, but a spoon that you put in the tea. Thank you, Senator Campbell, and good afternoon, fellow committee members. I'm Mike Gloor, G-l-o-o-r, representing the 35th Legislative District. I'm here today to open on LB261, a bill to update Nebraska's Medicaid Insurance for Workers with Disabilities program through the adoption of the Medicaid Insurance for Workers with Disabilities Act. While Nebraska does currently have an MIWD, that's Medicaid Insurance for Workers with Disabilities program, it is underutilized, often misunderstood. Because of this, many of us participated in LR555, an interim study intended to review and examine the ongoing issues with Nebraska's MIWD program. LB261 is an attempt to address the concerns that were raised in that study, and it's legislation largely modeled after the Medicaid Buy-In program in Kansas. It's an effort to get Nebraska's MIWD program functioning more efficiently with more eligible beneficiaries utilizing the program. What is the Medicaid Buy-In program? It's a program set up to assist persons with disabilities who are on Medicaid to enter the work force and then pay a premium--they would pay a premium--towards the cost of their health coverage to offset the fact that they are receiving some earned income. Typically, there are caps on the amounts of income that can be earned, asset limitations in the amount of money an individual can save, as well as other eligibility criteria. The idea is to encourage these individuals to pursue work if they're able. And the intent of LB261 is to add clarity to Nebraska's existing MIWD program and further these goals. LB261 is an update to the existing program, as I've mentioned. This update will hopefully allow eligible persons to better utilize the program, thus allowing them to work more hours and be productive members of society, and taxpayers rather than tax users. LB261 is about putting systems and incentives in place to allow persons with these disabilities to be able to earn a modest living while keeping their health insurance through Medicaid. Ultimately, LB261 is about jobs as well as about dignity and about character. LB261 is not an expansion of Medicaid. The persons who would be eligible to participate in the program are already on Medicaid currently or are eligible to be on Medicaid. Currently, Nebraska's MIWD program is organized under the federal Balanced Budget Act of 1997. Two years later the federal government passed what you may recall is called the Ticket to Work Incentives Improvement Act, and this act was further updated in 2008. LB261 would recognize the update at the federal level by moving Nebraska's MIWD

program under the federal Ticket to Work Act. This is important and beneficial for several reasons. Under the Ticket to Work Act, states are given much better direction and flexibility to implement a successful program by removing employment disincentives for persons with disabilities, thus enabling them to work, save for retirement, and overall pay more in taxes, pay their premiums for their Medicaid coverage, and reduce their reliance on other cash benefits or state assistance programs. Finally, one of the specific components of the MIWD program as outlined in LB261: Why were they chosen? LB261 keeps the countable income limit set at 250 percent of FPL, the same as it is under the current program. LB261 sets income disregards at the standard federal level for Supplemental Social Security Income and allows disabled persons to disregard any impairment-related work expenses. LB261 allows participants to accumulate modest cash savings of $10,000 for an individual and $15,000 for a couple. And retirement accounts are excluded from these totals, retirement accounts such as TSAs and 401(k)s. LB261 allows a grace period for participants of six months to participants who lose their jobs due to involuntary job loss or medical necessity as long as they continue to look for work and continue to pay their premiums. LB261 further includes a medically improved option where a person with a significant medical impairment who may no longer meet disability determinations would still be eligible for the program for an extended period. This is just an overview of the program's history, how we've gotten to the language contained in LB261, its intent. There will be people following me here today who are far more knowledgeable than I on this issue, some of whom you've heard during the legislative resolution hearing this summer, individuals who have been working in this field for many years and who I think can probably give you clear and always more concise answers to your questions. I encourage you to ask questions so that you can better understand the program and assess why I think this will be successful and what it means when we talk about putting people back to work, allowing persons who may not otherwise be seen as productive, but allowing them to entertain the notion of becoming more productive members of society. Thank you. And I would be glad to try and field a few questions, but I'm very impressed with the cadre of people lined up behind me and their knowledge base. Thank you. [LB261]

SENATOR CAMPBELL: Senator Krist wants to ask one though. [LB261]

SENATOR KRIST: I'm going to ask the question, you don't have to answer, but we'll put it on the table. "Countable family income shall equal the sum of all unearned and earned income minus the allowable standard Supplemental Security Income Exclusions as specified in 42..." dah, dah, dah. Is that what it currently is? Is that the way it currently reads? I mean, if you don't know, that's fine. [LB261]

SENATOR GLOOR: I don't know. [LB261]

SENATOR KRIST: Okay. I think it...I'll talk to it afterwards. [LB261]

SENATOR CAMPBELL: Okay. And one of the testifiers may be able to answer that. [LB261]

SENATOR GLOOR: I'm sure. [LB261]

SENATOR CAMPBELL: Senator Gloor, I'm sorry. I didn't mean to interrupt you. Did you have a bill before on this topic? [LB261]

SENATOR GLOOR: No, I did not, but... [LB261]

SENATOR CAMPBELL: Do you remember if somebody...I thought somebody brought a bill, like maybe the first year that we were here? [LB261]

SENATOR GLOOR: Yes. It isn't the first time this has been approached. There will be some folks up here who will present some numbers who I think probably can refresh our memory on the history of this. But yeah, it's not the first time that this has been addressed, and it may have been our first year here or it may have just been just before we came. [LB261]

SENATOR CAMPBELL: And I do want to say that I know in the early years of the Medicaid Reform Council, we spent quite a bit of time talking about this program and feeling that it needed revision and needed to be updated so that more people could work. [LB261]

SENATOR GLOOR: Yeah, we have a program; it's just poorly used. Surrounding states...I think of the surrounding states, Kansas has over 500, almost 600 people who participate; and we have 70. [LB261]

SENATOR CAMPBELL: Yeah. [LB261]

SENATOR GLOOR: And then as we all know, the turnover that we've had in DHHS, the lack of knowledge that caseworkers have about this program is...I mean, with the turnover we've had, no one knows this program even exists. So some of what this bill provides for I think is an educational piece that would make sure that we have staff better able to steer individuals towards the availability of this program. That's clearly got to be one of the reasons that it's so incredibly underutilized compared to surrounding states. [LB261]

SENATOR CAMPBELL: Thank you, Senator Gloor. Any other questions from the senators? Okay. Thank you, and we know you're staying so I don't have to ask that question. [LB261]

SENATOR GLOOR: Yes, I am. [LB261]

SENATOR CAMPBELL: Our first proponent for the bill. Good afternoon. [LB261]

REBECCA KOEHLER: (Exhibits 7 and 8) Hello. Good afternoon. My name is Becki, B-e-c-k-i, Koehler, K-o-e-h-l-e-r, and I'm the manager of business development for Goodwill Industries of Greater Nebraska, Inc., located in Grand Island and serving 54 counties of central and western Nebraska. I'm here today to offer my support for LB261, the Medicaid Insurance for Workers with Disabilities Act. I have dedicated my entire career, and that's over 37 years now, to assisting Nebraskans with disabilities to live better lives. For the last 16 years, I've specialized in helping Nebraskans with all types of work-limiting disabilities to find and keep paying jobs in their communities. These citizens, many of them are your friends and neighbors who are living with mental illness and substance abuse issues, with brain injuries or developmental and intellectual disabilities, or with chronic health impairments or physical disabilities, are determined to contribute to their communities. They strive to earn a paycheck and to find purpose in their lives through work. Many of these individuals work part time and in entry level jobs, but they still fear...live with the fear that their life-sustaining Medicaid health benefits will be cut because of work. I started helping Nebraskans with disabilities understand and use work incentive programs even before the federal Ticket to Work and Work Incentives Improvement Act was passed in 1999. This service, it's often referred to as benefits planning, is designed to reduce the fears that people with disabilities have about working and earning wages. Benefits specialists, like me, help people with disabilities use the programs that can help them work and earn as much as possible--that's so important, "earn"--as much as possible, in spite of their impairments, and when appropriate, to maintain an essential connection to Medicaid-funded healthcare and services. Nebraska's Medicaid Insurance for Workers with Disabilities, or the MIWD program, is one of the many, many work incentive programs that I have helped people use, and I believe it can work much better to help Nebraskans with disabilities go to work. As Senator Gloor provided the overview, LB261 updates MIWD by ensuring accurate disability determination decisions are consistent with federal Social Security Administration criteria and all the federal work incentive programs that are authorized by the Ticket to Work legislation. It maintains the countable income limit of 250 percent of federal poverty, but it reduces the complexity of the program by allowing both earned and unearned income, like the Social Security check, to be counted. It continues the standard SSI disregards and includes the disregard of impairment-related work expenses. It increases countable resource limits for an individual, currently from $4,000 to a level of $10,000, and for a couple, currently at $6,000, to a new $15,000. It excludes retirement accounts from the countable resource limit so people won't be afraid about saving a few dollars for their retirement years. It implements premiums at 100 percent of the federal poverty level so people help to pay for their Medicaid benefits. It provides a six-month grace period for people who lose their employment, giving folks some time to find another job. It holds DHHS accountable for encouraging people to try work and for working with qualified benefits specialists to

increase the number of Nebraskans who are working and using this program; and by implementing a medically improved option so Nebraskans who achieve a minor level of improvement as determined by our state's Disability Determination Service, to continue to receive healthcare and Medicaid-funded services. In my current position with Goodwill, I direct our employment services in Grand Island, Hastings, Kearney, Broken Bow, Ord, Lexington, North Platte, McCook, Ogallala, and many smaller surrounding communities. Goodwill provides community-based employment services for well over 400 Nebraskans with disabilities every year. In 2012, we served 467 people, providing employment supports. Of those people, 33 percent are eligible for our comprehensive benefits planning service. Every day our benefits specialists struggle with helping eligible Nebraskans gain access to our state's Medicaid Insurance for Workers with Disabilities program. One man that we have served for many years was not able to be here today. He was working, but he sent his letter to help you understand the problems that he's had in using this program. And those programs really revolve around, as he has used all the federal programs that are available to him to protect him as he worked more and more. He remained medically eligible under the federal law, but our state has determined that he is no longer medically eligible. So we have a terrible disconnect for him. He's done everything he was supposed to do and now everything is unraveling for him. After describing his problems in the letter that you will receive copies of, he says, "I do not want to quit my job. I want to contribute to society despite my disability. But without access to adequate healthcare, it is not possible. If the MIWD program is supposed to make people with disabilities be secure that they can go to work and be okay, it's not working. Please do what you can to help make the MIWD program work." Thank you for the opportunity to offer my perspective, and I'm available for your questions. [LB261]

SENATOR CAMPBELL: Questions from the senators? Very thorough testimony. Thank you. [LB261]

REBECCA KOEHLER: Thank you. [LB261]

SENATOR CAMPBELL: And you do have the letter? The pages will get it for us then. [LB261]

REBECCA KOEHLER: Yes. [LB261]

SENATOR CAMPBELL: Thank you very much. Our next proponent. [LB261]

MARLA FISCHER-LEMPKE: (Exhibit 9) Good afternoon. My name is Marla Fischer-Lempke, M-a-r-l-a F-i-s-c-h-e-r hyphen L-e-m-p-k-e. I'm the executive director for The Arc of Nebraska, and we are a statewide advocacy and support organization for people with intellectual and developmental disabilities and their families. We have 13 local chapters across the state and are all affiliated with The Arc of the United States.

The Arc of Nebraska strongly supports LB261 that adopts the Medicaid Insurance for Workers with Disabilities Act. Since 1999, Nebraska has had a Medicaid Buy-In similar to that proposed in LB261. Unfortunately, this program is sorely underutilized. The numbers reported in December 2012 indicate that only 71 Nebraskans were using this program. This should be very concerning to all when we consider access to healthcare, Nebraska's work force, and its economy. It's no secret that when people work they become taxpayers. It's also no secret that people often find a sense of fulfillment when they're able to work, when they're able to contribute to society, when their efforts mean something. This is certainly no different for people with disabilities. For Nebraskans with intellectual and developmental disabilities, work is very important. For far too long, people with intellectual and developmental disabilities have been getting ready to work. They've been in pre-vocational programs or workshops designed to give them skills to work in the community. But often they never get there. They want this opportunity. If people do have jobs in the community, they're told they can work only a limited amount of hours or they'll lose their Medicaid. That makes people fearful to try to go to work, to accept more hours at work, or to accept a promotion. It's not that they won't take more hours; they're afraid of losing everything. They need Medicaid for healthcare. They need habilitative Medicaid waiver services to support them to get ready for their workday, get to work, have support at work, etcetera. Losing Medicaid is not an option. LB261 ensures that people don't consume resources. They give back and they contribute. While we fully support LB261, we do offer one suggestion. We recommend adding an advisory committee to the bill. We suggest adding this language in Section 5 to guide the department in its efforts to engage in education, training, and outreach. We also offer that the advisory committee can ensure reported information is helpful to the Legislature to understand how the program is being utilized and by whom. Since 1999, many efforts have been conducted throughout the state to grow employment opportunities for people with disabilities. The Medicaid Infrastructure Grant has led a multitude of efforts and facilitated collaboration among many organizations to ensure growth in this area. We're pleased to see a utilization of the employment networks in this legislation. We offer that many more efforts will be of assistance to implement the program as effectively and efficiently as possible. The Medicaid Infrastructure Grant and the Division of Developmental Disabilities assisted The Arc of Nebraska to match funds from our Walmart Foundation Grant. We created and published three videos entitled, "Employment: Always an Option." These videos were made for audiences of service providers, employers, and families, so that all could see how employment should be for everyone regardless of disability. LB261 makes this a reality. LB261 presents an opportunity we can't afford to miss. We strongly urge you to pass it out of committee. We'd also like to extend our assistance in any way we can in gathering information about the impact upon people with disabilities and sharing our work with you. And I'd be glad to answer any questions. [LB261]

SENATOR CAMPBELL: Any questions from the senators? I don't believe so. Thank you for your testimony. [LB261]

MARLA FISCHER-LEMPKE: Okay. Thanks. [LB261]

SENATOR CAMPBELL: Our next proponent. [LB261]

BRAD MEURRENS: (Exhibits 10 and 11) Good afternoon, Senator Campbell and members of the Health and Human Services Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist for Disability Rights Nebraska, the designated protection and advocacy organization for Nebraskans with disabilities, and I am here to support LB261. Medicaid is typically the preferred insurance option for persons with significant disabilities because it provides affordable access to personal care assistance and durable medical equipment, benefits often absent from traditional employer-sponsored health plans. Upon reentering or entering the labor market, individuals with disabilities are often fearful that they will lose access to these Medicaid benefits upon which they rely. This is an alarming prospect for someone trying to maintain a decent quality of life with their disability. Forty-two states and the District of Columbia operate, quote, Medicaid Buy-In programs or what we call the Medicaid Insurance for Workers with Disabilities program here in Nebraska. States are afforded a lot of flexibility in the design and implementation of their respective Medicaid Buy-In programs. States were granted, for example, control over the income limits for eligibility, both as a percentage of federal poverty and a count of assets: for example, amount of money held in a savings account, thresholds for the payment of premiums and the calculation of those premium amounts, income and work verification standards, and grace periods. The number of people with disabilities enrolled in Nebraska's Buy-In program currently is woefully inadequate. As Marla had mentioned before, there are an alarming small number of participants in the program which stands in stark contrast to our neighbors. In Iowa, there are approximately 13,000 enrollees as of November 10, 2009. In Kansas, 1,183 enrollees, December 2010. And Minnesota, over 7,000 enrollees as of September 2008. Given the number of states that have a Medicaid Buy-In program, and the length that many of these programs have been operating, there is a wealth of data upon which conclusions can be drawn. Since state programs differ in design, however, it may be difficult to make direct comparisons among all programs, among all variables. However, Boston University's comprehensive literature review of states' buy-in programs does reveal some common themes and experiences which should prove illustrative in any efforts to perform and increase the effectiveness of Nebraska's Buy-In program. "The eligibility criteria reflect just part of the policy decisions that states must make as they create or refine their Medicaid Buy-In programs. For example, are states realizing revenue from increased income taxes paid by persons with disabilities? Is the premium structure for the Medicaid Buy-In program realistic in that states are able to recoup some of their expended costs? And are states providing critical vocational supports to participants in order to perpetuate earnings and employment successes? Focusing on these key issues of program sustainability and capacity is an important next step in supporting the promising improvements realized

thus far." LB261 addresses many of the elements of effective buy-in programs that have been shown to be successful in other states. Now is the time to make overdue improvements to Nebraska's Buy-In program so that it can meet its true stated intent and the Legislature can provide a win-win for both the state and its citizens with disabilities who want to work. We encourage the committee to advance LB261. Now I would also direct your attention to the second handout that I have for you entitled, "Policy Implications from the 2011 Boston University Literature Review." I wanted to make a couple of highlighted points. The first one is, if you look at point 1, Medicaid Buy-In participants earn more money, work more hours, contribute more in taxes, and rely less on food stamps than people with disabilities who are not enrolled. Number 3 on the list: Increased earnings have positive implications for state budgets. And I would also note that this (inaudible)...and this analysis is not contained in the fiscal note. It doesn't contain...or least from what I was able to garner, any discussion about feedback groups, about decreased reliance on services, increased income taxes, sales taxes now that persons with disabilities may have more of an expendable income. Kansas calculated that between 2003 and 2006, Medicaid Buy-In participants sharply increased the amount of state income taxes from an average of $74 in 2003, to $123 annually in 2006. And given that my time is up, I would just direct you to really look at the outcomes and the data that's coming out of the 2011 report. This is the most comprehensive and wide-ranging study that I was able to find on the Internet. And trust me, I spent a lot of time looking for state-based data. I think it will be very helpful in determining the impact of the program and how it will benefit persons and the state itself. With that, I'd be open to answer any questions the committee may have. [LB261]

SENATOR CAMPBELL: Questions? Mr. Meurrens, you're always one of our best data people. You always come with footnotes. And you had exactly the question that I was going to ask, and that's the offsetting costs. [LB261]

BRAD MEURRENS: Yeah. [LB261]

SENATOR CAMPBELL: Because so often, I agree with you, we get the fiscal notes, and it's this is what it's going to cost, cost, cost you. But there's...you know, it's just like, okay, we're not going to show any offsetting costs. And I realize sometimes they're hard to quantify, but at least looking at some of these other states would help us. [LB261]

BRAD MEURRENS: Yeah. You're right, it's a lot of the questions and the data, the cost data, is hard to quantify. It's hard to quantify things like participation rates in the future. It's hard to quantify how much of a decreased dependence or reliance or utilization of state-funded services would be a result of individuals going back to work. I get that. But I think that, you know, we should take as much of an effort as we can to try to find out what those numbers are. And I think that given the history of states that have programs that are either comparable to Nebraska's as it stands now and/or have components which are contained in LB261, things like the medically improved categories, the

decreased trigger for the premiums to be paid in. I think those would really be illustrative and really show us in the real world how these programs play out and how the...and expose those feedback loops which are not contained within the fiscal note and which are a little more squishy and fuzzy. [LB261]

SENATOR CAMPBELL: Mr. Meurrens, my second question that I wrote down, and I know that you are--because of the organization you represent--you are very well connected with a lot of the committees. And one of the suggestions by a testifier was to create an advisory committee. The senators are becoming very aware of yet not another...you know, that type of thing. [LB261]

BRAD MEURRENS: Yeah, right. [LB261]

SENATOR CAMPBELL: So perhaps if you could think about it, you don't need to tell us today, but even getting back to Senator Gloor, if there is some existing state commissions or committees that are in existence that we could do what the testifier suggested, monitoring, then we wouldn't have to reinvent that issue. So would you mind doing that? [LB261]

BRAD MEURRENS: We would be more than happy to do that. And, you know, I agree, there's no sense to reinvent the wheel if we can, you know, couch it in another existing committee. That would be a great idea, yeah. [LB261]

SENATOR CAMPBELL: But I think she had a good suggestion. It's just that hopefully we can find a commission. Okay, anything else from the senators? Thank you very much. [LB261]

BRAD MEURRENS: You're welcome. [LB261]

SENATOR CAMPBELL: Our next testifier. Good afternoon. [LB261]

GAYLE HAHN: (Exhibit 12) Hi. My name is Gayle Hahn, G-a-y-l-e H-a-h-n, and I am one of nine certified benefits specialists employed by the Visiting Nurses Association and Easter Seals Nebraska. When an individual is receiving Social Security based on disability and then they return to work, their newly earned income will affect the benefits they receive through state and federal government. Our job as benefits specialists is to explain these changes so that individuals can make the most informed choices for themselves. We promote self-sufficiency through the use of the work incentives, and we offer guidance and support while individuals work through the many state and federal systems. We serve the entire state of Nebraska and work with all disabilities. I am here today on behalf of Easter Seals Nebraska to offer our support for LB261, which can improve Nebraska's Medicaid Buy-In program, Medicaid Insurance for Workers with Disabilities. Currently, in determining eligibility to the MIWD program, there's a two-part

test that's used. In test A, they determine income eligibility; and then if eligibility is passed in test A, they move to test B to determine if a premium is due for the coverage. By eliminating test A, DHHS would be detaching themselves from...they'd be detaching the program from the Social Security Administration criteria regarding the trial work period and the extended period of eligibility. DHHS would no longer be dependent upon any outside agencies when administering their own program. Eligibility and premium amounts would be solely based off of test B, and they could be easily monitored by DHHS by having individuals submit their monthly pay stubs. We at Easter Seals Nebraska support a minimum monthly earnings level when determining an individual's eligibility. Individuals that experience a disability are willing to pay a premium for Medicaid coverage in order to remain eligible for the services they need. Many of the individuals that we serve are not eligible for the MIWD program as it is written now due to the regulations imposed in test A. Oftentimes, when a Social Security beneficiary returns to work, in order to access Medicaid they're forced to purchase insurance policies through private insurance companies in order to become eligible for Medicaid under Nebraska's medically needy program. One example of this is a 32-year-old man who requires personal care assistance three times a day. He receives Social Security disability insurance in the amount of $775 per month, and he has a part-time job where he works approximately 15 hours a week and earns $11.55 an hour. In order for him to access the Medicaid that he needs, he has to purchase private insurance policies with premium amounts of about $285 a month in order to get the Medicaid. Now, he'd like to work more, but the more he works the more private insurance he's going to have to purchase. Also he...if he wasn't working at all, he would get Medicaid at no cost to him. It just seems like it would be far more advantageous for premiums to be paid to the state of Nebraska to get people the coverage that they need and allow them to work as much as they want. As such, we recommend a flat rate premium fee graduating upwards, which is based upon the countable portion of an individual's earned and unearned income. This would be more time-efficient for DHHS staff and it would require less training on the Social Security work incentives for the department. We believe that the MIWD program is essential for Nebraskans with disabilities...significant disabilities, to be successful in long-term employment, as these individuals often require services that only Medicaid provides, such as personal care attendants and waiver services. Additionally, we support that medical coverage should be expanded to include those individuals who lose their Social Security cash payment because of working. And they want to continue working. These individuals are successful and they do contribute to local, state, and federal revenues when offered comprehensive healthcare options. To be successful, this program needs to be understood and embraced by the Department of Health and Human Services. This would include greater emphasis on internal training for DHHS workers and increasing the availability of information and materials to the public regarding all healthcare options. We believe that having a knowledgeable advocate to help navigate through the state and federal benefits systems is essential to long-term employment success for Nebraskans experiencing a disability. We believe that a multifaceted advisory committee should be developed to monitor the progress of

the program, and the committee will, at minimum, review the status of the program and ensure implementation of strategies to reach eligible candidates. Nebraska needs to be competitive in offering individuals with disabilities the opportunity to access healthcare while working. And one thing I really want to stress is that we are not requesting new Medicaid dollars, but the opportunity to increase the awareness of a program that already exists and to make it easier for all who need it to access it. [LB261]

SENATOR CAMPBELL: And we do need to...you're at the red light. [LB261]

GAYLE HAHN: Okay. We have nearly 60,000 people in Nebraska and less than 100 people participating in the program, so we need to step up to the plate. [LB261]

SENATOR CAMPBELL: Are there questions? A lot of good information in your testimony. Thank you. Senator Crawford. [LB261]

SENATOR CRAWFORD: I just want to come back to...I wonder if you would explain the test A and test B part again. So you have test A of income eligibility. And then it says if you pass that test, you move to test B to see if a premium is due. If you eliminate test A...so I'm trying to understand what we're trying to do by eliminating test A, I guess. [LB261]

GAYLE HAHN: Right now, in test A, the earned income of a disabled individual is always disregarded. The unearned income, meaning their Social Security Disability, is disregarded if they're in their trial work period or the extended period of eligibility that follows. The example that I gave of the man, the 32-year-old, he's out of...he's used his trial work period, he's used his extended period of eligibility. And so because...and he's still receiving his $775 in Social Security Disability. Because he's still receiving that, they're going to use it in test A, and because that $775 exceeds the federal benefit rate of $710 for a single individual, he fails eligibility in test A. And you don't...you're just done. There's...you don't go further. [LB261]

SENATOR CRAWFORD: Okay. [LB261]

GAYLE HAHN: By eliminating test A, we would just take that out and use the unearned income, the countable portion of his SSDI as well as the countable portion of his earned income to establish the premium that he would have to pay for the coverage each month. [LB261]

SENATOR CRAWFORD: Okay. So you're still looking at income, but the premium... [LB261]

GAYLE HAHN: Right. [LB261]

SENATOR CRAWFORD: ...is a much different level as opposed to... [LB261]

GAYLE HAHN: Well, you know, in LB261 the premium level starts at 100 percent, and I mean I didn't specify in my report here any certain level. I think that that would be...you know, we need to consider all options of it. But yeah, they definitely, they're paying premiums. He's not the only client I serve that purchases private insurance in order to access Medicaid. And if they're willing to pay a premium, why not let them pay it back to the state and access the services that they already are receiving and they're going to continue to receive? [LB261]

SENATOR CRAWFORD: Thank you. [LB261]

SENATOR CAMPBELL: Any other questions? Thank you very much for your testimony. [LB261]

GAYLE HAHN: Yes. Thank you. [LB261]

SENATOR CAMPBELL: Our next proponent. Good afternoon. [LB261]

LYNN REDDING: (Exhibit 13) Good afternoon, Senator Campbell and members of the Health and Human Services Committee. For the record, my name is Lynn, L-y-n-n, Redding, R-e-d-d-i-n-g, and I'm here in support of LB261. I am a person with a disability, and I work at McDonald's in Grand Island. Due to my disability, I take a number of medications per day, which costs several hundred dollars a month. Even though I'm working, the insurance that my job offers is too expensive for me to take. Medicaid is the only way I can afford my medications and is something I cannot go without. Working is really important to me as it is to many people with disabilities. But my health is also important. So I understand why some people with disabilities are detoured from getting a job. I know the empowering effect that working has on people with disabilities, so I support LB261's effort to make it more likely for people with disabilities to work without risking their Medicaid. I was told I would never have a real job due to my disability, so I went out and found one myself. It was great getting a paycheck. I really felt proud and empowered. After some time, I was offered a promotion. However, I had to turn it down because I was told that I'd be making too much money to keep my Medicaid. I want to be self-sufficient, but I cannot jeopardize my Medicaid. Self-sufficiency looks more and more unlikely if I can't work, because I can't access the medications that I need. I want to advance up the corporate ladder, but I fear that may be impossible. That is why LB261 is so important. It's a win for Nebraskans with disabilities like me who want to work or who want to take full advantage of opportunities to advance, but they rely on Medicaid to maintain their health. LB261 would provide greater incentives for people with disabilities to reach their full employment potential. LB261 is a win for the state because more people would be paying premiums back to the state to retain their Medicaid. In this era of tight budgeting and constant funding cuts to Nebraska's

Medicaid program, getting some of the money back in premiums, not to mention sales tax, income tax, property tax, is better than nothing. [LB261]

SENATOR CAMPBELL: You're getting to be a regular here, Lynn. We're glad to have you back. Pretty soon somebody is going to hire you as a lobbyist, so, because you give great testimony and you're always right on time and I appreciate that so much. Are there any questions from the senators? How's the job going at McDonald's? [LB261]

LYNN REDDING: It's awesome. I was offered a management position and couldn't take it because of my Medicaid. [LB261]

SENATOR CAMPBELL: Oh, my gosh. [LB261]

LYNN REDDING: With all the pills I take, like a day, and two of my pills are over $100 a pill, if I didn't have Medicaid I'd be in trouble. [LB261]

SENATOR CAMPBELL: I think we understand that. Thanks for taking time from your job to come and testify. I know Senator Gloor appreciates it. [LB261]

LYNN REDDING: Thank you. [LB261]

SENATOR CAMPBELL: Thanks, Lynn. Our next proponent. Good afternoon. [LB261]

SHERRI SHAFFER: (Exhibit 14) Good afternoon. Good afternoon, Senator Campbell and Health and Human Services Committee. My name is Sherri, S-h-e-r-r-i, Shaffer, S-h-a-f-f-e-r. I'm here to show my support for LB261 and to share my story. I have been working at Goodwill Industries for 12 years and it is a wonderful place to work. During my time at Goodwill, it has been a struggle to balance out my earnings from doing production jobs and making sure that I do not lose my benefits. Since starting to work with my benefits specialist, I feel more at ease working and knowing I don't have to be so scared about losing my Medicaid. This is a job that I love doing, and I am blessed that there is a possibility of bills that can help people not be scared about losing their Medicaid by working too much. When I work, I am a happier and healthier person and I feel like I contribute more to my community and my dreams. The passing of LB261 I believe would lead to many more individuals having the possibility of being more independent, positive part of society and making long-term dreams come true. [LB261]

SENATOR CAMPBELL: Excellent. Thank you. Any questions from the senators? You haven't been to Las Vegas since the last time we saw you, have you? [LB261]

SHERRI SHAFFER: No. No. [LB261]

SENATOR CAMPBELL: Okay. [LB261]

SHERRI SHAFFER: I'm going back to Los Angeles though. [LB261]

SENATOR CAMPBELL: On another trip? [LB261]

SHERRI SHAFFER: Yes. [LB261]

SENATOR CAMPBELL: Well, we'll expect to hear a report on that one too. [LB261]

SHERRI SHAFFER: Okay. [LB261]

SENATOR CAMPBELL: Thank you. [LB261]

SHERRI SHAFFER: Thank you. [LB261]

SENATOR CAMPBELL: Our next testifier. Good afternoon. [LB261]

CATHY MILLER: (Exhibit 15) Good afternoon. My name is Cathy Miller, C-a-t-h-y M-i-l-l-e-r, and I am testifying on behalf of the Nebraska Planning Council on Developmental Disabilities. Although the council is appointed by the Governor and administered by the Department of Health and Human Services, the council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. We are a federally mandated independent council comprised of individuals and families of persons with developmental disabilities, community providers, and agency representatives who advocate for system change and quality services. I have attached a brief description of who we are--that's the first handout--and what we do, as I realize we have new senators. One of the council's goals is to increase the employment of individuals with developmental disabilities working in integrated settings, and earning at least minimum wage. However, one of the barriers that people with disabilities face when they begin working is the fear of losing Medicaid. Even if their employer offers health insurance, the services offered by Medicaid waivers, such as personal care and habilitation, are not typically covered. Although Medicaid Insurance for Workers with Disabilities has been around for several years, it has been a very complicated eligibility determination process, as we've heard, and few people are familiar with it. LB261 will simplify the program and increase awareness among both individuals and staff working with people wanting to become employed. One of the activities of the state council is to award grants to various entities to address gaps and barriers in the system. I have also attached recommendations from a recent grant report noting the same concerns that bring us here today. We have other current and past grantees who have also noted the same issues and fears regarding loss of benefits. People who experience disabilities and their families are in the best position to make choices about work when they receive the good information about the impact of work on benefits prior to employment. Individuals with disabilities often face barriers to

employment, many of which are unrelated to their capabilities, yet they have demonstrated they are an untapped resource and can be less reliant on government payments and contribute to the economy with the right government and business supports in place. Thank you. [LB261]

SENATOR CAMPBELL: Thank you, Ms. Miller. Questions from the senators? I really appreciate you coming forward because it was your organization that I was thinking of as Mr. Meurrens was testifying... [LB261]

CATHY MILLER: Oh, yes. [LB261]

SENATOR CAMPBELL: ...because we often receive letters from the council, usually written by Pat Lopez. [LB261]

CATHY MILLER: Okay. [LB261]

SENATOR CAMPBELL: And so I was looking in the audience for Pat today, so I'm glad you came forward. I thought the suggestion was a good one. Do you think that fits with the Planning Council, her suggestion about an advisory committee to this? Apparently, you're already watching some of these issues. [LB261]

CATHY MILLER: An advisory council would be appropriate. An advisory council can also be not appropriate. They can offer suggestions, good suggestions, and they can offer suggestions that are not good. So when you think about an advisory council, it would have to be very select persons that would have an intimate knowledge of the workings of the state, of the workings of the Legislature, of the workings of the DD community. So yes. (Laugh) I'm sorry. [LB261]

SENATOR CAMPBELL: Okay. Well, we'll have...I'm sure Senator Gloor will review all the information. So thank you for coming. We appreciate that. [LB261]

CATHY MILLER: Yes. This last one, the second handout is something that I have just been really pleased to see in writing, okay? [LB261]

SENATOR CAMPBELL: Okay. [LB261]

CATHY MILLER: Page 2, "It was reported that DHHS service coordination doesn't seem to understand or be supportive of individuals shifting services from facility-based to community employment." And that has been a chronic problem we have discovered; so I don't know if an advisory council would take on those thoughts also, you know, getting the whole picture, so. [LB261]

SENATOR CAMPBELL: Okay. Well, we certainly will review your testimony and the

reports you've given us, so thank you very much. [LB261]

CATHY MILLER: Thank you. Can I also say thank you for my son for being very patient, Adam over there. He was... [LB261]

SENATOR CAMPBELL: Of course. We appreciate everyone's patience, believe me. [LB261]

CATHY MILLER: Thank you. [LB261]

SENATOR CAMPBELL: Thank you, Ms. Miller. Our next testifier. [LB261]

LINDA JENSEN: Hello. [LB261]

SENATOR CAMPBELL: Hello. [LB261]

LINDA JENSEN: (Exhibit 16) I'm Linda Jensen, L-i-n-d-a J-e-n-s-e-n, testifying for the Nebraska Nurses Association today to support LB261, the revisions to the Medicaid Insurance for Workers with Disabilities to facilitate people to return to work without losing their healthcare coverage. And we are for this because we realize that comprehensive and available healthcare is a lifeline for people with disabilities. As a college professor, I was contracted by the Nebraska Public Policy Center in the 1990s to do a qualitative study of people with various types of disabilities. We interviewed about 40 people, and all said they wanted to work but they had huge obstacles, and the biggest area was retaining access to their medical care. So many people, as you've seen today, want to return to work but they usually need to return to work gradually, and so they may not be eligible for insurance coverage at work at that time but they may have just enough income to lose their Medicaid. So work can help people become healthier as their self-esteem and confidence increases, and eventually we hope that they will be able to advance in their occupation and exit the Medicaid system. The higher resource limits will allow them to save for a car or maybe even a home, and they may need a car to get to their work and to get a better job. So those...at least they wouldn't be doomed to poverty. My son is one example of the population that this bill would help. He was first diagnosed with schizophrenia in '91, and has had over a dozen hospitalizations. He was violent at times. I remember being given the papers for Medicaid application during his first hospitalization, came home and cried all day, and then I realized that insurance and our incomes wouldn't cover everything. And then after three years of Medicaid coverage, he became eligible for Medicare. He's had a good period of stability the last ten years, as his doctors found a medication that works, and he works part time as a peer specialist at a psych hospital for the past five years now. And my husband and I are his guardians and he lives in our home and we provide a lot of functional supports: laundry, cleaning, mainly supervision of medications, money management, medical appointments, all those things. So he's been having a problem

with Medicare, decided that they would no longer cover his medical expenses, so we're still in appeal for that situation because he was part of the Ticket to Work program. Then Medicaid also decided that they would not pay and we asked...I'll kind of shorten this. There's a lot of details in here. But we did ask for the Medicaid for Workers with Disabilities. We asked Medicaid caseworkers about that, and nobody...we asked numerous people and nobody seemed to know much about it. We did have a lot of help from Easter Seals. In fact, Gayle Hahn was one of our biggest helpers; and Nebraska Advocacy Services. And so we went through hearings, we went through all kinds of back-and-forth situations, and everybody said he's not appropriate for it, he's not appropriate for it. But he was appropriate for it. Gayle kept telling us he was. So he finally was without Medicaid for a period of time, and then we reapplied and this time...went...they did have the state review team review his situation, and he was declared that he was permanently disabled, actually, and so is back on Medicaid again. So it was an awful year, and you know, if we wouldn't have been so, I guess you might say bullheaded or whatever, you know, he probably would have just gone off of it, and if he didn't have the advocate. We're fortune that through all this he continued to progress and continues to work, and he always will require about $2,000 worth of medical care every month. He has a lot of medications he has to take. And he is working on a master's in counseling and getting towards the end of that, hoping to be a counselor some day and work more with people with serious mental illness. So any questions? [LB261]

SENATOR CAMPBELL: Thank you, Ms. Jensen, for your testimony. Are there any questions? Thanks very much for bringing... [LB261]

LINDA JENSEN: Okay. And as a member of the Nurses Association and an educator, I'd be glad to help with any education that's needed for...certainly they need a lot of education about it. [LB261]

SENATOR CAMPBELL: Excellent. Okay, thank you very much. Our next proponent? Okay. Those who wish to testify in opposition to LB261? Those who wish to testify in a neutral position to LB261? Anyone in a neutral position? Okay. Senator Gloor, I believe we're back to you. [LB261]

SENATOR GLOOR: Thank you, Senator Campbell and fellow committee members. I'll be very brief. Just to summarize what the attempt is with LB261, it's to take an existing program, make it successful by removing employment disincentives for persons with disabilities, thus enabling them to get work, save for retirement, and overall pay more in taxes, pay their premium through the Medicaid coverage, and reduce their reliance on cash benefits and/or state assistance. And with that I'd ask favorable consideration of LB261. Thank you. [LB261]

SENATOR CAMPBELL: Senator Howard. [LB261]

SENATOR HOWARD: Thank you, Senator Campbell. Senator Gloor, I was hoping for somebody from the department, and happy for you that they are not here, but just to get the question on the record, I'm curious as to how this would interact with Medicaid expansion. [LB261]

SENATOR GLOOR: Forty-eight hours ago I could have answered that and it's slipped my mind. I think we've decided that it would be a minimal impact. That's the best I can do, but I'll be glad to get to you the specifics on that. [LB261]

SENATOR HOWARD: Thank you. [LB261]

SENATOR CAMPBELL: I have to say, Senator Howard, I asked counsel the same question and we're kind of scratching our heads too, so. Senator Gloor, did you want to make any comment about the fiscal note, whether there's any, you know, any points you need to bring up to us? [LB261]

SENATOR GLOOR: We're looking at the fiscal note. We think having just gotten it and not having a lot of time to sink our teeth into it, it would be nice if it were to explode the way that they say the program will explode. That's certainly not been the history of this program in the past, plus there's the question of, you know, after a three-year period of time on disabilities, you're going to find people who are Social Security-eligible under disabilities. That seems to have been ignored. And so we'll get a few more specifics after we've gotten some answers of our own, but I think...thank you for the opportunity. I think the numbers in there are highly inflated. If the department were aggressive as we would like them to be aggressive, maybe we could even dream of some of those numbers. But at 70 people, a little over 70 people right now, there's no reason to think that this program, even with some of the changes, is going to grow the way that they're talking about--or could, for that matter. [LB261]

SENATOR CAMPBELL: Actually, Senator...oh, Senator Crawford, I'm going to get to you in a minute. Actually, Senator Gloor, I think it would be interesting to look at a trend line of the program, and those numbers might be down... [LB261]

SENATOR GLOOR: Actually I think that's true. [LB261]

SENATOR CAMPBELL: ...from some of the previous years we looked at. [LB261]

SENATOR GLOOR: I think they were in the nineties. Obviously we're talking about a 15 percent decrease, which, of course, is sort of a joke since we're talking about going from something in the nineties down to the seventies. But yeah, the trend as best I could tell, has been more downward than even stable. [LB261]

SENATOR CAMPBELL: It might be worth looking at that number. Senator Crawford. [LB261]

SENATOR CRAWFORD: Thank you, Chairwoman Campbell. So I just wanted to clarify, and you and some other testifiers had emphasized this is an existing program, so--but it's not being used effectively--and so part of the bill is to require education and benefits specialists to help people understand that. But then is there also change in any of the eligibility or is it mostly really just improving the use of benefits specialists and the existing program that we have right now? [LB261]

SENATOR GLOOR: Yeah, there's improvement in eligibility also. You know, the one that should have real-life ramifications for us is the amount of money that people can save nominally for a down payment on a home, $10,000, $15,000 for a couple. And the fact that if somebody has their own 401(k) or tax-sheltered annuity, that doesn't get figured in. And, you know, those are the simple things that people moving into a real work life try and do for themselves and build up a small nest egg, set aside some money for retirement. And those are improvements of things that could be used or wouldn't be used for determinations of eligibility. [LB261]

SENATOR CRAWFORD: And so just to use an example, one of our testifiers of getting a promotion at McDonald's, is it your sense that existing programs would allow her to stay on and buy in, but it's the education and help with that benefits that's necessary, or we need to make some of these legal changes to make that possible? [LB261]

SENATOR GLOOR: You know, I don't know Lynn's specifics; but I would say, you know, as it relates to there are bound to be people like Lynn, it may be...it may have a direct impact on Lynn; it may not. I don't know what kind of offerings, what came with her offer of a job promotion. But there's no doubt that across the entire state of Nebraska with 60,000-some people who would be eligible, there would have to be a few people that could take advantage of it and get our numbers from 70 to 140 or 150. [LB261]

SENATOR CRAWFORD: And provide premiums--revenue. [LB261]

SENATOR GLOOR: Yeah, exactly. Yeah, it generates some revenue for the Medicaid program. People who are moving to higher paid jobs would now be perhaps net taxpayers. [LB261]

SENATOR CRAWFORD: Right. [LB261]

SENATOR GLOOR: And so those certainly are pluses. [LB261]

SENATOR CRAWFORD: Thank you. [LB261]

SENATOR GLOOR: Thank you. [LB261]

SENATOR CAMPBELL: (See also Exhibit 17) Any other questions? Thank you, Senator Gloor. We'll close that public hearing on LB261. If you are leaving, please leave as quietly as you can and take all conversations out into the hall. We will proceed to our last hearing of the day, LB338, Senator Gloor's bill to prohibit certain practices by healthcare professionals and healthcare facilities. So, Senator Gloor, you may want to wait just a minute and we'll let everybody kind of get out and...all right, Senator Gloor, I think when you're ready, we're ready. [LB261]

SENATOR GLOOR: Thank you, Senator Campbell. I'm Mike Gloor, M-i-k-e G-l-o-o-r, representing the 35th District. As we are considering the issue of Medicaid expansion in the states, I bring forward LB338 for your consideration. This also fits into the category, as did the bill I presented last week, of unintended consequences of Medicaid expansion. LB338 amends the Uniform Credentialing Act and the Health Care Facility Licensure Act and the Medical Assistance Act to prohibit discrimination against persons eligible for Medicaid or covered by Medicaid by licensed healthcare facilities and licensed healthcare professionals. A licensed healthcare facility or healthcare professional may be subject to disciplinary action if found discriminating against persons with Medicaid coverage or eligibility. Such finding would be the result of a complaint made to the Nebraska Department of Health and Human Services that is reviewed, as is currently the case with any unsolicited complaint, upon application for renewal of license. A healthcare facility or healthcare professional that is providing care as a patient-centered medical home is deemed to be providing care to a Medicaid patient on a nondiscriminatory basis. So they get a free pass if they are a patient-centered medical home. It's my understanding, from talking to the department, that this would only come into play if there is a complaint made and the department inquiry finds no Medicaid patients or a very small percentage of patients as compared with other comparable physicians or facilities in Nebraska. The department personnel I visited with understood that a provider cannot be 100 percent Medicaid, with possibly the exception of FQHCs or similar entities that get subsidization or special grants. So providers who see at least an approximately average number/percentage of Medicaid clients would not be subject to discipline. And the example I would use of that, in my dialogue with them, is the department does not have the time or money to be able to send somebody out and take a look at every provider's list of Medicaid patients or client list to find out what that ratio is. So we're not talking about unleashing the "Medicaid compliance posse" out of Lincoln to check medical practices and facilities across the state. It would be very much, as is the case with complaints that come in now, of unprofessional behavior. A complaint that's issued to the department then would go into a record and, at time of relicensure, that record is looked at. There are complaints that get issued against facilities and practitioners by patients, by competing groups, by, perhaps, members of the public. An example that I used, that was affirmed to me as an appropriate example,

would be letters or complaints that came from a practice in a community or a hospital in a community that said a certain provider was not taking their fair share of Medicaid patients and was, in fact, referring all their Medicaid patients to another practice or is referring them to a hospital emergency room, and that letter would then go into the file. It would not be subject to a reason for not issuing a license to somebody who was making the original application for a license. It would also not necessarily be subject to opening a case at that very time and moving forward but, like complaints of unprofessional behavior, would be the sort of thing that finds its way to a record and perhaps eventually finds its way to that level of dialogue. It's a pretty extensive process that the state has in place before it removes somebody's license. The Board of Health gets involved, and an inquiry board, to look at these sort of things. If that's found that there is justification for that, it gets turned over to the Attorney General's Office. So we have an elaborate procedure already laid out. We're not talking about changing anything other than making it clear that failure to take Medicaid patients in an appropriate ratio could be grounds for somebody not being able to get another license. I would say that there is a fiscal note. I was initially disappointed at the fiscal note--which, by the way, comes out of the Cash Fund; since people do have to submit a fee for relicensure, licensing is very much underwritten by a lot of the cash that comes in for those relicensing fees--because the enforcement fiscal note sort of runs counter to the discussion I had with the department. The more I've thought about it, though, the more I've thought the department itself has thought about this and decided, if we are adding tens of thousands of people to the Medicaid rolls, there could be a significant increase in the amount of complaints that come in of...along these very lines. And so, in retrospect, it makes sense to me that there would be a fiscal note, even though small, even though it's paid for in cash, that there would be that particular inquiry that comes up, so...or an increase in inquiries that would come up. So with that I'd be glad to answer questions. [LB338]

SENATOR CAMPBELL: Questions? Senator Krist. [LB338]

SENATOR KRIST: Given the bills that you've submitted this year, I've given some serious thought to when actually to discuss this or put it on the record. I think now might be an appropriate time. In the mid-80's, the United States government decided they didn't want to do what they needed to do for CHAMPUS patients and provide medical programs, medical assistance, medical funds for active-duty military and their dependents, and they started to decrease the amount of payments going out. That resulted in the city of Dallas, Fort Worth, and most of Texas, not having anyone, anyone, who wanted to participate in CHAMPUS. Now the...I don't mean to come to any conclusion on this discussion. But I do know the state of Texas, in particular, took action about "you must" and how they went about making sure that there was an equitable percentage of those patients. I think it's indicative, or it should be to our advantage, to take a look at how we...how they solved that problem. I do know that in other major areas where there were medical facilities--medical centers, as they were called in those

days, military medical centers--that they had huge problems, in terms of the retiree force, because that was cut down considerably. It has a lot to do with your logic on the availability of providers that want to participate, as well as the availability of providers, period. Less providers, more patients, or those that want to participate or not. And I'm in the process of digging that information up. But I just think it's worth talking about... [LB338]

SENATOR GLOOR: Absolutely. [LB338]

SENATOR KRIST: ...because we are in situation that is very similar to that for different circumstances. And the last thing you and I both...I mean, we agree the last thing we want to do is reinvent the wheel if there's something out there. So I just promise you I am...I have made that inquiry. I've gone to Legislative Research and I'm going back to TRICARE/CHAMPUS to ask those questions. How did you solve that problem? How did you actually provide that care? And we need...we can discuss that at a further date. And I'd...if you want to comment on it, that's... [LB338]

SENATOR GLOOR: No, I...it sounds almost exactly the same. I mean, there are components of it that hopefully...I mean, I'm not expecting that there's a big bandwagon that rolls up behind me that...in support, but I do expect there will be people who speak on the difficulties they have. And some of that may be part and parcel of...and there may be some solutions mixed in there of what we would hear from what Texas did. But I could see that certainly Texas, with the number of military bases it has and the number of retirees it has, that would be an incredible economic challenge for that state. [LB338]

SENATOR KRIST: Right. [LB338]

SENATOR GLOOR: And so I'd be...we'll work on it with you also. [LB338]

SENATOR KRIST: Thank you. [LB338]

SENATOR GLOOR: It sounds like there's potential for some solutions or at least some long-range planning that goes into that. [LB338]

SENATOR KRIST: Thank you. [LB338]

SENATOR CAMPBELL: Senator Crawford. [LB338]

SENATOR CRAWFORD: Thank you, Senator Campbell, and thank you, Senator Gloor. Could you answer the question of why exclude medical home physicians from the... [LB338]

SENATOR GLOOR: Yes. Thank you for that question, Senator Crawford. I think the

commitment to medical home, in and of itself, is going to require practices that do this, to bite the bullet and absorb some added expense above and beyond what traditional practices would. It's also an incentive. I mean, it's just a flat incentive for practices to look at moving to a medical home. I don't think enough practices that I know that are--and these would be primary care practices--having a problem meeting anybody's criteria when it comes to taking their fair share of Medicaid patients. On the other hand, it's one other thing that they can put in their cap and say, and we don't have to worry about anybody ever questioning us, whether we're taking enough Medicaid patients. I think, so far, our experience with the primary care groups that have taken on patient-centered medical home have been ones who only, only, see Medicaid participate in it. That's our challenge, is to get broader participation within Medicare and private pay insurance. So it basically is stating the obvious: Patient-centered medical homes, right now, for the most part, are only being rewarded by Medicaid, not by any other payer. [LB338]

SENATOR CRAWFORD: But as this stands, would it be the case that, if you're a medical...if you use a medical home model, that you would not be subject to any scrutiny on that front? [LB338]

SENATOR GLOOR: Well, only as it relates to this specific portion of the law. They're still subject to inappropriate behavior, complaints by the patients of, you know, rudeness or price gouging, any of those... [LB338]

SENATOR CRAWFORD: Sure, sure. But in terms of acceptance of Medicaid patients,... [LB338]

SENATOR GLOOR: Yep. [LB338]

SENATOR CRAWFORD: ...you're wanting to provide that flat-out exemption from being evaluated on that criteria? [LB338]

SENATOR GLOOR: They get a "get out of jail free" card. [LB338]

SENATOR CRAWFORD: Jail, okay. [LB338]

SENATOR GLOOR: Yeah, yeah. [LB338]

SENATOR CAMPBELL: Senator Howard. [LB338]

SENATOR HOWARD: Thank you, Senator Campbell. Do we have a PCMH certification program in the state of Nebraska? [LB338]

SENATOR GLOOR: We have a PCMH definition... [LB338]

SENATOR HOWARD: Um-hum. [LB338]

SENATOR GLOOR: ...that we can use that, in fact, is what the state uses, the department currently uses, and we have gotten bought in on a multipayer basis from everybody but Medicare, although I think we're pretty sure that Medicare would be happy to use our PCMH definition that we have. [LB338]

SENATOR HOWARD: Is there a possibility that somebody could achieve PCMH on the national level, like, say, NCQA, and not meet Nebraska's PCMH standards? [LB338]

SENATOR GLOOR: No. No, I think we very much follow NCQA, with some variations on that theme that are more appropriate for a rural state like Nebraska or smaller practices like you would find in Nebraska. But, yes, it's possible somebody could meet NCQA, but we'd be happy...we as a state should be happy if they have that level of certification. [LB338]

SENATOR HOWARD: And so, just for me to understand the intent of the bill, the intent is that no healthcare provider would be allowed to turn away a Medicaid patient? [LB338]

SENATOR GLOOR: No. It's taking your fair share,... [LB338]

SENATOR HOWARD: Okay. [LB338]

SENATOR GLOOR: ...however that's defined, Senator. [LB338]

SENATOR HOWARD: Do other states have, sort of, a fair-share movement at all, in terms of Medicaid patients, or is that really handled by managed care? [LB338]

SENATOR GLOOR: I am not aware that any state has a fair-share piece of legislation that's out there at this period of time. [LB338]

SENATOR HOWARD: Okay, thank you. [LB338]

SENATOR CAMPBELL: Senator Cook. [LB338]

SENATOR COOK: Thank you, Madam Chair. Senator Howard reminded me of another definition that we've talked about in this committee. And I'm looking on page 5. I don't have my glasses on, so it looks like the bottom of page 5. Do we have a definition...thank you. Do we have a definition for "medically necessary" in this state yet that we can broadly apply, perhaps, to behavioral health services for children aged zero to five? "When medically necessary," and it goes on. [LB338]

SENATOR GLOOR: This is under the section...I know we've got EMTALA,... [LB338]

SENATOR COOK: Um-hum. [LB338]

SENATOR GLOOR: ...which would require emergency rooms to provide care. Above and beyond that, that's a good question. I'll have to ask and find out how that fits...how that language would be a fit with... [LB338]

SENATOR COOK: Um-hum, so as we continue the conversation... [LB338]

SENATOR GLOOR: Yep. [LB338]

SENATOR COOK: ...about medical necessity and behavioral health services. Thank you. [LB338]

SENATOR GLOOR: That's a great question. Thank you for bringing that up. [LB338]

SENATOR CAMPBELL: Senator Crawford. [LB338]

SENATOR CRAWFORD: Thank you, Senator Campbell. This is following up on Senator Krist's comment, I guess, more than a question. But just...since that's on the record, I'll put this on the record, too, as we're looking at models and examples, so...and one question would be how pediatricians responded when they had expansion. So, you know, is there any models of fair practice or ways that they were watching one another as peers during that expansion that might be relevant as we're looking at what this would look like and what it would look like in practice? So you don't have to respond to that. I'm just throwing that out for the record. [LB338]

SENATOR GLOOR: Well, we...I would say, and this may not get at your question specifically. But one of the challenges with coming up with a hard-and-fast number, which is, all right, if, across the state, 15 percent of all patients are Medicaid patients in practices, is that the number that we ought to measure? And I would tell you the...I know the problem with that is...I don't...a pediatric practice, a pediatric medicine practice/dental practice that has only 15 percent Medicaid may not be seeing a lot of Medicaid patients, compared to a cardiologist who has 15 percent Medicaid. That may be quite a few Medicaid patients for a cardiologist. So therein lies the problem and the lack of specificity in what's the right number when you look at this. And, I mean, clearly this is going to be what is going to be hard for the Board of Health to come to some sort of decision on. But, on the other hand, I would say, if somebody's file folder is filled with letters of complaint from other providers, from Medicaid recipients, from hospitals, that may be...it may be, as some professors--not you, I'm sure--provide grades, and that is, look at how thick this file is, and they're all the same complaints. It may come down to

that sort of a judgment call. [LB338]

SENATOR CAMPBELL: Senator Howard. [LB338]

SENATOR HOWARD: Thank you. Is there a federal law against discrimination for Medicaid patients? [LB338]

SENATOR GLOOR: You know, I think there is, but I can't remember how that is specifically worded. [LB338]

SENATOR HOWARD: It's applied based on payer. [LB338]

SENATOR GLOOR: Yes, that's right, yeah. [LB338]

SENATOR HOWARD: Okay. [LB338]

SENATOR CAMPBELL: Applied based on what? [LB338]

SENATOR HOWARD: Based on payer. You can't discriminate based on payer, pay source. [LB338]

SENATOR CAMPBELL: Oh, payer, okay. [LB338]

SENATOR HOWARD: Is there a state law that says you can't discriminate based on payer? [LB338]

SENATOR GLOOR: Not that I know of. [LB338]

SENATOR HOWARD: Okay. [LB338]

SENATOR GLOOR: I think, if there is, it's foreign to me because the federal law was always the one that, frankly, frightened most providers most. Let's put it that way. [LB338]

SENATOR HOWARD: Okay, thank you. [LB338]

SENATOR CAMPBELL: Senator Gloor, as we've watched all of this unfold with the ACA and conversations--and committee counsel and I have had a lot of conversations about all of this--one of the things that we started paying attention to or thinking, well, we maybe should pay attention to this, is the fact that we now have Medicaid in the state of Nebraska under managed care. So how does this then work with managed care when that managed care, who we have hired in our Medicaid program...I mean, they put together the networks. [LB338]

SENATOR GLOOR: Well, I think everyone will be glad to sign up with the managed care provider for Medicaid, it would seem to me. I mean, I don't know that that's problematic. But it's like any contract. You can sign a contract and then you just never provide care for anybody under the terms of that particular contract. Signing the contract is just signing a piece of paper. I am sure that that piece of paper offered by the managed care company says that you'll provide care to folks, but I'm also guessing it doesn't say what exactly the number is of individuals that you'll take care of. And so taking one Medicaid patient a year, is that appropriate, versus having a caseload of 15 to 20 percent of Medicaid patients all the time? So I don't see managed care as... [LB338]

SENATOR CAMPBELL: I think we're just trying to figure out if somebody wasn't...if a physician was not in that network. And we're still saying, you have to have, you know, complaints...because I'm not within that community. [LB338]

SENATOR GLOOR: Yeah. [LB338]

SENATOR CAMPBELL: I'm not saying that I have an answer or I'm trying to lead you to any answer. I'm just raising a question. It's sort of like what we're all doing here, and it's just kind of think this through. [LB338]

SENATOR GLOOR: Yeah. [LB338]

SENATOR CAMPBELL: So you might want to think about that. We don't have to go into it right now. Any other questions? Probably raise more questions as we go through. All right, we will take our first proponent for LB338. Good afternoon. [LB338]

KERRY WINTERER: (Exhibit 18) Afternoon. I'll get you the other orange sheet here. I told Senator Gloor I was his bandwagon. [LB338]

SENATOR CAMPBELL: Go right ahead and start. [LB338]

KERRY WINTERER: Afternoon, Senator Campbell and members of the Health and Human Services Committee. My name is Kerry Winterer. That's spelled K-e-r-r-y; last name is Winterer, W-i-n-t-e-r-e-r. I am the CEO of the Department of Health and Human Services. Today I am substituting, or pinch-hitting, for Vivianne Chaumont, who is the director of Medicaid, who unfortunately is unable to be here to testify in support of LB338. She, of course, is the expert when it comes to Medicaid. And, to the extent that you ask me questions, I may have to punt to her, so. LB338 prohibits providers from discriminating against individuals who are eligible for Medicaid by denying access to services based on the individual's eligibility for the program. As we prepare for the additional 35,000 eligible persons coming into Medicaid from the implementation of the

mandatory provisions of the Affordable Care Act in 2014, and as many as 48,469 by 2020, we are concerned that providers and healthcare facilities will turn away patients simply because they are Medicaid clients. This entry of additional eligible clients will strain the number of current providers within the state. The ability of Medicaid clients to receive appropriate care may well be jeopardized. The Department of Health and Human Services supports this bill, which includes a provision that providers or healthcare facilities can be sanctioned through the licensure process for turning away Nebraska Medicaid clients simply because of their Medicaid eligibility. All Nebraska citizens should be able to obtain quality healthcare regardless of the payment source. In conclusion, DHHS supports LB338 as it prohibits discrimination by providers against individuals who have Medicaid by denying those individuals access to healthcare. I'd be happy to answer any questions to the extent that I can. [LB338]

SENATOR CAMPBELL: Questions? Senator Howard. [LB338]

SENATOR HOWARD: Thank you, Senator Campbell. Can you tell me where the number 48,469 came from? [LB338]

KERRY WINTERER: I would assume that that has been the result of, particularly, Milliman studies and other studies that have occurred that project out the enrollment result of the mandatory ACA expansions. [LB338]

SENATOR HOWARD: Um-hum. I guess I'm asking the question because last week we heard a much larger number from Vivianne. [LB338]

KERRY WINTERER: Yeah. These would be the result of only the mandatory changes to Medicaid, beginning January 1. I'm sure you're thinking about the expansion population to the extent the Legislature chooses to expand. [LB338]

SENATOR HOWARD: Right. [LB338]

KERRY WINTERER: That number would be much higher, which also could mean that this becomes that much more of a problem. [LB338]

SENATOR HOWARD: And the 35,000 comes from? [LB338]

KERRY WINTERER: Well, if you recall, there's a number of folks that we think are going to be "switchers." They're not going to be newly eligible in the sense of the expansion population. But they're going to be "switchers" that will move from insurance that they may have because Medicaid is going to be more affordable or at no cost come January 1, and other populations out there that have other coverage or that have no coverage at all then now will come into the Medicaid population. [LB338]

SENATOR HOWARD: Okay, thank you. [LB338]

SENATOR CAMPBELL: Other questions? Senator Crawford. [LB338]

SENATOR CRAWFORD: Thank you, Senator Campbell, and thank you for your testimony. Senator Howard had mentioned that, you know, there's a federal law against discrimination based on payer. I just didn't know if, in your position as CEO, if you are familiar with federal cases or federal sanctions against providers in Nebraska for Medicaid discrimination? [LB338]

KERRY WINTERER: No. I'm unaware of that, nor am I aware of any federal requirement that would apply. [LB338]

SENATOR CAMPBELL: That answer your question, Senator Crawford? [LB338]

SENATOR CRAWFORD: Yes, thank you. [LB338]

SENATOR CAMPBELL: Mr. Winterer, do you have any idea how many complaints, on an annualized basis, the department gets now about physicians who don't take their fair share? [LB338]

KERRY WINTERER: I do not. I think we could probably go back through complaints that we've received and determine to what extent that is an issue. [LB338]

SENATOR CAMPBELL: And in years past, if there have been...I'm assuming that there has to be some complaints that come into the department. I don't know for sure about whether there's been any discussion by the director of Medicaid with the different medical professionals across the state in terms of their saying, how should we deal with complaints. Has there been any discussion in years past with the doctors, the nurses, the nurse practitioners? I mean, what I'm trying to get at here is have we reached out to the medical professions across the state to try to say, are you paying attention to what the Medicaid population needs and, as we move to managed care, whether there had been any discussion with them about this? [LB338]

KERRY WINTERER: Well, I would...I guess whatever my answer to that question would be speculation because I haven't been involved in those comments. I would assume that there have been conversations between the managed care contractor and, in turn, their providers relative to those issues and relative to dealing with complaints, if you will, if there truly are access complaints. [LB338]

SENATOR CAMPBELL: My last follow-up would be...and I don't expect you to be able to answer this today, but perhaps Director Chaumont could get back to us. But when we set up the managed care contracts across the state, because we had a period of time

which we had a pilot on the eastern side, and then we went... [LB338]

KERRY WINTERER: That's right. [LB338]

SENATOR CAMPBELL: ...statewide,... [LB338]

KERRY WINTERER: That's right. [LB338]

SENATOR CAMPBELL: ...what is required of those managed care contracts with regard to the serving of the Medicaid population? And so if the director could get back to us of that, that would be helpful. Because now that we are statewide on managed care with Medicaid, how are those companies dealing with this issue and question? So whatever information she might have. Any follow-up questions for the director--CEO, I should say? Okay, thank you, Mr. Winterer. [LB338]

KERRY WINTERER: Thank you. [LB338]

SENATOR CAMPBELL: We appreciate you coming and pinch-hitting. [LB338]

KERRY WINTERER: I don't think I hit it out of the park, but maybe a single. (Laugh) [LB338]

SENATOR CAMPBELL: We won't have any report on that. Okay, our next proponent. Okay, we will move to those in opposition. [LB338]

SENATOR KRIST: She positioned herself at the edge of her chair. (Laugh) [LB338]

SENATOR CAMPBELL: Yeah. Dr. Meeske was ready. Good afternoon. [LB338]

JESSICA MEESKE: (Exhibit 19) Good afternoon. I'm going to spell my name correctly today. So my name is Jessica Meeske, J-e-s-s-i-c-a M-e-e-s-k-e, and my address is 601 North St. Joseph Avenue in Hastings, Nebraska, 68901. So, as I said, my name is Dr. Meeske, and I'm a pediatric dentist and chair of the Nebraska Dental Association's Medicaid committee. I'm also a member of the Governor's Medicaid Reform Council. And I'm a proud Medicaid provider, with about 65 percent of my practice in the communities of Grand Island and Hastings dedicated to seeing Medicaid-eligible kids and developmentally disabled adults. I'm testifying today, on behalf of the NDA, in opposition to the bill. While the NDA appreciates the intent of Senator Gloor's bill regarding healthcare providers accepting Medicaid-eligible patients in their practices and agrees that Medicaid-eligible persons need reasonable access to care, the NDA would like to point out that access to care for Medicaid-eligible persons is a complex and it's a multifaceted issue. It's not as simple as getting enough docs to see the patients. I can assure you, as a children's dentist that sees the most difficult kids in

Nebraska, whether it's a dental, a medical, a social, or a behavioral issue, I am clearly interested in getting more dentists to see Medicaid. No one wants to be the only game in town seeing the most challenging patients who have the least resources to compensate you. And, as you know, the Medicaid program, it's a partnership which includes the federal government, the state government, the providers, clinics, and the Medicaid population itself. And the spirit of a partnership recognizes that everyone has a vested interest in making a program work. If the state is concerned about access to care for Medicaid, there's some very clear pathways within the dental care system and in the overall healthcare system in which we can work together to achieve this. First thing I want to mention is there could be a whole lot more collaboration within HHS between the folks that run the Medicaid side and the public health side. We don't have good collaboration. These tend to be standalone agencies. Also, we don't sit together and look at outcomes data. There were questions asked about outcomes, disparities, and things like that. Now I can tell you, as a local school board member, I look at K-12 academic performance indicators all the time with stacks of information like you have. And that data is available on Web site for public viewing, and it clearly drives a lot of the decisions we make. But I'm really surprised at how we don't know a lot about Medicaid outcomes, and it's very difficult data for us to get ahold of. And for what we spend, we need to know more about what that's all about. A second solution includes adopting sound public health policy in terms of preventing tooth decay before it even occurs, and that would be something like water fluoridation. So fluoridation is the single most cost-effective way to reduce dental disease and, therefore, help with your demand on access to dental care, decrease Medicaid expenditures. Its effectiveness is as sound as seat belt safety, childhood immunizations, and yet the Legislature doesn't have the political will to seem to get this passed. Third is the state's lack of commitment to recruiting and retaining a state dental director. This is the individual who is responsible for coordinating all the dental public health activities--your school-based sealant programs, working with your low-income schools, matching people who need care with the providers who are able to give it. Fortunately, LB187 is a step to making this happen, and I hope the members of this committee will support it. It's an Appropriations bill. This is one of the most exciting things for me about how this all comes together. Within the next year or two, the Nebraska Dental Association, in collaboration with the Hygiene and the Assistant Association, plans to bring forth a bill that will maximize better use of all the members of the dental team. We're going to do this in a collaborative, proactive way. We're not going to duke it out in front of the Legislature. If we're able to get this passed, what this is going to do is allow people like me to be a lot more efficient and increase my capacity to see Medicaid. The fourth involves a Medicaid program exploring more effective ways of paying for dental care and managing risk. Medicaid doesn't have the expertise, nor does it have the resources, to understand utilization, recruitment, and retention of Medicaid providers. You were asked a question about outreach. There is not a lot of outreach. I can tell you that, as someone being on the side of the provider. And then, finally, in summary, appropriately funding the dental public health clinics in Nebraska is key. And I commend Senator Cook on your bills that

are coming forth because that's an important piece of this pie. The NDA is committed to working with the dental Medicaid program and the Legislature to help improve access to care for all Medicaid recipients. Specifically, in your packet I've included 11 recommendations of how we can start doing this tomorrow that cost very little money. Thanks, and I'll be happy to address any questions you might have. [LB338]

SENATOR CAMPBELL: Thank you, Dr. Meeske. Questions from the senators? I do want the senators to know that Dr. Meeske is a champion for kids and certainly for the dental profession as she sits on the Medicaid Reform Council. [LB338]

JESSICA MEESKE: Thank you. [LB338]

SENATOR CAMPBELL: I've had the pleasure of serving with her, and I do want you to know that, through Senator...or through Dr. Meeske's continued perseverance, we tried on the dental administrator and sent a letter and got turned down flat. So Dr. Meeske is...I wanted you to know how hard she has worked on some of these issues, so. [LB338]

JESSICA MEESKE: Thank you. [LB338]

SENATOR CAMPBELL: Senator Krist. [LB338]

SENATOR KRIST: I'd be happy to bring the fluoride bill back next year if you want to. But I think, sitting on the Governor's board, did you find an opportunity to whisper in his ear about the dental director and a few of those kind of things or no? [LB338]

JESSICA MEESKE: Well, that's what...that will be coming up in a couple weeks. We'll have a hearing, and we're starting to get our ducks in a row to see if we can make that happen. I do want to...if you want the answer to the question that you've been asking the other testifiers, in regards to what is the federal government say about my requirement to see Medicaid, I can answer that. [LB338]

SENATOR CAMPBELL: That would be terrific. [LB338]

JESSICA MEESKE: Okay. I am actually meeting with the OIG in New York in two weeks, and I do a lot on the national level for the dental Medicaid program. So the answer to that is I can turn down any Medicaid patient in my practice as long as it doesn't violate the Civil Rights Act. So I can't turn down somebody if they're HIV positive or, you know, race or religion or something like that. But I do want to say I do limit my practice in the Medicaid that I see, and I do that sometimes by age, by geography, by all kinds of reasons. But sometimes you have to do that in order to get the sickest kids in the door or it just...I don't...it's not my job to see all the kids from North Platte just because someone isn't seeing them in North Platte, so we do limit. [LB338]

SENATOR CAMPBELL: Senator Krist. [LB338]

SENATOR KRIST: So is there also...it seems to me like a few years ago there was a federal regulation that said if you're going to accept Medicare you'd have to accept Medicaid. [LB338]

JESSICA MEESKE: And that may be. And I'm not the person to ask that because Medicare does not pay for dental services, so that would be a question for a nondentist. [LB338]

SENATOR KRIST: Okay. Yeah, I think that's probably the federal regulation as well. [LB338]

JESSICA MEESKE: Yeah, I think you're right. [LB338]

SENATOR KRIST: Thank you very much. [LB338]

SENATOR CAMPBELL: Any other questions? Thank you, Dr. Meeske. Good to see you. [LB338]

JESSICA MEESKE: Yeah, thanks. [LB338]

SENATOR CAMPBELL: Our next proponent. [LB338]

_____: Opponent. [LB338]

SENATOR CAMPBELL: Or, sorry, opponent. Thank you. A little help from the wings here. Our next opponent. [LB338]

ANN FROHMAN: Good afternoon, Madam Chair and members of the Health and Human Services Committee. [LB338]

SENATOR CAMPBELL: Good afternoon. [LB338]

ANN FROHMAN: My name is Ann Frohman. For the record, that's spelled A-n-n F-r-o-h-m-a-n. I'm an attorney and a registered lobbyist, and I'm here today on behalf of the Nebraska Medical Association to testify in opposition to LB338. The challenge with Medicaid expansion is one that the physician community, through the membership at the NMA, have been spending quite a bit of time on. And in grappling with it, this dialogue we're having here today is one of the, you know, topics of their agenda as well. And we had several discussions with the legislative committee at their annual members' meeting about what all of this means. And in looking down to the focus of this bill and

what we're trying to accomplish, the trouble is really in three areas for the practitioners. And the first area is the fact that, in the Medicaid arena, you're working with low reimbursements already. And even with Medicaid expansion, as one physician advised me, he said it may be X dollars, you know, less of our actual cost to provide the services. You multiply that out, and it's still a losing proposition. It's still X dollars. I mean, so the expansion is a challenge in that regard, with respect to Medicaid. The other issue with declining reimbursements or the lower reimbursement level, we recognize that there is some temporary relief under the ACA, that they also saw this and wanted to make sure that Medicaid patients have the wherewithal to go to the physicians that they need to when they need to. And in looking at that, they put an incentive in there for 2013 and 2014. Unfortunately, it is only a two-year component, but that does give us a little bit of time, perhaps, to try to resolve some of the other challenges that we see in this. Two of them exist that we're not sure how you resolve. And I appreciated where Senator Krist was coming from because that's one of the issues, is this uneven allocation. The Nebraska Medical Association canvassed a number of their physician clinics and talked them about this, and indeed there are clinics that have 50 to 60 percent of their capacity filled by Medicaid patients now. Now if they happen to be in a geographic area where Medicaid patients gravitate into their door and they're looking at their mix and saying, hey, we're barely making our margins now, is that the right thing to do, to put more pressure on them? How many is enough? How do they make their margins? And you have to be careful there because now you're playing around with the marketplace. And is there a disincentive to have a physician practice in a certain zip code simply because they know that that attracts, you know, maybe more? They want to provide the services. But with the lower, you know, reimbursement rate and needing the private market to help with that, it's very complex in terms of what this can do to upset that apple cart there. And so that uneven allocation of patients among clinics is one issue that we think we would need some help on and we'd have to figure that out, and I don't see any help here in the bill. The other is hidden costs, and there are a number of hidden costs that are imposed on the medical practitioners in particular with respect to Medicaid patients that folks don't often recognize. And one of them, in particular, is the cost associated with interpreter fees. Interpreters are provided on a regular basis. The practitioners will tell stories of how, you know, they'll need them for a couple of hours on occasion or they'll have to...by the time they set them up, get them there, they may have no-shows. They still eat those costs, and those can be exorbitant costs. And so we need help with the hidden costs, with the capacity issue, in terms of those that are already seeing a large number of Medicaid patients. So if you can help us with those issues, those are the sorts of things that we think impede our ability to really support the idea of going forward with this without resolving a number of issues. [LB338]

SENATOR CAMPBELL: Questions from the senators for Ms. Frohman? Ms. Frohman, I know that you are very well versed on the ACA and have spent a lot of time. One of the issues that the legal counsel and I talked about a lot earlier and...was: Is there a component in the ACA on incentivizing, giving points for certain services or serving

people? Do you...have you heard of that? [LB338]

ANN FROHMAN: I know that, with respect to the temporary reimbursement, you're looking at, you know, family medicine, you're looking at internal medicine, pediatrics, and there's a number of services within there. You know, the scope of services, if it's...it may be embedded in that. [LB338]

SENATOR CAMPBELL: Okay. [LB338]

ANN FROHMAN: But I'm not all that familiar with it. [LB338]

SENATOR CAMPBELL: We just...I think we were just looking at, you know, rather than the stick, you look at how do you incentivize people, and we're trying to figure out if there was such a thing in the ACA. We'll all have to dig in deeper. Just when...I mean, there's, like, pages and pages. It's not that it would be strange that we missed it. But, in any case, I just thought I'd ask you. [LB338]

ANN FROHMAN: Yeah. It might be embedded in that service piece. [LB338]

SENATOR CAMPBELL: Okay. [LB338]

ANN FROHMAN: I am not sure. [LB338]

SENATOR CAMPBELL: Okay, we'll take a look there. Thank you very much. Oh, Senator Crawford, I'm sorry. [LB338]

SENATOR CRAWFORD: Thanks, Senator Campbell. I was just looking through some of the other letters here as well, and one of the concerns that I thought I'd get your reaction to is, I think, the language right now talks about not discriminating against a person who is eligible and whether or not your...you were interpreting that as, you know, an inability to decide about some kind of...decide, if someone came forward, to not be able to deny anyone based on Medicaid, which is a little different than some of our earlier discussion, which was something around a fair share. You know, like, would you think there would be more acceptance if there was a fair share-type of regulation as opposed to a strict not discriminate, which...language that's like in the bill? [LB338]

ANN FROHMAN: I do. I understand that route in terms of these...of administration. But I don't think that that will do well for creating an incentive to want to do more for those that are already at capacity, and it might be a disincentive. It's...the unintended consequences can be worse than what we're trying to accomplish here. If you're looking at a practitioner's clinic that's at 50-60 percent and saying, this is all I can handle, he's going to pause. He's really going to pause and say, hey, what am I doing here, am I going...you know, throw up my hands and go to a different model, sell out to the

hospitals, that sort of things. That's...it's going to create some disintegration, I think, in the market. [LB338]

SENATOR CRAWFORD: So the provider who has been a good player all along and has a 50 percent load, like you said, if it...if we're looking at new people coming in, then they are getting hurt by this, where somebody who hadn't taken Medicaid patients in the past, it's easier for them to take the new patients as they come in, as I understand. So that's that dynamic of being a (inaudible)... [LB338]

ANN FROHMAN: I think that's fair to say, yes. [LB338]

SENATOR CRAWFORD: Thanks. [LB338]

SENATOR CAMPBELL: Any other questions? Thank you, Ms. Frohman. [LB338]

ANN FROHMAN: Thank you. [LB338]

SENATOR CAMPBELL: Any other opposition to the bill? Good afternoon. [LB338]

BRUCE RIEKER: (Exhibit 20) Good afternoon. My name is Bruce Rieker. It's R-i-e-k-e-r. And I am vice president of advocacy for the Nebraska Hospital Association, appearing here in opposition to LB338. And we appreciate the intent of the proposal. And you would think that on its face, as one of the backstops to healthcare where federal law requires hospitals to take patients regardless of the ability to pay in emergency situations, that we may be one of the first to rush to the front and say this would be a great solution. But, as Senator Gloor alluded to in his opening comments about unintended consequences of what may come with expansion, there's also some unintended consequences that we see with LB338. One, you've already talked about some definitions that we would hope to see more clarification, whether that be appropriate ratio, medically necessary. One of the things that I will throw out is that there is an existing methodology for the disproportionate share hospitals that, if they take a higher number of Medicaid patients, there is some payment. It doesn't make those providers whole, but there is some payment to help offset the cost associated with those hospitals that see a higher number of Medicaid patients, and that may be something that we could look at it through this. Part of our concern about LB338 has to do with, and we would hope this would never happen, but the unscrupulous actors that would file claims against various providers that may be with merit or may be not. But it seems that maybe one of the unintended consequences is a very draconian effect of losing one's license to practice based upon if we don't have more definition as to what, exactly, an appropriate ratio is, or discrimination, what medically necessary is, so we'd be looking for more information there. Our overall position is that we think that this issue has merit and that we would urge the committee to make this part of LR22, which delves into this issue deeper, looking at a holistic approach. The redesign of the delivery

system has been identified as the hospital association's number one priority. We survey our members through a very thorough process, and this is the highest priority that they have for us as an association. Given the relatively low reimbursements, you know, we see that as problematic. Right now we're already facing a growing number...or a shortage of primary care physicians and, in essence, one of the consequences of LB338 could make all healthcare providers somewhat indentured servants or employees of the state by saying, you will take these patients and this is what we will pay you. And it may actually work in reverse where we would lose providers that would move to other states. I don't know whether that's what happened in Dallas or not. But when they were forced to do something...you may not be able to find a provider that's willing to live under those consequences. And as things stand right now, we can't blame certain providers for not taking more Medicaid patients or taking Medicaid patients at all. But we've seen a shift in recent years where physicians have said, we're not getting enough from Medicare, we're not getting enough from Medicaid, if you want us to stay in your community you need to make us whole. And that puts more pressure on the hospitals to come up with more money to offset the below-cost reimbursement that is required to keep providers in the area. So, in a nutshell, you know, we would hope that we could engage in a much deeper discussion about this with LR22. There is a lot of recommendations, things that we think could be core issues to study in the written testimony that I've submitted to you, and hopefully that could be part of the framework for where we go in the not-so-distant future, called the interim. [LB338]

SENATOR CAMPBELL: Okay, thank you, Mr. Rieker, for your testimony. Questions from the committee? Okay, seeing none, thanks. [LB338]

BRUCE RIEKER: You're welcome. [LB338]

SENATOR CAMPBELL: Anyone else? If you are planning to testify today, you might want to come to the front, and then you're all ready. [LB338]

DAVID O'DOHERTY: (Exhibit 21) Good afternoon, Senators. [LB338]

SENATOR CAMPBELL: Good afternoon. [LB338]

DAVID O'DOHERTY: Senator Campbell and members of the committee, my name is David O'Doherty, O-'-D-o-h-e-r-t-y. I'm the executive director of Nebraska Dental Association, representing nearly 80 percent of the dentists in the state. And I have no intention of trying to compete with Dr. Meeske's testimony. My main purpose in being in front of you was to discuss this handout that's going around now. It was done by the American Dental Association in 2012. Approximately 10 to 15 years ago, six other states listed--if you go to the bottom of page 3, you can see what those states are: Alabama, Michigan, South Carolina, Tennessee, Virginia, and Washington--all were asking the same question: How do we get more providers? I think this report focuses

mainly on children, but I think their recommendations apply to children and adults since many states don't have adult Medicaid. But, unfortunately, it gets down to provider fees. It's one of the constant results that come from these studies. Administrative burdens is another one, depending on the state and how they administer their Medicaid. But increasing provider fees is always something that will increase provider participation. And in this report it's between 30 and 50 percent. That's a big jump of folks. Dental offices have a much higher cost of doing business, 60 to 65 percent overhead. So if their fees are 40 to 45 percent, they can't make it up in volume. And with the kids coming out of dental school these days with over $200,000 in debt, it'd be tough to ask them to start taking patients without their losing money by taking patients. One thing I was thinking of on the drive down today: There are dentists who don't take certain types of private dental insurance. They still see the patient; they just don't accept the insurance because they don't want to be bound by the fee structure. And the one I'm thinking of specifically was analogized to...they said they're almost as bad as Medicaid fees. It's like, you don't want to be in that ballpark. So they still see the patient and they're able to see the patient. It's just that the patient doesn't get reimbursed from their private insurance. But you can't do that with Medicaid. If you take a Medicaid patient, you have to...you're bound by the Medicaid contract and the fees. That's a big distinction. So, unfortunately, with the high cost of doing business and the low reimbursement fees, there are plenty of providers to see Medicaid patients in the state. It's unusual when you see the reports on which counties have, you know...are tabbed as low-access areas. It's not because there aren't dentists in those counties. They just don't take Medicaid. There's plenty of dentists. Even with our retiring group of dentists we have in the state, there are still plenty of providers in the state. They just aren't...they choose not to accept the patients because of the fee structure, primarily. But I just wanted to give you this report. It's very recent. It summarizes the six states that asked the same question and came up with some recommendations. So I'd be happy to answer any questions. [LB338]

SENATOR CAMPBELL: Any questions from the senators? Bringing solutions is always a good thing. [LB338]

DAVID O'DOHERTY: Yes. Thank you. [LB338]

SENATOR CAMPBELL: Thank you. Any other opposition? Good afternoon. [LB338]

NICK FAUSTMAN: (Exhibit 22) Good afternoon. I'm Nick Faustman with the Nebraska Health Care Association. The Nebraska Health Care Association is the parent association of a family of entities, including the Nebraska Nursing Facility Association, which is NNFA, and the Nebraska Assisted Living Association, which is NALA. Both NNFA and NALA represent nonpropriety in governmental long-term care facilities. NNFA and NALA both oppose LB338. The bill amends the Uniform Credentialing Act and the Health Care Facility Licensure Act to prohibit discrimination against persons

eligible for Medicaid--I'm sorry--eligible for medical assistance or covered by Medicaid by licensed healthcare facilities or licensed healthcare professionals. NNFA and NALA fully understand that the...Senator Gloor introduced this bill as part of a bigger conversation centering on the question of whether the state of Nebraska should expand Medicaid eligibility. However, there are several practical concerns that we have with the bill that would make the proposal inoperable in our complex industry. First, individuals who apply for Medicaid benefits may be termed "Medicaid pending." Medicaid pending means, generally, that the application is complete with the department but has not yet been authorized, that the patient has not been authorized. As introduced, it is not clear whether the bill applies to these individuals. Second, a nursing facility can only be paid by Medicaid if the bed is certified for Medicaid care. Some facilities only certify a certain number of beds for Medicaid. And if the certified beds are full or otherwise occupied, LB338 apparently still requires the facility to take that person because the requirement is a condition of licensure or credential. And third, there is nothing in the bill that would allow a healthcare facility to decline taking a person for the purpose of simply not having the means to care for that individual. Some facilities are not staffed for high-acuity residents, and others do not have the specialty staff available to treat them. If a nursing facility takes a resident for whom the staff is not trained, the resident may be...may not receive the care, and the facility may be opening itself up for liability. We appreciate the conversation regarding Medicaid coverage and what it could mean for our state, but we urge the Health and Human Services Committee to consider the complications that a proposal such as LB338 would present to existing law and to our industry. [LB338]

SENATOR CAMPBELL: Thank you, Mr. Faustman. Any questions from the senators? Seeing none, thanks for coming today. [LB338]

NICK FAUSTMAN: Thank you. [LB338]

SENATOR CAMPBELL: Other testifiers in opposition? Okay, those who wish to testify in a neutral position. Good afternoon. [LB338]

RON JENSEN: Chairwoman Campbell and members of the Health and Human Services Committee, my name is Ron Jensen, R-o-n J-e-n-s-e-n. I'm a registered lobbyist appearing before you this afternoon on behalf of Leading Age Nebraska, which is a statewide organization of nonprofit and government-owned nursing homes, assisted living, and low-income housing facilities. And basically, for information on LB338--I've begun to feel like the great historian around this place--there is, apparently, a little-known and lesser-cared-about statute in the books presently that applies to nursing homes, and it was introduced and sponsored by Senator Ron Withem when he was in the body. And it provides, essentially, that a nursing facility that participates in the Medicaid program, and not all of them do, but those who do may not discharge a resident for reasons of payment, for exhausting their own resources and transferring over to Medicaid, unless 10 percent of the house is...are Medicaid clients. I don't think

our members of the association I represent...I don't think that becomes operative for them, seldom to never, because many of them don't even seem to know about it, and I don't know of instances of homes being sanctioned for it. I think that there...it would be a rare not-for-profit or government-owned facility in the state that has a policy of not admitting Medicaid clients or, more commonly, keeping them after they exhaust their own resources and go over to Medicaid. I just thought the committee might want to be aware of that as they consider this bill. [LB338]

SENATOR CAMPBELL: There's a number of facilities, are there not, Mr. Jensen, that have a spend-down policy? I mean, in terms of, you know, if you have Medicaid beds, you allow someone to come in, but you're...they're spending down their own personal and they soon will be eligible for Medicaid. [LB338]

RON JENSEN: Yeah. [LB338]

SENATOR CAMPBELL: At least I know that was a policy in Lancaster Manor. [LB338]

RON JENSEN: Sure, and it's tricky. I spent eight years on the board of directors of Tabitha here in Lincoln, last year's president. And, candidly, your concern about the proportion of the house that is on Medicaid...because you're shifting some of those costs over to the private-pay residents and you exhaust their resources that much more quickly, and then they move over here. And even if, at that time, we had had a policy of not admitting Medicaid residents--and for a church-based facility, that would be pretty hard to testify--that proportion of the house that was on Medicaid continued to increase. So it's not an easy balancing act, as you know, Senator Campbell, for facilities that do accept Medicaid residents. [LB338]

SENATOR CAMPBELL: Any other questions? Thank you for coming. [LB338]

RON JENSEN: Thank you. You bet. [LB338]

SENATOR CAMPBELL: Always good to have an historian. [LB338]

RON JENSEN: (Laugh) Okay. [LB338]

SENATOR CAMPBELL: Any other testimony in neutral position? Good afternoon. [LB338]

DAN NOVOTNY: Good afternoon. Possibly, I'm the last one you'll have to listen to. (Laugh) [LB338]

SENATOR CAMPBELL: Maybe. [LB338]

DAN NOVOTNY: It's been a long day. Thank you for having me. My name is Dan, D-a-n. My last name is Novotny, N-o-v-o-t-n-y. I'm a licensed clinical social worker from Grand Island, Nebraska. And I was talking to our executive director for the Nebraska Association of Social Workers and, obviously, social workers are all for inclusiveness and all for accessibility. And it's wonderful if we can have more people getting benefits, medical and otherwise. My practice has been mostly with psychiatric patients, adults, and I've been in the business for well over 30 years. Unlike some folks, most of my business was Medicare and Medicaid because I dealt with people with severe mental illnesses. In the last several years, in my estimation, everything that could be done to discourage me from practicing has been done by Medicaid, and so I'm a little reluctant to see someone have to work with that system if they're being discouraged to use it or to practice. Frequently I was told that my services were unnecessary. I suppose this was done to contain costs. I was told that I should find volunteers to see severe mental illness clients because they could adequately meet their needs. The state shouldn't have to pay for a psychologist or a social worker. It's a difficult situation and, you know, one of the things that really caused me upset was when, during the Johanns administration, efforts were made to close regional centers and, of course, Hastings Regional Center was closed. And the offset was that we would have more community-based services. Well, many institutions, many facilities, group homes, and nursing homes took over seeing quite a few people with chronic mental illnesses. And the state was sponsoring these facilities, saying that, you know, we needed them. But now we find out that this was illegal in that Medicaid funds should not have been used to support what is called "institutes for mental diseases." And anybody who has more than 16 beds, any nursing home with more than 16 beds, and if at least 16 of those people are diagnosed as depressed or otherwise have a mental illness, they are not eligible for Medicaid reimbursement, even though those reimbursements had been made. And so many of the people I was seeing were in group homes for mental illness, and many of these group homes had over 16 beds. Now I'm being told that they can go back to 2004, ten years, and collect back payments from doctors, dentists, and anybody who provided these services because these services were not legitimate under federal guidelines. So, yeah, I would love to be able to serve the population. But at the same time, these disparate rules between the federal government and the state and just not knowing how you're going to qualify under different rules, it's been a real nightmare. And I thank you for that consideration. I'd love to be able to supply more services, but at this time, I won't even bill for Medicaid until... [LB338]

SENATOR CAMPBELL: Thank you, Mr.... [LB338]

DAN NOVOTNY: I'd like to see some reform done with behavioral health and Medicaid in Nebraska, to start there before you're mandating providers provide the care. [LB338]

SENATOR CAMPBELL: Thank you, Mr. Novotny. We have had some of the issues you're talking about--the IMD and PRT have been...you know all the acronyms. But,

yeah, we've been...the committee has wrestled with those issues over the last year. And the issue painfully came to us more so in the service of behavioral health for children than adults, but it exists for adults, we understand. [LB338]

DAN NOVOTNY: It does exist for adults, and I know the Legislature has taken up quite a bit of time to try to help repair children's services. But for adults it's been quite a quagmire too. [LB338]

SENATOR CAMPBELL: It's interesting, Mr. Novotny. You're the second person to talk to me this week about holes in the adult system. And so I find that really interesting because everybody thought LB1083 was really going to take care of it. LB1083, Senator Jensen's bill a number of years ago, so. [LB338]

DAN NOVOTNY: Right. [LB338]

SENATOR CAMPBELL: Questions? Senator Krist. [LB338]

SENATOR KRIST: More a comment: Thank you for coming, and thank you for your service and what you've done. I have to say, though, that with all the efforts and Senator Campbell and this committee, I'm convinced that the only way we're going to get Medicaid reform is with a change of administration and a change of director. So hopefully, 2014, it will be a valid issue, and we'll figure out how to reform Medicaid along with starting our jaunt down Medicaid expansion, so. But thank you very much for coming. [LB338]

DAN NOVOTNY: Well, I hope it helps. I know that reform would certainly be a benefit, especially for new people entering the counseling field, whether they're social workers or psychologists or psychiatrists. But right now, as the system exists, I wouldn't recommend any young person having anything to do with Medicaid or Medicare. You're looking for more than just a slap on the wrist. And I know, if you don't have everything just right, they're going to go after you for funds. And it's one way to contain costs, if you can contain how many providers you have. And perhaps you may want to have primary care physicians. But if you don't want to have mental health therapists or you can't afford mental health therapists, I think it's just best to say you can't do it rather than to impose sanctions on people who have tried. [LB338]

SENATOR KRIST: Right. Thank you, sir. [LB338]

DAN NOVOTNY: Thank you. [LB338]

SENATOR CAMPBELL: Any other comments? Thank you, Mr. Novotny. Any others in the hearing room who wish to testify today? Okay, Senator Gloor, I believe we're back to you. [LB338]

SENATOR GLOOR: I want to thank everybody for keeping me engaged enough so that I forgot about coughing for the first time in about three days. (Laugh) As the committee knows, a large portion of this bill was a soapbox, and so I'm very appreciative of the testifiers who took advantage of that, especially Dr. Meeske and Dr. O'Doherty and Mr. Novotny, who drove quite a long ways for this event. So I'm very appreciative of their taking the opportunity to speak on this behalf. You know, the real issue here is that we're...I mean, I'll go back to the unintended consequences. We're offering an invitation for people to join the Medicaid program, sending out invitations for people to join us. And my concern, again, is that they're going to show up for this party and be told, there's no room, or, you're not welcome now, in spite of the invitation. And it's a real issue we have to deal with, and it's a complicated issue. And LR22, I think, starts allowing us to get our hands around it with payment issues, payment rates--a problem for us. We have shortage. We don't have enough trained professionals in a variety of specialties, subspecialities, and modalities to provide care. In fact, here's a story I just heard today that you might find of interest that puts an emphasis on how things have gotten out of control for us. I found out from the head of my local airport that there's an incredible number of boardings that are international people who have international destinations who leave Grand Island or fly into Grand Island from southeast Asia; not from Mexico or Central America or South America, southeast Asia, a surprising number. They're Filipino nurses who are coming in to help fill some of the nursing staffing needs in central Nebraska of institutions. So we're now bringing nurses in from southeast Asia. How badly have we fallen behind that we have staffing needs, work force issues, that we're now turning to southeast Asia, taking work force out of those countries to bring to this country, as opposed to educating our own and building our own? And, you know, Senator Nordquist has LB20, which tries to put some more money back into rural health work force issues, scholarship forgiveness, community partnerships, but it's a small amount of money compared to what we ought to be doing. We have regulatory expenses. And Ms. Frohman did a nice job talking about one example--that's interpreters--that now is an added expense that gets foisted on top of providers. They try and balance all this and still take care of Medicaid patients that we currently have, and now we're going to be looking at even more Medicaid patients. This isn't just an issue that we can blame on one branch of government, as was pointed out by Dr. Meeske, and we dropped the ball in some areas also. And fluoridation was a perfect example of what a huge difference that would make in our public health expenses, and we lack the courage to be able to do it. I got some skin in that game. I've got a tobacco bill, second time up, I know would make a huge difference in Medicaid expense, short term and especially long term. That's a difficult one to stand up to the lobby on, very difficult one. And not to mention the fact that who wants to be in favor of a tax increase? But that's a public health issue that's our responsibility to wrestle with one way or another. I appreciate the committee's patience on this. I think, once again, I really appreciate individuals coming to testify on it because it's a lot different when I climb up on the soapbox and say these same things time and time again. It's different when

others stand up on the soapbox and relay the message from their personal vantage point and perspective. So I think the bill still has merit. And I would say this, and meant to say it in my introductory comments: It's very unlikely somebody would lose their license over this. I think it highly unlikely. I have some experience in this area. It falls under the same category as hospitals that credentialed individuals to practice whatever they practiced in my facility. You were basically stripping somebody of their livelihood. If they weren't credentialed in your facility, and if it, as an example, was a surgeon who that's what they did was surgery that they needed to do in your facility, and you were stripping away their livelihood, you better have a pretty airtight case before that comes to play. And I know that the same thing holds true...obviously there have been times where the department has gone after people's licenses or not issued a relicense for an individual. But it's usually one of those situations where somebody voluntarily surrenders their license rather than the battle that can be both costly, time consuming for the department, as well as costly, time consuming, and an embarrassment for the practitioner themselves. Usually there is dialogue before it gets to the point where somebody's livelihood is threatened, where the chance for somebody to change their ways, get further education, enter rehab, whatever the case may be. I think it highly unlikely, if this bill were to become law, that you would find people actually no longer able to practice because they lose their license. But I think you would see some change in behavior for those folks who might deserve it. And with that, because I am losing my voice, as well as I've covered everything I need to, I'd be glad to answer any final questions. But thank you for your patience. [LB338]

SENATOR CAMPBELL: Any other questions? Senator Crawford. [LB338]

SENATOR CRAWFORD: Thank you, Senator Campbell. Thank you, Senator Gloor. Would you be amenable to a focus that's much more about a fair share as opposed to the sort of discrimination kind of language that's in the bill now? [LB338]

SENATOR GLOOR: Sure. [LB338]

SENATOR CRAWFORD: Thank you. [LB338]

SENATOR CAMPBELL: (See also Exhibits 23-29) Anything else? Okay, we'll close the public hearing. [LB338]

SENATOR GLOOR: Thank you. [LB338]

SENATOR CAMPBELL: We will take a five-minute break. Five minutes. [LB338]