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Transcriber's Office

Health and Human Services Committee  
May 09, 2013

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[CONFIRMATION]

The Committee on Health and Human Services met at 1:00 p.m. on Thursday, May 9, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a gubernatorial appointment. Senators present: Kathy Campbell, Chairperson; Bob Krist, Vice Chairperson; Sue Crawford; Mike Gloor; Sara Howard; and Dan Watermeier. Senators absent: Tanya Cook.

SENATOR CAMPBELL: We will open the official confirmation hearing for Dr. Joseph Acierno, who has been serving as the interim director of the Division of Public Health. Am I saying that right, Dr. Acierno? [CONFIRMATION]

DR. JOSEPH ACIERNO: Right, the director of the division, yeah. [CONFIRMATION]

SENATOR CAMPBELL: And the confirmation hearing is our chance to visit with you a little bit about yourself... [CONFIRMATION]

DR. JOSEPH ACIERNO: Um-hum. [CONFIRMATION]

SENATOR CAMPBELL: ...and what you are looking for in the department...some things that you think that the committee ought to be paying attention to or directions that you want to go. So I'm going to go ahead since I think you know everybody, you've been here before, let you go right ahead with your opening statement. [CONFIRMATION]

DR. JOSEPH ACIERNO: (Exhibits 1 and 2) Great, great. Good afternoon, Senator Campbell and members of the Health and Human Services Committee. I'm Dr. Joseph Acierno, that's J-o-s-e-p-h A-c-i-e-r-n-o. I'm the Chief Medical Officer and Director of the Division of Public Health for the Department of Health and Human Services. I was appointed and started the position on March 8. It's a great time to be in public health. Serving Nebraskans is an honor and a privilege, and I'm excited about the work we're doing to help people live healthier lives. I'd like to share a little bit about my background, and then I'll talk about my vision for the division. Before becoming Director and Chief Medical Officer in March, I had served as Deputy Chief Medical Officer since 2007 and was legal counsel to the department prior to that. I'm a physician and a lawyer. I didn't hand in one degree to get the other. I consider what I do the practice of medicine. I just do it a little bit differently. This combination makes me well-suited for the work I do at HHS, which has both community health and regulatory sides. I received my medical degree and law degree as well as my undergraduate degree from Creighton University. I was an emergency department physician while attending law school and later practiced medical-legal law in Los Angeles and Omaha before joining the department. I've been married to my wife JoAnn for 26 years, actually it will be 26 years on Saturday. She's an associate professor of nursing at Clarkson College. And I have two grown children: Michael, who is an aerospace engineer in Ohio; and Michelle, who is a

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fourth-year veterinary student at the University of Pennsylvania. And we share our home with a 12-year-old Westie named Riley. Actually it's his birthday today, so a lot of events this week. I hit the ground running and spent the last several weeks gaining insight into the breadth of the division and what successes we can continue to build on as we move public health forward in Nebraska. I worked side by side with my predecessor, Dr. Joann Schaefer, for six years. I have the utmost respect for her. She is my colleague, but I'm also proud to call her a friend. She had a mighty vision, and she accomplished much and left a solid foundation. One success is wellness. Wellness is something that affects every Nebraskan. We've worked hard to help create a culture of wellness in the state. We know embracing a healthy lifestyle early on through physical activity, good nutrition, preventive screening, and stress management leads to better health outcomes later in life. Wellness affects all people and also crosses divisions at DHHS, and I look forward to working with my fellow directors. We're all trying to hit the same target, but we're using different arrows to get there. We know the power of one can be strengthened by the power of many. Our goal is to cut across silos, work together to make a collective impact, and change lives for the better. Another area is preparedness. A lot has changed since September 11, 2001. As a state, we're more prepared now than ever before. Every county in Nebraska is covered by a local health department, thanks to LB692, the Nebraska Health Care Funding Act, passed in 2001. Those local health departments played a critical role in response to the H1N1 influenza pandemic. Health officials undertook one of the fastest and largest vaccination campaigns in history, vaccinating more than 475,000 Nebraskans and saving lives. I'm a member of our public health emergency response team, and preparedness planning never stops and will continue to be one of my priorities. Another success to build on is taking advantage of the latest technology to make processes like professional licenses, birth or death certificates, or immunization records electronic; making government more user friendly, more accessible to the people, especially outside of normal working hours. We will continue to look for ways to use technology to make our processes seamless, responsive, and timely. As Chief Medical Officer, by statute, I'm charged with the role of disciplining healthcare providers. My goal is to be consistent and fair with licensees and with the discipline. Nebraskans should be cared for safely and healthcare providers treated fairly, but there must be confidence in the system. Nebraskans should receive safe, effective, quality care; and if there's a problem with a facility or provider, the public can trust we will investigate and remedy the issue based on our findings. When it comes to discipline, licensees should understand what we're doing and why and that all our actions are consistent with the laws. Public health is unique in a sense. Sometimes success can't be measured in what doesn't happen. When you don't hear about us, it's because people have clean air and water, less disease, quality care at safe healthcare facilities, healthy schools, communities and workplaces. We're getting the job done, and that's success in public health. Our successes wouldn't be possible without the work of our employees. I feel extremely fortunate to work with such talented and dedicated staff. I may be the face of public health, but they are truly the heart and soul. I also appreciate your commitment to health of Nebraskans. We've done a good job working together

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over the years on things like scope of practice and licensing new professions. And the division has been a resource for you on community health and general personal health issues. In the months to come, I'll be traveling with my deputies around the state to get input from staff, partners, and the local health departments on what we're doing well, what we can build on; and if we're not doing something well, what we can do to improve it. I'm excited about the work we've already done, what we're doing now, and where the future will take us. Thank you for your time, and I'm happy to answer any questions you may have. [CONFIRMATION]

SENATOR CAMPBELL: Questions? I'll start out with one. [CONFIRMATION]

DR. JOSEPH ACIERNO: Sure. [CONFIRMATION]

SENATOR CAMPBELL: Dr. Acierno, I guess I missed it until I read the information for this hearing that you are also an attorney. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes. I thought most everyone knew that. [CONFIRMATION]

SENATOR CAMPBELL: So here you are... [CONFIRMATION]

DR. JOSEPH ACIERNO: That becomes such a common question I get asked all the time. [CONFIRMATION]

SENATOR CAMPBELL: Here you are a ER doc. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yeah. [CONFIRMATION]

SENATOR CAMPBELL: ...you've done that and then you decide to go to law school. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes. [CONFIRMATION]

SENATOR CAMPBELL: So what was the impetus behind that? [CONFIRMATION]

DR. JOSEPH ACIERNO: That is probably...I've got to tell you, that is probably the most common question I get asked. I think it was something that developed while I was in medicine. I used to hear all the time general discussion about legal issues in medicine. And I always thought it would be kind of neat to have physicians trained as lawyers, and it snowballed. And so, strangely enough, one day I went home and said to my wife, you know, I have this idea and I want to go to law school. And she kind of looked at me, and she said it was fine as long as I graduate sometime before my kids graduate school. So it was an interest that developed. And so while I was in the ER, I would actually have my law books with me. Between patients I'd be reading contracts and things like that.

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So I was a full-time law student, and I'd be working in the ER in the evenings and weekends. It was just an interest. I don't regret it. It's very interesting to be part of two professions that don't seem to like each other very much. But it comes in really handy in this role because I've been on the regulatory side for a number of years. So I've had really the privilege to deal in legal analysis over the years. So it's just something that developed and kind of the rest is history. I had an incredibly supportive family--mother, father and wife--who were willing to put up with all these years of school so I'm grateful for that. [CONFIRMATION]

SENATOR CAMPBELL: Thank you. Senator Howard. [CONFIRMATION]

SENATOR HOWARD: Thank you, Dr. Acierno. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes. [CONFIRMATION]

SENATOR HOWARD: Given your history working at DHHS and your love of data... [CONFIRMATION]

DR. JOSEPH ACIERNO: Oh, yeah. [CONFIRMATION]

SENATOR HOWARD: ...that I believe we share,... [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes. [CONFIRMATION]

SENATOR HOWARD: ...what do you think are some of the health issues that we need to be looking at as a Legislature and for the future? [CONFIRMATION]

DR. JOSEPH ACIERNO: I'm not sure how it...overall, I think where some of the trending is going, I think the world is kind of shrinking because of the way data is going. We're getting better snapshots of what's going on across the country and around the world of what's going on. And I think what you're going to continue to see is in the preventive world of medicine. That's where it's going to be. We're going to see through syndromic surveillance issues like that where we're going to understand admissions to hospitals, who is being admitted, what type of heart problems they have--we use that as an example because that's always a pretty good one--cardiovascular disease, we're going to be able to take a look at it almost in real-time one day. And I think those are going to be the issues. It's going to be preventive medicine more than anything else. Really on the whole, and when you look at so many of our health promotion programs, life span health, really our role is about preventive parts of medicine. We're not really out there caring for people per se with problems. We're trying to educate people. We're trying to stop problems before they get going. And that's, I really think, where public health is going to go. I think public health, though, is challenged at the message. It always has been and always will be, and I think that's nationally. Most people don't understand

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public health. They don't know what we do. I find in this state when I speak to people and I tell them...I ask the question, when is the last time you dealt with public health, it's kind of a trick question; but the point being made is someone will say, well, I got a birth certificate. I tell them, no, you've been drinking water today. Public health regulates drinking water in this state. Clean Indoor Air Act, we regulate it. So from everything from environmental to the hospital you may have gone to earlier that day, we do the licensing end of it. But in its totality, though, I think probably those are the biggest health issues, you know, we're going to be dealing with is preventive. The closest one on the horizon right now that we're dealing with is H7N9, which I'm sure all of you have heard about, not that we're panicking about that, but we're watching that. And I think we're prepared as a division and as an agency should that kind of rear its ugly head. So I hope that answers your question. [CONFIRMATION]

SENATOR HOWARD: Thank you. [CONFIRMATION]

SENATOR CAMPBELL: Senator Gloor. [CONFIRMATION]

SENATOR GLOOR: Thank you, Senator Campbell. Dr. Acierno, we've got...in the department we've got...you've made reference to I think all of these components at one time or the other, but we've got licensure, we have Medicaid, we have public health mixed in with that, we have child welfare, we have all these different components. And you can say that public health is all part and parcel of that, but there also is a traditional issue of public health, as you point out, with water, fluoridation... [CONFIRMATION]

DR. JOSEPH ACIERNO: Right, yes. [CONFIRMATION]

SENATOR GLOOR: ...immunization, syndromic surveillance, all of that. [CONFIRMATION]

DR. JOSEPH ACIERNO: Right. [CONFIRMATION]

SENATOR GLOOR: And I would tell you that I'm worried, especially with the Affordable Care Act, and all the attention that and energy that's going to be drawn into Medicaid and reform in that capacity that this role of bringing all these things together under one umbrella, we may have outgrown that. And our span of control may be too broad now, and we ought to go back and look at whether there should be a separation from the regulatory Medicaid standpoint into those things that are more traditional public health. Any thoughts on that? [CONFIRMATION]

DR. JOSEPH ACIERNO: Right. I think that is interesting. I think we are going to see it evolved under the Affordable Care Act because I think certain roles that may have been assumed by public health will go in different directions. If you're asking about the challenges of being a regulator and being involved with the other divisions, you know,

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that has its challenges, obviously, when you regulate your sister divisions at times...though we also with Medicaid we're actually a partner with them since we're the state survey agency so we're working in concert with them in tandem. So I do think some of the things you're saying are true. I think there are going to be some challenges of how public health, whether it's in this state or anywhere else, how it will morph over time as some of these other areas may expand. But I think we're all living and learning together of what's going to be happening with the Affordable Care Act. Because if you look at it in its totality, there was a fair amount of money that was put into preventive medicine in public health, but then the next time you read where money might be coming out of and depending on what's going on in Washington. So I think that's...I think there are other challenges with that. I don't know what you mean, though, by separating it, what you mean is a vision. I'm not quite sure what... [CONFIRMATION]

SENATOR GLOOR: Taking a look at the different divisions and breaking them up in ways that may make more sense looking 10 to 15 years down the future. Having a medical director, as an example,... [CONFIRMATION]

DR. JOSEPH ACIERNO: Yeah. [CONFIRMATION]

SENATOR GLOOR: ...who has specific public health responsibilities... [CONFIRMATION]

DR. JOSEPH ACIERNO: Right. [CONFIRMATION]

SENATOR GLOOR: ...as opposed to a broader span when it comes to Medicaid, licensure, and some of the other pieces. [CONFIRMATION]

DR. JOSEPH ACIERNO: And I understand that. I think it's something that may need to be visited down the line, I think, as we see how it goes. It is broad because public health is programmatic in so many ways, but then it does have the regulatory side. But I think they can continue to work together, but I don't know where the divisions may be made financially as funding goes and as programs disappear and other ones kind of morph together. So I kind of understand where you're going with that. I wish I had a crystal ball to know how the story ends. But in the meantime, I think we will continue to move the division to work with our sister divisions; and where we have common goals, we will continue to do that because we really do. When I say we have different arrows, if I look at Behavioral Health, how they may look at something in Children and Family Services; we're all trying to get to the same health outcome. Whether you're dealing with children or you're dealing with folks that may come under Behavioral Health, ultimately in public health the better they do, the better the public health outcome is going to be. Public health is about...what's I think difficult to understand sometimes, it's not like going and getting your appendix out because, you know, you have a hot appendix and within 24 hours it's out and you're feeling better. Public health really is measured in generational

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changes; so it takes many, many years to really see something that can happen. We've seen that in smoking cessation and things like that. So I understand where you're going with it, and it may need to be visited down the line, I would agree. [CONFIRMATION]

SENATOR CAMPBELL: Senator Krist. [CONFIRMATION]

SENATOR KRIST: Two questions. One of them comes from my concern that my perception in the years that I've been here is the Department of Health and Human Services occasionally doesn't want to visit us during hearings, doesn't want to talk to specific issues, even though they are the experts at some of the areas. And that goes for other cabinet agencies across the board. What will be your attitude once you see what is now a bill delivery system, those that are in the hopper? If you haven't been consulted on them, how are you going to weigh in on them and are you going to participate in the legislative process? [CONFIRMATION]

DR. JOSEPH ACIERNO: Well, I would...I'd like to participate in the legislative process. I think I have over the years as to what I can. But I don't know that every issue; I think we can be a resource for information, but I don't know that every issue that may be in front of you is something that we may not have a strong opinion on one way or another. But I would like to be a resource to you, but obviously there will be...I need to obviously look at issues and determine where I think it's important we get into the discussion or where we don't get into the discussion. And I guess we go case by case on that. But obviously it's...and as we look at policy on anything, it's where we want to be, how we want to look at that issue. I don't look at it as I'm trying to avoid working with you. I don't look at it that way. I look at it as it's issue specific and how we feel about moving it forward. I know we've been working on a couple of issues together, and hopefully those have been positive for you. My goal is not to hide the ball. It is here's the resource, here's what I am. I've spoken to various senators regarding this and folks that I've work with. I think I'm up-front about those issues, but I don't think every bill necessarily do we need to be part of it. But obviously if somebody was to call and say, hey, could you give us some background or some information or statistics on something; we have that data; we should and will provide it to you. But I don't know whether we're going to have an opinion on everything. [CONFIRMATION]

SENATOR KRIST: So you're suggesting that probably a compromise in that area might be that when we see things come up and we need that kind of expert testimony that we have the committee staff forward those questions specifically to you for your participation. [CONFIRMATION]

DR. JOSEPH ACIERNO: Sure, sure. And I think we're doing that on many issues as it is right now. We get routinely from, whether it's from this committee, maybe somebody else who gives us a call, one of your fellow senators who gives a call or sends an e-mail and says, hey, how do you, what's...tell us a little bit about this issue. And if we can sit

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down and talk about it...I'm not a lover of e-mail, but it's a good way to get a hold of me, just so much of it. [CONFIRMATION]

SENATOR KRIST: Well, the purpose of the question is because this is your confirmation hearing I want to hear what the policy is going to be under your control. So it doesn't sound... [CONFIRMATION]

DR. JOSEPH ACIERNO: Yeah. [CONFIRMATION]

SENATOR KRIST: ...like it's going to be any different than it's been. And so I would encourage you to continue doing what Joann did in terms of responding to our requests. [CONFIRMATION]

DR. JOSEPH ACIERNO: Right. And that's, working with her, that's what we always did. And I don't see any reason that that is going to change. We do have expertise in various things, whether it's from public water to life span health, and we're here to help you use those resources to get the information you need. So I don't have...I think...I have no intention of changing the course of what we've been doing over the last years, so. [CONFIRMATION]

SENATOR CAMPBELL: Senator Crawford. [CONFIRMATION]

SENATOR CRAWFORD: Thank you, Senator Campbell; and thank you. I wonder if you might speak briefly to your philosophy or vision in terms of scope of practice issues and what you may see coming in the future as we have changes in technology and more telehealth that might cross state lines, those kinds of things. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yeah. Right. I think overall telehealth is going to get bigger. It's just a matter of how we're going to...how the oversight is going to work with telehealth. And I think we're already looking at regulatory changes. I think it's inevitable. But we also have to be sure that who's on the other end of these devices are competent and that they're looking at the best interest of the patient. In...what you find out in all practice issues, as the law goes, the law always lags a little bit behind some of the practice. So we have to be diligent to move it forward. Where do I see practice issues going? I don't have a crystal ball to know who might be doing...want to do what. But I don't think the goal is to...I think we have to be careful not to just keep overregulating everybody. I'm not sure there's a value to just bringing in more people and regulating them. There must be a purpose to regulating people. Just to give them a piece of paper to say you're regulated, I don't see a point in that. There must be a safety issue involved. There must be some public protection issue. And that's why we have the 407 process. So we may see various professions come through, and I think we have some 407s that you will be seeing in the next many months, but groups coming forward. I think you're well familiar with many of the groups that have come forward, whether it be

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in the nursing community, the dental community. We may see more of those. So I think where it's going to go, as we see with many of the professions at this point, it's...we see nurses doing more than maybe we thought they would be doing 30 years ago. And that isn't wrong. It's the evolution of the scope of practice and it's the...but with that evolution comes responsibility. And it's appropriate oversight over that responsibility. So I think we're open-minded to the evolution of those professions, and I think we're going to continue to see it. So...but telehealth I think is very interesting. And like I said, I think we're well aware of that issue. It's just a matter of how we can keep people practicing safely. And that's been our goal in everything we do. If we have practitioners who may be located somewhere, they need to be licensed here in this state. And we just can't have people just willy-nilly taking care of patients over the Internet or whatever it might be. It's just not going to work. It's not safe practice. So as far as what I'm hearing of other professions coming forward, I haven't heard anything specifically. They don't necessarily share that with me. It ends up in the 407, and then I get to see it after that. As a matter of fact, sometimes you guys hear about it first because they introduce a bill and then we're finding out about it. [CONFIRMATION]

SENATOR CRAWFORD: Right. [CONFIRMATION]

DR. JOSEPH ACIERNO: So I don't have a crystal ball on that. But I think as long as all of us are in this room and for years to come there will always be the continued evolution of practice. But by no means do I believe that everyone out there needs to be regulated. It just depends on what they're doing. We regulate so many people as it is right now. I'm not against regulating people, but it must have purpose. I'm just not into giving people a piece of paper for the sake of saying they're regulated by the state. [CONFIRMATION]

SENATOR CAMPBELL: Other questions from the senators? No other questions? Dr. Acierno, I think that certainly you've appeared a number of times in front of us so we're probably as familiar with you as some of the director confirmations that we've had because you've been here with us. [CONFIRMATION]

DR. JOSEPH ACIERNO: Sure. [CONFIRMATION]

SENATOR CAMPBELL: And I would concur with your comments to Senator Krist. It's very helpful when we do get the data and the expertise and sometimes when we ask, the good advice, because we're not the professional in these fields. And as much knowing that we have someone on the other end of the phone that will say, you're seeking my advice or you're seeking as you look as a professional I think can be very helpful to us. [CONFIRMATION]

DR. JOSEPH ACIERNO: And sometimes, and maybe it seems as we go back and forth maybe with counsel on some of these things because the question will come over and we may send questions back, please don't interpret that as we're trying to obstruct.

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Sometimes we're trying to drill down because we may know more about it and say, what is it you really want to know from us? You're giving us such a big, broad picture that maybe it just doesn't make sense to us. So sometimes we'll have the back and forth, but it isn't for the sake of obstructing what you want to know. Sometimes we just want to make sure you get the answer you're seeking without too much stuff around it.

[CONFIRMATION]

SENATOR CAMPBELL: Because I think this committee has, certainly, when we've discussed bill this year; I have a sense from the committee that we fully know that the practice of a lot of professionals across the state is going to change, and not just because of the ACA... [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes, that is correct. [CONFIRMATION]

SENATOR CAMPBELL: ...but there's a change in the whole health field.  
[CONFIRMATION]

DR. JOSEPH ACIERNO: I agree with that completely. [CONFIRMATION]

SENATOR CAMPBELL: And how we best align the resources and the technology and the statutes to get us there, we're going to need some really good advice.  
[CONFIRMATION]

DR. JOSEPH ACIERNO: Right. Well, and that's why I feel fortunate with my legal background. It kind of helps to kind of look at some of these things. I agree--the evolution will continue. It's just the nature of medicine. And having a wife who's a nurse, we talk about nursing quite a bit and in the span of her career how much nursing has changed from, you know, nurses were...I would say that they were looked at differently. Now they're becoming more...they're more of a partner in the practice of medicine. They're looked at differently. They're in so many different parts of medicine. Now this is all good. So I'm not afraid of change. It's just a matter of as we move it along, we just all need to be comfortable, whether it's us or you as the Legislature that's passing the laws, with scope of practice issues that you feel comfortable that we actually have a safe environment and safe practices so there is confidence in our system that people aren't being hurt. [CONFIRMATION]

SENATOR CAMPBELL: If there are no other questions, we'll close the hearing. And, Dr. Acierno, we'll have probably an Exec either tomorrow or Monday. [CONFIRMATION]

DR. JOSEPH ACIERNO: That's fine. [CONFIRMATION]

SENATOR CAMPBELL: And then it would go to the floor so. [CONFIRMATION]

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DR. JOSEPH ACIERNO: That's fine. You know where I'm at (laugh). [CONFIRMATION]

SENATOR CAMPBELL: We certainly do. So thank you very much... [CONFIRMATION]

DR. JOSEPH ACIERNO: Thank you so much. [CONFIRMATION]

SENATOR CAMPBELL: ...and you can enjoy the birthday with Westie.  
[CONFIRMATION]

SENATOR CRAWFORD: Yes, yes. [CONFIRMATION]

DR. JOSEPH ACIERNO: With my little Westie, Riley, yes. [CONFIRMATION]

SENATOR CAMPBELL: Riley the Westie. [CONFIRMATION]

DR. JOSEPH ACIERNO: Yes, I will. I'm just glad he's around still after 12 years so.  
[CONFIRMATION]

SENATOR CAMPBELL: Yeah, that's amazing. [CONFIRMATION]