Banking, Commerce and Insurance Committee
February 09, 2016

[LB706 LB794 LB801 LB817 LB1036 LB1060]

The Committee on Banking, Commerce and Insurance met at 9:00 am. on Tuesday, February 9, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB794, LB817, and LB1036. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Nicole Fox; Mike Gloor; Brett Lindstrom; and Paul Schumacher. Senators absent: none.

SENATOR SCHEER: Ladies and gentlemen, this is the Banking, Commerce and Insurance Committee. My name is Jim Scheer. I'm from Norfolk and represent the 19th District. I'll serve as Chair of the committee this year. The committee will take up the bills in the order as posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. Caveat: There will be coming some different terms that we'll have today in reference to the length that we'll be able to spend on bills. To better facilitate today's hearing I would ask for a few conveniences on your part. Please turn your phones to either silence or vibrate so that it does not interrupt the testimony. If you are going to be testifying, if you could move up into the front area in the chairs so that we know...we don't spend time moving around rather than testifying. Testifiers, you will need to sign in. There are these pink sheets in the back. If you're going to testify you need to fill one of these pink sheets out and give it to Jan before you testify. Jan is to your far right, the committee clerk. When you do testify, if the first thing you could do is, please, say your name and spell it for the record so that the transcribers have that correct. I will ask you to be concise. We are going to be on a three-minute clock this morning, not a five-minute. So if you were thinking five, guess what? You need to abbreviate so now you've got time to start cutting your testimony because we will be three minutes. The green light will be on for two minutes; the yellow light will be on for one minute; the red light signals your time is up and normally I may just coax you; today I will just stop you. So we are going to be moving...try to move through in a very efficient manner. If you're testifying, please make sure that you're speaking into the microphone and I would ask the committee members to do the same as well. There are sign-in sheets in the back, white sheets, that if you are not going to testify, but you'd like to be on record in relationship to one of the bills either for or against, you can sign in and notate that and that becomes part of the record as well. If you have handouts we will need 10 copies of that for the committee. If you do not have 10 copies one of the pages will be glad to take care of that for you. Just make sure that you get that to them before. It's always nice to have your information when you are testifying. I would ask that the committee members introduce themselves. We'll shift up and we'll start with Senator Gloor.

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

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson County, Custer County, and the north part of Buffalo County.

SENATOR FOX: Nicole Fox, District 7, downtown and south Omaha.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Platte and parts of Stanton and Colfax Counties.

SENATOR SCHEER: Our committee clerk is Bill Marienau to my right and...committee counsel. Our committee clerk is Jan Foster to my far left or your right. Our pages this morning I believe are Jake and...okay...all right. And in the...try to make sure that the bills have adequate time--well, they won't have adequate time--but we are on a time frame. Senator Harr, do you know approximately how many people you might have testifying?

SENATOR HARR: I think just one.

SENATOR SCHEER: Okay. If that's the case, we will run Senator Harr's bill no later than 9:30. It can start earlier than that, but we will not run past 9:30 on yours. Senator Riepe's bill will run from 9:30 to 10:30, 10:35, and I will allow the senators a five-minute close. We are putting a time limit on that today so, Senator Riepe, you have a five-minute close so your hearing will end at 10:35, meaning no more testifiers after 10:30. And we will open Senator Campbell's bill at approximately 10:40 and we will close that at noon, meaning Senator Campbell's close will be at 10:55 (sic: 11:55) and we'll be finished at 11:00 (sic: 12:00). Having said that, there will be some of you that probably will not get to testify. If you are wanting to testify and if you want to be on record in the committee report, if you turn in your written testimony to Jan we will read it into the record as testimony and it will show up in the committee report today. Not Senator Harr's, because it doesn't appear that there will be a problem. Any of the other bills, the other two bills this morning we are going to alternate. So instead of having all proponents then all opponents and then neutral, we will be shifting from proponent to opponent to neutral in that classification. If we run out of proponents or opponents or neutral people, then they will just shift. And we will continue to do that to try to give everybody equal access to the microphone. Having said that, I hope I've made myself clear. If not, I'll correct myself later on because sometimes I do make mistakes--although I don't admit them--but I will say that sometimes that happens. So with that, not to use any more time, Senator Harr, you're welcome to open.

SENATOR HARR: Chairman Scheer, members of the Banking, Commerce and Insurance Committee, my name is Burke Harr, H-a-r-r, and I represent Legislative District 8 in greater Omaha. In 2014, I introduced LB794, which revised and updated the Nebraska Model Business Corporation Act and the legislation passed that same year with an original operative date of January 1, 2016. Last session the Legislature passed LB157, introduced by Senator John McCollister, to delay the act's operative date to January 1, 2017, to allow for additional comments regarding clean-up revisions. I subsequently introduced interim study LR263 and worked with Banking, Commerce and Insurance's wonderful legal counsel, Mr. Bill Marienau. LB794 before you is the product of the interim study and contains changes recommended working with attorneys, businesses, Mr. Marienau, and the Nebraska Bar Association. In brief, among the technical changes the major technical changes are: returns former language which allows shareholders of a corporation organized before 1996 to continue to have a preemptive right to acquire the corporation on issued shares if the articles of incorporation did not expressly eliminate such preemptive rights; it allows for a corporation to amend the articles of incorporation without a meeting, but with written consent of the shareholders provide the use of written consent to the elected directors is unanimous; and it returns former sections regarding former corporations in lieu of obtaining a certificate of authority from Nebraska to file with the Secretary of State to become a body corporate of Nebraska as a foreign domesticated corporation and the benefits that come with that. With that, given the shortness of the hearings today I will end and entertain any questions you may have. [LB794]

SENATOR SCHEER: Thank you for your brevity, Senator Harr, that's wonderful. Any questions? Seeing none,are you staying to close? [LB794]

SENATOR HARR: Yes, I will. Thank you. [LB794]

SENATOR SCHEER: Okay, we will now entertain proponents for LB794. Welcome. [LB794]

DENNIS FOGLAND: Thank you, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. My name is Dennis Fogland, spelled D-e-n-n-i-s F-o-g-l-a-n-d. I am Chair of the Nebraska State Bar Association, Business Law Section and I am here today to speak on behalf of the Nebraska State Bar Association in favor of LB794 relating to changes in the Model Business Corporation Act. As Senator Harr indicated, the Nebraska Business Corporation Act was originally to have an effective date of January 1, 2016. By legislation last year, that was moved back to January 1 of 2017 to give the State Bar Association and the Business and Corporate Law Sections an opportunity to review the act to see if there are any recommended changes before it became effective. The result or the provisions of LB794 are the results of that. The act was reviewed by the Business Law Section, the Corporate Law Section and we solicited comments from our Business Law Section which has over 300 members throughout the state of

Nebraska. We also worked with Bill Marienau, Senior Legal Counsel to the committee and Mr. Marienau has done a superb job of incorporating into and drafting the legislation that's in LB794 to respond to the comments that we have made. The fundamental principles in our review were: One, to keep current with the ABA Model Business Corporation Act, which is being updated on a regular basis; and then two, and this is most important on LB794, to keep consistency in Nebraska Model Corporation Act with the historical provisions of Nebraska's Business Corporation Acts. In certain cases, Nebraska statutory corporate law has provisions which are unique to Nebraska and LB794 incorporates and continues those provisions consistent with our corporation act history. Briefly summarized, the four substantive provisions in the act, and these were hit upon by Senator Harr: The Nebraska Constitution provides for a constitutional right to cumulative voting for directors of Nebraska corporations, this is unique to Nebraska, and certain changes were made to the ABA Model Act which are incorporated in LB794 to keep consistency with the constitution. As Senator Harr indicated, the law for preemptive rights for Nebraska corporations has always had certain provisions for corporations incorporated before January 1, 1996, grandfathering rights, and we have incorporated those to keep those consistent with which is what has been the law. Since 1985, Nebraska corporation law has carved out certain appraisal rights for Nebraska financial institutions and LB794 keeps those provisions in line and consistent with the prior law. And then finally, certain domestication procedures that are unique to Nebraska have been added into this, again, to keep consistency with the historical law. Because these provisions are important before the act becomes effective, we strongly urge the adoption of these this year. I'll take any questions the committee may have. [LB794]

SENATOR SCHEER: Thank you. Did you get finished because... [LB794]

DENNIS FOGLAND: That's fine, yes. [LB794]

SENATOR SCHEER: Okay. Questions? Senator Schumacher. [LB794]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony today. The very nature of a model act is that a lot of states adopt virtually the same thing and that has some advantages. But we're in a world of competitiveness and right now we focus maybe too much on how our tax rates are competitive. Has the bar ever looked at this particular issue in corporate governance acts in a way that we could break with the model acts and have a corporate act that is more business friendly, that is advantageous to operate under, and use that as an argument for businesses to (inaudible) here? [LB794]

DENNIS FOGLAND: Senator Schumacher, I think that the...certainly in this particular legislation we did not do that. Our consistence...our approach was...and say really to look at a historical practice. Nebraska has followed the...some version of the Model Business Corporation

Act for decades and so we wanted to keep consistency with the historical practice of Nebraska. And so in that sense all of these changes do not follow the model act and we are following things that Nebraska has done differently than the model act for various reasons over the years. In answer to your question about have we looked at that, as a corporate law practitioner I think there is...the advantages of following model acts outweigh the disadvantages. We don't have a lot of case law in Nebraska and so when you're faced with a particular interpretation of some statute and if you're following the model act, first you have not all 50, but a vast majority of the states who have also followed it, you can just look to those cases and have identical language that are interpreted by courts that gives you something to rely on. [LB794]

SENATOR SCHUMACHER: Thank you. [LB794]

SENATOR SCHEER: Other questions? Thank you very much, appreciate your testimony. [LB794]

DENNIS FOGLAND: Thank you. [LB794]

SENATOR SCHEER: Next proponent. Welcome, Mr. Hallstrom. [LB794]

ROBERT HALLSTROM: (Exhibit 1) Thank you, Senator Scheer. Chairman Scheer, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB794. The primary interest of the NBA relates to section 10 of the bill, which addresses the issue of shareholders' right to dissent being inapplicable to shareholders of specified financial institutions or their holding companies. These provisions were inadvertently omitted when Nebraska adopted the Model Business Corporation Act version in 2014. These provisions relate all the way back to the mid-80s when there were troubled economic times and unfortunately a number of banks failed. The original legislation or the exception to the shareholders' right to dissent was grounded in the fact that it facilitates a voluntary merger of banks rather than having to have them fail, at which time they're not going to be worth much at all as a continuing operation. So with that, we would encourage the committee to advance the bill for passage this session. Be happy to address any questions. [LB794]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you. [LB794]

ROBERT HALLSTROM: Thank you. [LB794]

SENATOR SCHEER: Good morning. [LB794]

RON SEDLACEK: Good morning, Senators. My name is Ron Sedlacek, that's R-o-n S-e-d-l-a-c-e-k, I'm here on behalf of Nebraska Chamber of Commerce and Industry. And to save committee a bit of time, I just want to say that the Nebraska Chamber of Commerce is supportive of the legislation and I'd be happy to answer any questions. [LB794]

SENATOR SCHEER: Thank you, Ron. Any questions? Seeing none, appreciate the brevity. [LB794]

RON SEDLACEK: Thank you. [LB794]

SENATOR SCHEER: Any other proponents to LB794? Any wishing to speak in opposition to (LB)794? Any wishing to speak in a neutral capacity to (LB)794? Seeing none, Senator Harr, you're welcome to close. Senator Harr waives closing and that will end the hearing on (LB)794. We will now move to LB817. Senator Riepe, you're welcome to open. [LB794 LB817]

SENATOR RIEPE: (Exhibits 1-7) Chairman Scheer, members of the Banking, Commerce and Insurance Committee, I am Merv Riepe, it's M-e-r-v, and the last name is Riepe, it's R-i-e-p-e. I represent Legislative District 12, which is Omaha, Millard, and Ralston. LB817, direct primary care is a healthcare reform bill and my priority for this session. Fee for service healthcare is not working in the United States and that includes Nebraska. Healthcare reform is needed before it consumes even more of the gross domestic product. The key to bending the healthcare cost curve is to refocus on primary care. President Obama said, in 2000, to the Senate Democrats that: Absent cost controls and reform, we can't simply put more people into a broken system that doesn't work. A fix is needed for Medicaid, Medicare, and all of healthcare. One part of the fix for healthcare delivery is direct primary care, which is a contract between a patient and a practitioner where the patient pays a retainer fee--monthly is common--for primary care services. The retainer fee is similar to the price of a standard utility bill. The practitioner generally provides unlimited office visits and an annual physical. Practitioners include general practice, family medicine, internal medicine, and pediatrics. Nurse practitioners are included since the passage of LB107 last session. Direct primary care has been likened to automobile insurance, coverage for what one cannot afford to lose, but not for day-to-day maintenance costs. Patients are encouraged to purchase a catastrophic health plan that meets the current federal requirements. The health plan would cover those things one cannot afford to lose, mainly hospitalizations and specialists. There are 13 states with direct primary care legislation and 9 additional states that have introduced legislation this session. We obtained the direct primary care statutory language of all 13 states and created what we believe is the best practices that will meet the needs of Nebraskans. The need for legislation is to guarantee in statute that direct primary care is not insurance and, therefore, exempt from the insurance code. Legislation is needed to ensure direct primary care's viability does not rest with the opinion of one state

director of insurance who may change from time to time. The Department of Insurance has submitted a letter of support of the legislation stating, and I quote: "LB817 will be very helpful in providing the department with clear legislative guidance as to what is insurance and what is not insurance and provides the needed clarity to the Department of Insurance in this area." In July of 2015, I issued a press release stating my intention to introduce enabling direct primary care legislation this session. The early announcement was to engage as many stakeholders to weigh in on the enabling legislation. As you all know, with both a rural and urban population in Nebraska, one size does not fit all. We have spoken with numerous and varied stakeholders of healthcare in Nebraska including: representatives of medicine, nursing, hospitals, insurance, chambers of commerce, farmers, ranchers, legislators, and many others. Some of the benefits of direct primary care include a free-market option in healthcare. Practitioners are happier through a better work-life balance and there is a greater connection with patients. Practitioners are getting back to the way they thought they were going to practice medicine. In an exclusive direct primary care practice there is no insurance to bill. Direct primary care motivates practitioners from retiring early out of frustration and realizes primary care as the focus. Direct primary care encourages medical students, residents, and others to become primary care practitioners. Another benefit of direct primary care includes happier patients. There is a focus on preventive, monitoring chronic conditions, and creating a strong and trusting patient-practice relationship. Direct primary care offers better health outcomes. A direct primary care provider in Washington State called Qliance reported reductions of 14 percent in ER visits; 14 percent reduction in specialist visits; 60 percent reduction in in-patient stays for an average savings of almost 20 percent per patient enrolled in direct primary care practice. Critics may say direct primary care will result in fewer practitioners available to the public due to reduced panel sizes. This is especially concerning given the shortage of primary care practitioners in Nebraska. That said, practitioners are not indentured servants and may elect to retire earlier than desired because the bureaucracy of medicine has proven too many challenges. Panel size may, but not necessarily, be smaller, but if direct primary care practitioners are able to improve their work-life balance, the net gain could be more practitioners available to serve for additional years. Nebraska direct primary care may appeal to farmers, ranchers, employers, especially small businesses, individuals, and labor groups, as all are being asked to pay more of the cost of healthcare. In New Jersey, this year they are moving forward with a voluntary direct primary care pilot program for state employees, including firefighters and teachers. The pilot program is supported by the AFL-CIO and the state teacher's union. In Washington State, Qliance partnered with Expedia, the online travel company, to allow 2,000 employees to enroll in direct primary care with a new clinic within the Expedia building. Direct primary care is not an all-or-nothing proposition for the practitioner. A practitioner may have a hybrid practice, a practice that includes direct primary care patients, Medicare, Medicaid, commercial, and uninsured. In Nebraska where some rural communities may have one physician, it is not our intent to exclude Medicare patients or others from the practitioner. The 2016 legislation does not mandate primary care in Nebraska. The legislation will establish direct primary care in statute to ensure its long-

term viability and provide consumer protection language. The legislation will also allow the Nebraska Director of Medicaid to contract with direct primary care providers, but does not mandate such action. In fact, Centene, which was just awarded one of the Nebraska managed-care organization Medicaid contracts, was instrumental in bringing direct primary care to Medicaid in Washington State. The legislation will seek to avoid mandates, minimize regulation, and has, and I repeat, has no fiscal impact to the state; no fiscal note. There is a great group of testifiers here to support direct primary care this morning, as well as numerous letters received in support of this legislation. I especially want to highlight that Dr. Clint Flanagan is here from Longmont, Colorado, and is a practicing direct primary care practitioner. I understand, with the time restraints, all of the testifiers in support of direct primary care may not have the opportunity to testify today. I gladly will answer any questions that the committee may have, however, I request to answer any questions at closing to afford the testifiers the opportunity to speak. I also have a few letters I would like to introduce as exhibits and I will pass those to be shared. Thank you. [LB817]

SENATOR SCHEER: Okay. Any questions for Senator Riepe? Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Senator Scheer. Would you prefer we not ask questions? Is that what I heard, Senator Riepe? [LB817]

SENATOR RIEPE: Your pleasure. I just thought it might give them a chance, in the interest of time, but... [LB817]

SENATOR GLOOR: I'll be brief then, Senator Riepe. First of all, thank you for bringing this bill forward. I was trying to read in the bill if there were any provisions or any specificity when it comes to payment. In other words, is that up to the individual practice to decide whether it's a monthly payment, an annual payment up front? The only risk I see to consumers if it's an annual payment up front, and a provider realizes six months in this isn't working and we've got to discontinue it, is there a rebate? Is the patient-client just out those dollars? Is that spoken to in any way, shape, or form in the bill? [LB817]

SENATOR RIEPE: It's not spoken to in the legislation. However, what is in the legislation is a requirement for transparency so that there would be a written agreement between the practitioner and the patient. And the idea of that agreement as well, is that they clearly understand what the payment is and what they're receiving for that. It also would stipulate...and we're not trying to give them any verbatim document, we're trying to give them some guidelines that would be required. One of the things that we would see in the requirements in this legislation is that the patient could leave at any time, but the doctor would have to...or practitioner, in this case, would have to give 60 days' notice... [LB817]

SENATOR GLOOR: Okay. [LB817]

SENATOR RIEPE: ...so that we don't leave them in the lurch. [LB817]

SENATOR GLOOR: That fits into that category, sir. [LB817]

SENATOR RIEPE: What we're trying to do, too, is allow them the opportunity to some practitioners, in our experience, would have a mental health worker in their office so they might price differently, but they have to have that transparency as well. [LB817]

SENATOR GLOOR: Okay. [LB817]

SENATOR RIEPE: If I may, Mr. Chairman, I would like to read in some letters that aren't in there, too. These letters are from: Dr. Joe Miller, who is a Nebraska Academy of Family Physicians; John Roberts, with the Nebraska Rural Health Association; David Ingvoldstad--I hope I didn't butcher that--he's with the Omaha Metropolitan Medical Society; Laura Redoutey, she's president of the Nebraska Hospital Association, in support; and also, Matt Litt with the Americans for Prosperity. [LB817]

SENATOR SCHEER: Senator Gloor. [LB817]

SENATOR GLOOR: Let me make just a short comment by way of clarification, since Senator Riepe and I have been working...talking about his particular bill and his interest in this for over a year now. This bill, and I want this for the record; it's more of a comment, this bill is not in conflict with the work that I and others have been doing on patient-centered medical home. This is a payment approach, not a transformational care approach. And it's reasonable to expect they could both, and I expect will both, exist within the same environment. You can have a clinic that is a patient-centered medical home that chooses to accept payment under direct patient care or not, one way or another, but the two are, in fact, separate and distinct and can cohabitate in a practice together, as far as I'm concerned. And I appreciate, again, you bringing this bill forward. I think it's a good bill. [LB817]

SENATOR RIEPE: Thank you. I think they're both rooted in primary care, so that's our key. Thank you. [LB817]

SENATOR SCHEER: Any other questions? Seeing none, thank you. [LB817]

SENATOR RIEPE: Thank you, sir. [LB817]

SENATOR SCHEER: And, again, a reminder: We are going to be going proponent, opponent, and neutral. So the first will be...the first speaker will be...or testifier will be a proponent. If you'd like to come forward. Good morning. Welcome. [LB817]

ROBERT WERGIN: Good morning, Senator, and thank you for allowing me to share my views on this important topic. My name is Robert Wergin, R-o-b-e-r-t W-e-r-g-i-n, I'm a practicing family physician from Milford, Nebraska, about 25 miles west of where we're sitting right here today. But I'm also currently the board chair and immediate past president of the American Academy of Family Physicians, a national professional organization that represents over 120,000 family physicians from across the United States. And I'm speaking on...in favor of LB817, which really arose from some of our members, nationally, as what we would call a disruptive innovation in payment models, out of our membership. Currently, we have about 2 percent of the members of our organization in a direct primary care model, but a large number of members looking into that model. We have many tools on our websites to inform our members, including our Nebraska members, on what the concept is, how a person might move into that business model. We have a member interest group that is LISTSERV that is visited frequently by people with this looking to go in that model or in that model to do best practices. We have a annual meeting every year. I think Senator Riepe attended in Kansas City, where they come and meet about various topics and challenges of the direct primary care, and I would just say, having attended that, it's like a revival meeting, actually. These guys are very passionate, very enthusiastic about this model of care. Several things have already been stated. It's really a relationship between you and the patient, with a per member per month fee for a basket of primary care services and usually includes an overarching, catastrophic care, in the event you need expensive care, such as a bone marrow transplant or some procedure, we know from our population studies that about 90 percent of what you need can be taken care of right in that office. It often includes labs, etcetera, so one-stop care. It's a drift away from the volume-based fee for service world we live in now, whereby you're only paid if I'm sitting across from you like I am with you today. So you can spend more time with the patients that you're seeing. The patient satisfaction goes up, but more importantly, the physician satisfaction is also, and in our surveys, it's much higher. And I know my time is short so I'm going to jump ahead here and I'll be glad to answer questions at the end. But I think it really brings the joy of practice back to family physicians. And I often tell people when they go to meetings--and I attend many state meetings--is, look at the faces of the people who have developed this model and you'll see it in their face; they're smiling. They're back focused on the patient, not on paperwork, not on rules and regulations. And, therefore, another thing in answer to some of the questions that might arise, can use technology and other things to help deliver the best care we can to our patients. Thank you for letting me be here today. [LB817]

SENATOR SCHEER: Thank you, Doctor. Are there questions? Senator Williams. [LB817]

SENATOR WILLIAMS: Thank you, Senator Scheer, and thank you, Dr. Wergin, for being here today. A couple of questions. We have heard testimony over the course of the last year about the percentage of family practice or those types of practitioners in Nebraska and the United States compared to other countries. Do you think this would help us address that issue in Nebraska with our education system? [LB817]

ROBERT WERGIN: I believe it would. And I get the opportunity to talk to medical students, both here at Nebraska and others. And there's great interest that they have in this concept of patient focus, spending more time with patients. So that's what we'd call the pipeline in. I think Senator Riepe addressed it as well. One of the big focuses we have nationally is physician burnout and resiliency. And what you see when you survey those people, why are you going to quit when you're 55, 60 years old? They'll mainly not...there's not a single person that says, I don't like to see patients anymore. Nobody says that. It's the administrative burden, the paperwork, electronic health record often enters into that. So I believe this would help improve the work force on both ends, improve student interest and, as you suggested, if you look at other developed countries in the world, they have a much higher percentage of primary care physicians. [LB817]

SENATOR WILLIAMS: In Senator Riepe's opening he talked about, it was clearly not the intent of this legislation to create a situation that would defer people from providing primary care in rural areas. You're a rural doc. Would you address the issue, very specifically, about in situations where we have communities that have maybe only one or a limited number of healthcare providers, docs, PAs, and what you think could actually happen with them choosing this business model? Or would it really be a hybrid practice? Could you address that for me? [LB817]

ROBERT WERGIN: I think that is one thing for me, personally, being in that world. And I think Dr. Flanagan will address that. I think for the basket of services provided are much larger. I'm a comprehensive family physician, and what you choose to include in that contract where you sit down with a patient and say varies, but I think you'd have to move to a hybrid practice because you'd do more in-patient, and some of those services that you're describing that would have to be billed. One of the advantages to doing that, that reduces then, is most of these offices release their billing staff. Their overhead drops because they don't bill insurance. In a hybrid practice you'd have to develop a system of billing insurances. So I'd say a hybrid practice would work in rural areas. [LB817]

SENATOR WILLIAMS: I'll just ask the ultimate question then. Do you have any fear that by creating this business model, we will leave people unserved with medical conditions in rural areas? [LB817]

ROBERT WERGIN: I don't. And at the core of it, the focus of this model is on the patient. And I believe that that relationship can be defined. And in those situations where hybrid practice develops, I don't. That's the ultimate, especially in rural areas, you have to have access. [LB817]

SENATOR WILLIAMS: Thank you. [LB817]

SENATOR SCHEER: Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Senator Scheer. And thank you for your work and service. [LB817]

ROBERT WERGIN: Thank you. [LB817]

SENATOR GLOOR: Had the immediate past president of the American College of Family Physicians flown in to provide testimony, I think we would have felt obligated to ask more questions. The fact that you hopped in your car and drove over from Milford should minimize that anyway. [LB817]

ROBERT WERGIN: Thank you, Senator Gloor. [LB817]

SENATOR GLOOR: So I think my question is, I have always thought, since talking with Senator Riepe about his interest in this and the model, this is probably more likely to be successful and adopted by a practice in a larger area where there's a big enough population base for a practice to make that jump, make that risk. Your thoughts on that or what you've heard about an option of this model? We're concerned about negative impact on rural areas, and for me, I think we're less likely to see rural practices that might adopt this model. [LB817]

ROBERT WERGIN: Right. I think there are challenges for rural practices, as Senator Williams alluded to, too, that you'd have to move to a hybrid model probably, because of the basket of services. And that's what's key even in an urban model, so that the patient understands what really is covered by the scope of this relationship and that, but I don't think it would reduce the access or number of providers in rural areas. And I believe in our tool kits we actually describe some different models. A members interest group, which as president and board chair I don't make comments on (inaudible) group, because if I make comments it changes the discussion.

They talk about some of those issues and challenges. And there are rural...Idaho being a state that has implemented this bill and has a pretty robust direct primary care practice, it hasn't come to fruition, that reduction of access. [LB817]

SENATOR GLOOR: Thank you. [LB817]

SENATOR SCHEER: Any other questions? [LB817]

ROBERT WERGIN: Thank you. [LB817]

SENATOR SCHEER: Seeing none, thank you very much. Are there any wishing to speak in opposition to LB817? Okay, then we don't have to worry about those. Anyone wishing to speak in a neutral capacity to LB817? Good morning. [LB817]

ERIC DUNNING: Good morning, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Eric Dunning, for the record, that's spelled E-r-i-c D-u-n-n-i-n-g. I appear today as a registered lobbyist for Blue Cross and Blue Shield of Nebraska, testifying in a neutral capacity on LB817. We're fine with the bill as introduced. We think it includes a few provisions which have not necessarily been included in bills passed in other states, which we think were pretty good. There's a prohibition on these practices discriminating against people based on their health status. We think that's an important fairness element. We like the disclosure that this is not insurance under the Affordable Care Act and this doesn't relieve people those obligations. And last but not least, we like the provision that says that providers can't bill directly for services provided under the contracts, that the member can, to the extent that their policy allows it, but these things are not set up on the premise of sort of double dipping into the system. So with that, if there are any questions. [LB817]

SENATOR SCHEER: Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Mr. Chairman. So I'm just playing out hypotheticals here. What if a primary care practice decided it wanted to partner with a physical therapy group to...and price accordingly. Would you see that as an expansion on the initial scope of primary care? Would you see that as an obvious...or, perhaps a dietician? I mean, we're not talking about a surgeon, we're not talking about an orthopod, we're talking specifically about somebody who might enhance somebody's health over all, but the price now includes a certain number of visits to a physical therapist along with your ability to see your primary care physician. [LB817]

ERIC DUNNING: Well, in looking at the bill, it looks like the bill is drafted in such a way as to put that emphasis back onto primary care. Whether or not, to the extent that there's an evolution in these practices to move into things like PT or OT or something similar, whether that gets us out of primary care is probably not a question that I'm equipped to answer, but I think that frontier is always going to be a bit of a challenge. [LB817]

SENATOR GLOOR: Okay. Thank you. [LB817]

SENATOR SCHEER: Senator Campbell. [LB817]

SENATOR CAMPBELL: Thank you, Senator Scheer. Mr. Dunning, are you saying that you want these three provisions that are in other states in the bill or... [LB817]

ERIC DUNNING: No. No, ma'am. [LB817]

SENATOR CAMPBELL: Are you wanting them out? [LB817]

ERIC DUNNING: They're in the bill. [LB817]

SENATOR CAMPBELL: You want them out? [LB817]

ERIC DUNNING: No, I want them to stay. [LB817]

SENATOR CAMPBELL: Oh, okay. [LB817]

ERIC DUNNING: That's why we're here in a neutral capacity. [LB817]

SENATOR CAMPBELL: Okay. Were there any other provisions that you saw in a state that's not in the bill that you thought was exceptionally good, we might want to put it in? [LB817]

ERIC DUNNING: You know, I spent a fair amount of time reading the bills that got introduced around the country. And really, these were the three big things that jumped out at us when we were looking at these things. And we were glad to see that Senator Riepe put them in the bill. [LB817]

SENATOR CAMPBELL: Okay. Thank you. [LB817]

SENATOR SCHEER: Senator Schumacher. [LB817]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you, Eric, for your testimony today. I just have a...the bill in two locations requires notices or disclaimers. And I'm curious as to how it works now as compared to how it would work under this system. And one of the sentences says that when somebody applies for primary care services under a direct agreement--I take that to be going to the doctor's office that you have a direct agreement with--you have to have a disclaimer that informs the patient of the rights and responsibilities and states the direct provider will not bill a health insurance carrier for services covered under the direct agreement. And it recommends that their insurance be carried. Who...if there are services that are not provided under the direct agreement that are made necessary in that visit or in that course of treatment, who then do you envision being responsible for making application to the insurance company for payment? [LB817]

ERIC DUNNING: I would believe that the physician would, as they would now. [LB817]

SENATOR SCHUMACHER: Okay, so it's your interpretation of this, if there was something that was not covered, that the physician either has to... [LB817]

ERIC DUNNING: Would do that legwork, yes. [LB817]

SENATOR SCHUMACHER: Just like they do now. [LB817]

ERIC DUNNING: I would think so, yes. [LB817]

SENATOR SCHUMACHER: Thank you. [LB817]

ERIC DUNNING: And as a practical matter, I would think the practice would want to do that on behalf of their member, of their patient. [LB817]

SENATOR SCHUMACHER: Just one follow-up to that. [LB817]

ERIC DUNNING: Sure. [LB817]

SENATOR SCHUMACHER: Then how does the physician make the judgment, because the definition of primary care means the general care services of the type provided at the time the patient seeks preventive care or first seeks healthcare services for a specific health concern? So a

chronic situation...they first come in with an asthma problem, but asthma goes on and on and always requires continuing treatment. It just isn't cured, at least that's the way I understand, or a disease like that. So the second time they come in for an asthma treatment, I would take it that at that point they would make application to the insurance company because it's the second time? [LB817]

ERIC DUNNING: No, I believe that would still come under the heading of primary care. But, ultimately, these are contracts between the physician and the patient. So to the extent that we're talking about services that are outside of that contract, I would expect that the physician would know that they're outside of the services that have been provided under the contract. [LB817]

SENATOR SCHUMACHER: Okay. The word that I find bothersome is, first seeks healthcare services, as if after the initial presentation the deal is off and it's no longer primary care and we're back in the soup as to whether or not these are insurance contracts. Thank you. [LB817]

ERIC DUNNING: Thank you, sir. [LB817]

SENATOR SCHEER: One sort of maybe question I might have, the agreement with the doctor is separate from insurance. I understand that. However, is the $50 or the $100 or whatever the monthly fee is--and we'll say, for the lack of a better term--$50, so you're going to pay $600 over the year's time. Is that $600...is an individual able to submit that then towards their deductible, their copay? [LB817]

ERIC DUNNING: No. [LB817]

SENATOR SCHEER: It's just out-of-pocket expense? [LB817]

ERIC DUNNING: Correct. [LB817]

SENATOR SCHEER: Okay. Thank you. Any other questions? Thank you, Mr. Dunning. [LB817]

ERIC DUNNING: Thank you, sir. [LB817]

SENATOR SCHEER: We will have the next proponent, please. Good morning. Welcome. [LB817]

CLINT FLANAGAN: Good morning, Chairman Scheer and Senators. My name is Dr. Clint Flanagan. I'm a board certified family medicine physician and emergency medicine physician from Fremont, Nebraska, that now lives out in Colorado. I grew up here and attended college at Wesleyan and then did my medical school at UNMC and then did my residency out in Colorado. Years ago, being a private family medicine physician practicing the fee for service business model, oftentimes throughout the day I saw many of the challenges of the existing fee for service model, and many of these barriers got in the way of good patient care. And so back in around 2009/2010, we started thinking about how can we do this differently, because this existing model is not what we signed up for in med school and residency and it's really getting in the way of taking care of our patients and our businesses and our communities. And so in 2011, we launched Colorado's first direct primary care practice and we've been off to the races ever since. I'm glad to see that we have many friends these days. Back then, we kind of made up our own playbook and ran our own plays, but now over 40 states in this country offer direct primary care. And we have the support of the American Academy of Family Physicians, which represents all of us doctors. In short, part of the reason we did this was just to get back to the good, old-fashioned family medicine physician-patient relationship. And we had hoped that there were solutions and we just didn't see those solutions. So we came up with our own solution and that's an affordable monthly fee. And just about anybody can afford this. And we have patients in our panel that just make a little too much money to qualify for Medicaid or subsidy and we have patients in our panel that can afford anything. We take care of small businesses like HVAC guys and plumbers and we take care of craft beer companies, we take care of ballet companies, we take care of large satellite companies that are self-funded, and we take care of our communities. And by being beholden to our patient and beholden to our businesses, it allows us to have this relationship that is...it's kind of what we did sign up for back in med school and residency. As a current fee for service doctor, as well, running a hybrid practice, every day I'm reminded about the challenges of a hybrid fee for service model. And I can tell you, it's not that I'm a better doctor or a different doctor, it's just that the direct primary care model allows us to be the doctor that we always wanted to be and have that relationship with patients in a way that is not beholden to a third-party payer. We're responsible to our patients and to our businesses and our towns. And we have rural clinics, we also have clinics in larger towns and cities. And I can tell you, it's been a pathway that has reaped many benefits. And the main benefit there being is, I don't have any barriers when it comes to seeing my patients and taking care of them like I want to. Most all of our patients have high deductibles that sit right along their direct primary care program. And to your point, if they needed to see a pediatric respiratory physician or if they need to see a orthopedic surgeon, then we move to the high deductible health plan to help with that major medical event. But we're there to be their healthcare quarterback and be their guide and we're responsible to them. And if they don't like direct primary care, it's month to month, so they can leave, but we hardly ever see anybody leave. Be happy to entertain questions. [LB817]

SENATOR SCHEER: Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Senator Scheer. Thank you, Dr. Flanagan, and welcome back to Nebraska. You know you're not a Plainsman anymore, you're a Wolf, I believe, as relates to Wesleyan and their sponsor. [LB817]

CLINT FLANAGAN: We have changed. [LB817]

SENATOR GLOOR: Yes, they've changed. So tell me what the experience has been...my question to Dr. Wergin about the...some of the changes or morphing, perhaps, of direct patient care. I mean, if you serve in that capacity for a ballet group, as an example, assuming it was a large enough ballet troupe of some sort, would you, in fact, have your own physical therapist or contract with physical therapists so that that could also be provided for in direct patient care? [LB817]

CLINT FLANAGAN: And so, once again, as a family medicine physician, as I believe Dr. Wergin mentioned, we take care of 90-plus percent of what patients need in the healthcare system and we're also the lowest cost provider. As an ER doctor, I'm one of the highest cost providers. So as their quarterback or captain or Sherpa or guide, we're very, very familiar with sending them to physical therapy or occupational therapy, sending them to chiropractic care, referring them to a orthopedist, etcetera. So what we've done in our model is, we have had relationships with many of these ancillary service providers for years and years. And so we've gone to them in a good old free market, capitalistic way and said, will you provide your physical therapy service for our ballet patients at a discount, because many times they're going to come in and some of these insurance plans don't carry their physical therapy, but would you provide a discount? And we've applied that to pulmonary companies, durable medical equipment companies, chiropractors, gastroenterologists that do colonoscopies. And then we've also let them know that, oh, by the way, you're competing with four other physical therapy groups, so we sure hope your price is pretty good because you're all really good practitioners. So we've taken away--many of us call it--the Wizard of Oz screen on pricing and said, let's be transparent about pricing, let's let patients know what the cost is ahead of time. And what we've found is that it works pretty good. Oftentimes, patients will use their HSA accounts that are attached to their high deductible health plans to pay for those services. I think what needs to be said is, health insurance and a health insurance card, it's getting harder and harder to get good, high quality healthcare in this country. And these high deductible health plans are creating a barrier to good patient-physician relationship. And that's where we come in with direct primary care, because oftentimes it's been said that the cost for what we do is less than a latte a day. So patients pay for their cell phones and if you can afford a cell phone, you can afford what we do. So we think it's very important that the physician help with those patients and also help create transparency on the pricing so we know ahead of time, because right now a lot of times you don't know what the cost of a service is going to be. [LB817]

SENATOR GLOOR: Okay. Thank you. [LB817]

SENATOR SCHEER: Senator Campbell. [LB817]

SENATOR CAMPBELL: What's the average age of the people that you serve in your practice under these plans? [LB817]

CLINT FLANAGAN: Yeah. Well, I haven't done direct data collection on that front. I would say probably the average age is in their late 30s to 40s or so. So we take care of municipalities, like the town of Frederick and the town of Firestone and the ages go all the way up from kids to grandparents. We take care of policemen. We take care of craft brew companies. The average age there is probably around 28 to 32. We take care of DigitalGlobe. There are 1,300 employees and I would say their average is probably around 35 or so. So we can take care of infants all the way to grandparents in direct primary care. [LB817]

SENATOR CAMPBELL: So is there a different fee for an individual versus a family then? [LB817]

CLINT FLANAGAN: So the way we've set our fee structure up is adult and kids. So for the first adult, it's X amount of dollars. For the next adult, it's a little less. And then for kids, it's a set fee. And if you have more than I think three or four kids in our program, the rest of the kids are free. [LB817]

SENATOR CAMPBELL: Thank you. [LB817]

CLINT FLANAGAN: And our prices...you'll see differences across the country on that front, but almost all of us doctors have agreed--and I serve on the National Direct Primary Care Coalition--that we want that number to be less than $100. And I think if you look at the average per member per month across the country, it's around $60 per member per month. [LB817]

SENATOR CAMPBELL: Thank you, Doctor. [LB817]

SENATOR SCHEER: Senator Fox and then Senator Williams. [LB817]

SENATOR FOX: (Inaudible.) Question. Given your emphasis with providing healthcare in rural areas, would this be...is this a model that people practicing direct primary care use? Do they use telehealth to provide this care? [LB817]

CLINT FLANAGAN: So great question. And more and more and more you're seeing technology step into the healthcare sector in the use of technology to provide connectivity and convenience to patients. It's been used for years and years. I've had friends up in Sitka, Alaska, that used telehealth years ago. Part of the challenge with telehealth is in the fee for service world, the model is not set up for that. So it's hard to get reimbursed or paid and hard to run your small business if you were to do telehealth all day in the fee for service world. Contrast that with direct primary care, we do telehealth all the time. So this morning when I was having breakfast with Senator Riepe, a patient of mine from Colorado texted me about her child that's 10 years old and had a fever of 103.6 this morning. And this is a mom with three kids. And I was able to help her this morning while Merv and I were having breakfast. So we utilize, whether it be text or whether it's phone, which all of us doctors have been using for years, video so we can use Skype and FaceTime for visits. And what that allows for, that technology allows for greater connectivity and connection. And in today's fee for service world, it's really hard to see that because you're seeing a patient every seven minutes. I used to see 30 to 40 patients a day. And you can't do...you can't take care of people when you're on that treadmill like you should. And in the direct primary care world you can kind of step off that treadmill and have a half-hour visit or an hour visit. Your doctor gives you his cell phone number and his e-mail and responds within minutes of being called or texted. That's what I talk about when I'm talking about a relationship. And it gets down to trust and caring and it's really, really hard to have that in a fee for service world because we're on this transactional healthcare treadmill. And most of us docs went into this to have relationships and long-lasting relationships, and so the connectivity side of telehealth is, it's really an exciting piece of healthcare. And it's a definite piece of direct primary care across the country. [LB817]

SENATOR FOX: Thank you. [LB817]

SENATOR SCHEER: Senator Williams. [LB817]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you, Dr. Flanagan, for being here today. A couple of quick questions. It appears from the information that Senator Riepe gave us that you do not have legislation in Colorado on direct primary care. Do you find that problematic? [LB817]

CLINT FLANAGAN: The short answer is, probably not at this time. So years ago when we started down this pathway, we met with the division of insurance. We met with our lobbyists. We met with Colorado Hospital Association. We met with Independent Physician Association. We met with our senators that represented our counties. And at the time--and this was back in 2009, 2010, there were only a few states doing direct primary care. And what we found was that we didn't need to go and pass legislation immediately to do what we wanted to do. This was much

different than Washington. So Dr. Erika Bliss and (Dr.) Garrison Bliss had to do that in Washington in order to start Qliance. In Colorado we didn't need to do that, so we felt it was important to grow our business and go to the private market and employer groups in our communities and just start to get patients. And that's what we did, but we maintained those alliances and friendships with those at the capitol. And we're at a place now, Colorado has more direct primary care practices than any state in the country outside of Washington. And so there's definitely been talk now that it would be reasonable just to pass some pretty simple legislation in Colorado and we'll likely do so, I anticipate, probably within the next year or two. [LB817]

SENATOR WILLIAMS: Well, I applaud Senator Riepe for doing all this work on behalf of you doctors so you don't have to go out and do that. You can continue to take care of patients. You heard my questions concerning the availability of medical providers in rural areas. And as I understand your testimony, you're doing direct primary care in suburban areas, but you're also doing it in rural areas. Have you seen any decreasing in the availability of medical services in rural areas based on primary care? [LB817]

CLINT FLANAGAN: So I also practice as an emergency room doctor and go to small communities in Colorado that have just maybe a few physicians. And, first and foremost, almost all rural communities are underserved in this country by primary care and it's a challenge on many fronts. If direct primary care were to work in a smaller community, I agree with what's been said before, in that I think it would be probably best served as a hybrid practice. So that would mean the existing doctor--which oftentimes they're employed by the hospital in those smaller communities--would continue to see his fee for service, Medicare, and Medicaid patients. But oftentimes in any community in this country, many of those patients have high deductible health plans. So whether you're in a rural community or in Denver, many patients have a $3,000 or $5,000 deductible. So they get one preventative visit a year with their primary care doctor and then for follow-up on their asthma, their diabetes, or their high blood pressure, they're out-of-pocket for all of those visits. And those primary care visits on average are around $150. So for those patients, which are in every community across the country, rural, suburban, or urban, direct primary care would sit right alongside their high deductible health plans. And so I don't see in rural communities' physicians abandoning at all their existing fee for service structure. We didn't do that in the town of Frederick where we're at. It's a rural underserved community. We continue to see those Medicare, Medicaid, and insurance-paying patients, but then we offer, right alongside our fee for service practice, direct primary care. And what we saw were a lot of patients signing up and most of those patients had high deductible health plans. So I think it would be used in conjunction with the existing fee for service in smaller communities and it would also offer an avenue to take better care of the patients in those communities that have high deductibles. [LB817]

SENATOR WILLIAMS: Thank you. [LB817]

SENATOR SCHEER: Senator Schumacher. [LB817]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Dr. Flanagan. I take it that this model has been around for a number of years, the direct primary care model. [LB817]

CLINT FLANAGAN: Correct, a number of years. In our case in Colorado, in 2011 we launched. It was under development in 2009. There were those that came before me, like Dr. Garrison, who lives in Seattle in, I think, 1998. [LB817]

SENATOR SCHUMACHER: Have any studies been done as to the economics of the model? Do physicians operating under this model, as compared to physicians operating under the traditional fee for service model, as to their incomes? Who makes more money? Have there been any studies, surveys? [LB817]

CLINT FLANAGAN: So of the information that I'm aware of, physicians can do just as good, if not better, in the direct primary care model and I can tell you from my personal experience. So oftentimes in the fee for service model about 30 percent to 40 percent of our day is spent doing nonpatient things, doing administrative things and billing and dealing with the detail of prior authorizations to order an MRI, all of this detail that requires overhead. And so what we know, without a doubt, is that in a direct primary care practice the overhead is less than a fee for service practice. And I'm not talking less by 1 percent or 2 percent. Usually it's less by 10 percent to 20 percent. So as a result of lower overhead, just a simple, monthly membership model, there's less details involved when it comes to the billing side. In the fee for service world, there are about 26 steps between when you see a patient and when you get that reimbursement back to your business. And those 26 steps can take around 60 to 90 days, etcetera, and many of us fee for service doctors have a pretty significant accounts receivable. In the direct primary care world, we just don't see that, and so you're able to run your business better because you're not beholden to this challenging system of payment. And by being able to run your business better, it allows a family medicine physician to kind of go from surviving to thriving. And it provides a pathway where the family medicine physician can maintain his practice and stay private, and this is in a time when many family medicine physicians across the country are being kind of gobbled up by big systems. And we think, many of us in primary care, it's important to allow runways for family medicine doctors and other primary care specialists to be able to run their own business versus having to be employed. [LB817]

SENATOR SCHUMACHER: So what we're basically not facing an economic disincentive to physicians to use this model. They come out equal or ahead of what they would, bottom line, 1040 tax return. [LB817]

CLINT FLANAGAN: Completely agree with you. In fact, there are so many challenges in the fee for service world that that's why many docs are retiring early and stepping away and just becoming employed doctors that are getting a salary from big systems, because that's a lot of stuff that we didn't sign up for in med school and residency. And so this just...Todd LaRoss (phonetic) said, clean the slate and said, you know, we're going to be beholden to our patients and our employers and we want to provide value for them, and for that, we're going to charge a monthly membership fee that just about anybody can afford. And it's going to be pretty darn simple. And that's why Dr. Garrison Bliss coined the term "direct primary care." You're paying directly for your primary care and then you're using insurance for what insurance should really be used for and that's the high dollar items like $70,000 hips, hospital stays, cancer visits, etcetera. Use insurance like we use insurance for our cars and our houses, don't use insurance for the low-cost primary care guy. And by having that kind of business model, it allows the family medicine physician to move beyond this challenging, survival of the fittest pathway and into more of a pathway of thriving. And that's why we're so excited about this model, because we have med students and residents coming through and they're seeing a different way than what they're hearing at the universities. And that is, you have to be an employed doc. And a lot of docs don't want to do that. They want to have their own small, private practice in Wahoo or Blair or Fremont and this provides a pathway for them to do that. And we've seen that already in Colorado. So we've had residents that have trained with us and done a month rotation in business or a month rotation in medicine and have come out doing direct primary care. We've talked to medical students at grand rounds and when you have a room of med students and ask them how many have heard of direct primary care, it used to be hardly any. And now many of them raise their hands and so they're seeing this as a different way. And that's important because in today's day and age, too many med students are going into specialties. And the reason they're going into specialties is they see the debt of college and medical school and they're like, gosh, I'm going to be an interventional cardiologist or I want to be a radiologist. I don't want to be one of those primary care docs that works 14 hours a day, 6 days a week, and has a hard time paying off his debts. So we offer a different pathway for those med students and we are excited about that. We need to have a flip in this country; instead of two-thirds specialists and one-third primary care, we need to flip it. And in order to flip it, we can't continue in that existing fee for service system. [LB817]

SENATOR SCHUMACHER: Thank you. [LB817]

SENATOR SCHEER: Other questions? Seeing none, thank you very much. [LB817]

CLINT FLANAGAN: Thank you. [LB817]

SENATOR SCHEER: I do not believe there are any other opponents. There were no other opponents, so the next neutral testifier, if there is one. Seeing none, then the rest would be those in support of (LB)817. Welcome, Mr. Lynch. [LB817]

CALDER LYNCH: (Exhibit 8) Good morning or afternoon. Well, I guess it's morning. My original testimony says afternoon because it was for last week. Good afternoon, Senator Scheer and members of the Banking, Commerce and Insurance Committee. And may I say, happy Mardi Gras. My name is Calder Lynch, that's for the record, C-a-l-d-e-r L-y-n-c-h, and I'm the director of the Medicaid Long-Term Care division within the Department of Health and Human Services. I'm here to testify in support of LB817. Thank you, Senator Riepe, for introducing this bill. LB817 is an important step that will enhance healthcare quality for Nebraskans. This bill will allow primary care practitioners to enter into direct agreement with a patient or patient representative to provide primary care services. You've heard testimony today, of course, that under these agreements providers do not bill insurance for covered services and only provide the services in the amounts that are detailed in that agreement, really allowing patients to develop more meaningful relationships with their physicians. For Medicaid, this manifests itself a little bit differently. Specifically, this bill would clarify that our managed care organizations are allowed to enter into direct primary care agreements subject, of course, to the approval of the state and federal officials by which they operate. This is very much in line with where we're moving in terms of our Medicaid program. You know, away from volume-based care and toward value-based care. And, specifically, beginning in January of 2017, we'll be launching the Heritage Health Program, which is our new integrated managed care program through which three health plans will provide a full range of fully integrated services, including physical health, behavioral health, and pharmacy services. And actually, since this testimony was written, we have announced the three notices of intent to contract for that RFP and are entering into, with the Division of Administrative Services, finalization of those contracts with those three health plans which we have to finalize in the next month. As part of these contracts with our health plans, value-based contracting agreements or value-based purchasing agreements, like direct primary care agreements, are not only anticipated, but they're required and encouraged as part of our contracts with the health plans. We've actually set specific targets for each year that the health plans must enter into certain thresholds of value-based contracts with providers. And I think direct primary care can be a very important tool for our health plans and entering into those types of arrangements that move us away from fee for service and more toward value-based care. With that, I thank you for the opportunity to testify. I look forward to future conversations with this committee as we continue to improve medical care for our state. And we believe that this bill assists with our vision of helping people live better lives. With that, I'll be happy to answer any questions from the committee. [LB817]

SENATOR SCHEER: Thank you, Mr. Lynch. Any questions? Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Mr. Chairman. And thank you, Calder. I want to understand how the contracting might work. Would you offer a separate contract just for direct patient care and then offer a contract for providing care to Medicaid patients that choose not to do direct patient care? Or is it going to be, we'll sign a direct patient care contract, but going hand-in-hand with that is, you're also agreeing to a Medicaid contract for those who don't choose direct patient care that comes with these obligations and this fee schedule? [LB817]

CALDER LYNCH: Thank you, Senator, I think that's a great question. I think it's going to manifest itself a little bit differently depending on the health plan and the provider and the terms of the agreement they reach. As I said, this legislation will manifest itself differently for Medicaid in that federal regulations don't really allow us to waive benefit package. There's really not much in the way of cost sharing for the individual or deductible, so the incentives are a little bit different. But what it does clarify I think is important is that the health plans, as part of our contracts with them, are incentivized and require to have a threshold of contract with providers that we define as value-based. And we define that using some criteria that says that they are now incentivizing the provider through some shared financial risk or incentive payments or bonus payments or subcapitation for the risk of that individual life. And that there are some quality of performance metrics tied to that. And I think a direct primary care type agreement between the health plan, which is acting as the patient's representative, and the primary care provider where perhaps that PCP is subcapitated, paid a fixed rate, and doesn't bill for fee for service, could be how that manifests itself in that type of arrangement. We still have to work through some issues in terms of making sure that we get the necessary reporting back to report back to the federal government in terms of what services were delivered. But it's certainly moving us in the direction we want to see, which is moving us away from fee for service and more toward a value-based type of care. [LB817]

SENATOR GLOOR: I do understand. But one of the interesting things for me is to see how this eventually evolves because, to me, one of the successes of direct patient care is that it's a disrupter. But when it starts to be folded into the existing insured models, then it becomes less a disrupter and just a variation on payment models. Neither a commentary that it's good or bad, it's just maybe the evolution of some of the payment models that are out there. [LB817]

CALDER LYNCH: I don't disagree, Senator. I do think it's an evolution and we're going to continue to see it evolve over time. And Medicaid, we're, of course, dealing with a more complex regulatory structure. But I think this allows us to continue to push in the right direction. [LB817]

SENATOR GLOOR: Thank you. [LB817]

CALDER LYNCH: Thank you. [LB817]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Mr. Lynch. [LB817]

CALDER LYNCH: Thank you, Senator and committee members. [LB817]

SENATOR SCHEER: Next proponent, please. Good morning. [LB817]

ERIKA FENNEN: (Exhibit 9) Good morning. My name is Erika Fennen, and I'm a second-year medical student at the University of Nebraska Medical Center at Omaha. I'm here today to offer my support for LB817. I discovered direct primary care early last fall while reading a fascinating 2015 Time Magazine article entitled "Medicine Gets Personal". This article detailed an office where physicians were happy and loving what they were doing and the patient outcomes were better. I thought to myself, this isn't right. Like, this could not happen. But how can a world exist where I spend my time building relationships with patients and not building a relationship with my computer, a world where a patient and I determine the best medical intervention, not what an insurance company decides they will or will not allow? I held onto that 2015 Time article because for the first time in a long time I had hope. Before medical school, I wanted to own a private pediatrics practice. I had a vision for a patient-centered medical home, a place where people could spend an hour talking to me about their problems and where I could truly understand where they were coming from, but with my entrance into the medical community, I saw firsthand just how complicated practice could be. This past June I spent three weeks in a family practice clinic in Scottsbluff. One of the physicians was able to see her patients in the allotted 15-minute time slot for the first hour. But then every patient after 9:00 am. kept getting pushed further and further back, because in 15 minutes she had to see her patient, she had to chart the encounter, and then she had to file a claim for insurance. So at the end of the night, every night she took home 20 charts to finish and she only finished those 20 charts the next morning before 8:00 A.M. before the next patient the following day. And that's when I thought to myself, maybe I should just go into a hospital. I mean, the burnout rates are lower. That would be easier. And that's the problem. Students like me are thinking, I shouldn't do primary care anymore because it's too hard, because I'm going to burnout too fast and I'm going to hate my job after all of the time I put in. Now is not the time to be scaring medical students away from primary care, not if we can help it. So today there's a potential solution to reduce the red tape and the burnout rates and the patient frustration, direct primary care. And it is just that, direct. Healthcare decisions should be made between provider and the patient. As providers, we spend a minimum of seven years learning how to practice, followed by a lifetime of continuing education. So we desire the chance to be able to practice how we want to practice and what we see in medical school. People critique direct primary care as being oversimplified, but at the direct primary care level most of what I want to do isn't complicated. I want to spent more than 10 minutes talking to my patients. I want my patients to feel comfortable in our relationship so they will reveal minute details that could completely alter the course of care. I don't want a checklist of concerns building up for months when they walk in my door. I want them to be able

to call me and say, should we be concerned about this side effect? Are my ideals lofty and idealistic? In today's practice, yes. But by the time I start practicing, I hope not. We all have a right to health. Not only to have health, but to also utilize those who are trained in it. I ask today, what will you do for doctors like me? Thank you to Chairman Scheer and the members of the Banking, Insurance and Commerce Committee. I'd be happy to take any questions. [LB817]

SENATOR SCHEER: Thank you. Any questions? Seeing none, I appreciate you taking the time this morning. [LB817]

ERIKA FENNEN: Thank you. [LB817]

SENATOR SCHEER: Next proponent. Welcome to our committee, Senator. [LB817]

SENATOR KOLTERMAN: Thank you, Senator Scheer, members of the committee. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, I'm here today representing my constituents as well as I'm an insurance agent. To me, this bill is about additional choices. It's another arrow in the quiver or part of our toolkit. It falls right up there with patient-centered medical home. Both of these are going to be part of what we need to move healthcare in the direction that we want to take it. I would tell you today that the Affordable Care Act is unaffordable for those that are paying the premiums. To give you an example, a family of four off the exchange pays in a range of $969.38 a month to $1,782.10 per month. That's for a family of four, age 45 with two children. We're down to two providers in the state of Nebraska right now for all practical purposes, on the exchange and in many cases off the exchange. In the last 30 days I've received correspondence from two companies that have said, we're not going to pay you a commission going forward. So, in essence, they're telling us they don't want us to sell their products. So we're down to Blue Cross and Blue Shield and Medica, a company out of Minnesota that's been around for about 45 years. To me, direct primary care is a very simplistic approach. Let's say that a primary care doc charges $70 per month per person, times four, that's $280 a month, but there's no copays, there's no claim forms, their routine care is taken care of. In addition to that, the customer could purchase a high deductible health plan for $969.38 a month to take care of any catastrophic claims that they might have. That gets you to a total of $1,249 per month. I talked to some of my counterparts in Colorado as well as in Kansas, where they both have direct primary care from an agent's perspective. And what they're doing is, they're allowing the doctor to negotiate directly with employers and directly with individuals and then they're wrapping around a product that they can sell to the employer for the catastrophic care. And they're finding that people are going to the doctor and they're getting their high blood pressure, their diabetes, their asthma, things like that under control. So this gives an opportunity for agents to sell a wraparound policy with a high deductible health plan to cover those major claims. And it still...even though $1,200 a month--that's with a $6,000 deductible for the high deductible health

plan--that's still almost unaffordable, that's $14,000 a year of premium. That's a lot of money. Anyway, I just want you to know, I think this is a good bill. I appreciate Senator Riepe bringing it. I think it's something that we can use in this state both from possibly Medicaid as well as the consumers in this state. They need another alternative and that's just what this is, just one more choice for them to make. So I'd answer questions you might have. [LB817]

SENATOR SCHEER: Thank you, Senator Kolterman. Senator Gloor. [LB817]

SENATOR GLOOR: Thank you, Senator Scheer. This is probably more for the record than anything. Thank you for your testimony. But a direct care contract does not meet the definition of insurance under the Affordable Care Act. [LB817]

SENATOR KOLTERMAN: I'm very much aware of that, but it does fulfill the need of providing healthcare. [LB817]

SENATOR GLOOR: Certainly. But, again, for the record... [LB817]

SENATOR KOLTERMAN: And this is not...this is nothing an agent could sell. I'm very much aware of that, but thanks for the question. [LB817]

SENATOR SCHEER: Senator Schumacher. [LB817]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Senator Kolterman. Couple of questions, one just in reference to your testimony that off the exchange expenses run $900 to $1,700 a month. Is that before or after the subsidies? [LB817]

SENATOR KOLTERMAN: Well, if it's off the exchange, there's no subsidies involved. Now, if we're on the exchange... [LB817]

SENATOR SCHUMACHER: Oh, okay. [LB817]

SENATOR KOLTERMAN: If we're on the exchange, then we're looking at something different. So if you're at 100 percent of poverty and you go into a silver plan, as an example--that's where you get your best subsidies--in essence, if you're at the bottom of the...you know, the 100 percent to...it goes from 100 percent to 400 percent of poverty. [LB817]

SENATOR SCHUMACHER: So the $900 to $1,700 are basically for the people who are above an income level, whatever it is, 400 percent of poverty... [LB817]

SENATOR KOLTERMAN: Four hundred percent of poverty, correct. [LB817]

SENATOR SCHUMACHER: ...which is $80,000, $90,000 a year for a family of four, something like that? [LB817]

SENATOR KOLTERMAN: Yeah. [LB817]

SENATOR SCHUMACHER: Okay. Now the second question: You mentioned about working with employers and wraparound policies. And there's some wording here that I need clarification on. On page 6, section 8, a direct provider shall not enter a contract with an employer relating to direct payments between the direct provider and the employees of that employer other than to establish a timing and method of payment of the direct service charged by the employer. And we heard from Dr. Flanagan about taking care of employees of an employer, a various company. We've got this language. What do you take that to mean? Can an employer negotiate for his whole group with a group? [LB817]

SENATOR KOLTERMAN: What I've heard in Colorado and in Kansas, where this is being utilized, the employer is going directly to a primary care doc or direct primary care provider and saying, I've got 12 employees and I'd like to pay for their monthly fee for them and their family. And then, in turn, they write a group policy to cover the high-end claims, the major claims that they might run into. And that might be a $3,000 deductible. [LB817]

SENATOR SCHUMACHER: I guess I'll wait for somebody to maybe participate in the writing because I'm still bothered by the language, a direct provider shall not enter into a contract with an employer other than to establish timing and method of payment. And so I'm having a hard time reconciling those. [LB817]

SENATOR KOLTERMAN: Yeah. And that might need to be looked at. [LB817]

SENATOR SCHUMACHER: Thank you. [LB817]

SENATOR SCHEER: Any other questions? Seeing none... [LB817]

SENATOR KOLTERMAN: Thank you. [LB817]

SENATOR SCHEER: (Exhibits 10, 11, 14, 16-25.) And if you'd please take your seat because we are within one minute of the closing time. Those that have not been had the opportunity to testify, if you will bring your pink sheets forward, I'll be glad to put your names...and you're all in support, so I'm assuming I can read your names and put that into the record as testimony. This is not...realizing it's not your problem that we have to be at an extreme time frame here. Nope, we're done. Thank you. I just want to...and Jake, will you bring me the pink sheets so I can read those in real quick? The following people were here to testify in favor of LB817. Because of time restraints that were not within our control, would be speaking, again, in favor of that: Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, representing the Federation of Independent Businessmen and the Nebraska Chamber of Commerce and Industry; Rowen Zetterman, as an individual from Omaha, Nebraska, that is R-o-w-e-n Z-e-t-t-e-r-m-a-n; Jessica Herrmann, J-e-s-s-i-c-a H-e-r-r-m-a-n-n, representing the Platte Institute; Joel Bessmer, M.D., from Omaha, J-o-e-l B-e-s-s-m-e-r; LaDonna Hart, H-a-r-t--is that correct? Okay--from Lincoln, Nebraska, representing the nurse practitioners...Nebraska Nurse Practitioners; Jeanne McClure, representing CHI Health; and Bob Rauner, R-a-u-n-e-r, representing the Nebraska Academy of Family Practitioners and the Nebraska Medical Association. Those should all be noted on the committee sheet as speaking as a supporter of this bill. And, again, it is the committee's and my apology to those that came this morning and were unable to testify. We would have been more than willing to if we had not had weather delays from last week and would have had as much time as you would like to have devoted. But, unfortunately, we don't. So, again, I apologize on behalf of the committee and myself and Senator Riepe to close. [LB817]

SENATOR RIEPE: Thank you. I will be quick. Thank you to all of the committee members. We did not professionally bus all of these professionals in here this morning, but we do appreciate all of them being here and we thank you for the opportunity. In closing, I would like to add that in Nebraska we understand, given an opportunity, the free market can and will work. We understand the importance of the patient-practitioner relationship. We understand one size does not fit all. We understand we must reform Medicaid and the entire healthcare delivery model to make a better Nebraska. I would also like to remind anyone, we do have a lunch over at Blue Cross\Blue Shield at noon and you're all invited. So with that, I would take any questions you might have or I'm gone. [LB817]

SENATOR SCHEER: Any final questions or comments for the senator? [LB817]

SENATOR GLOOR: What's for lunch? [LB817]

SENATOR WILLIAMS: Bribing us with lunch? [LB817]

SENATOR RIEPE: The desserts are especially nice (inaudible.) [LB817]

SENATOR SCHEER: (Exhibits 12, 13, and 15) All right. Thank you, Senator Riepe. And I would also like to read into...we have received correspondence in support of LB817 from Americans for Prosperity; from the Nebraska Department of Insurance, Director Bruce Ramge. And one letter of opposition from the Association of Insurance Financial Advisors of Nebraska, Dave McBride. And that will close the hearing on LB817. [LB817]

SENATOR RIEPE: Thank you. [LB817]

SENATOR SCHEER: Thank you very much. And not to waste any more time, we will begin our hearing on LB1036 and Senator Campbell to open. And again prefacing the testimony, we again will be going in alternating fashion, proponents, opponents, and in a neutral capacity for this legislation. I have informed Senator Campbell and am informing you folks as well. I will be stopping the testimony at 11:55 so that we can be finished up somewhere around noon. Those of you that are here to testify and do not get that opportunity, there may or may not be, if that is the case, if you will bring your pink sheets up as well and they will be read into the record as being here to testify, in favor but because of time restraints were not able to do so. So everyone will be on record that wishes to be, but we do have some time restraints. And so with that, Senator Campbell, your introduction. [LB1036]

SENATOR CAMPBELL: Thank you, Chairman Scheer and members of the committee. I am Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, of District 25, here to introduce LB1036, which seeks to update payday lending laws to meet the needs of Nebraska consumers. I chair the Legislature's Intergenerational Poverty Task Force created to provide data and recommendations on ways to break the cycle of poverty in Nebraska. The task force heard a presentation on payday lending which prompted my interest and research. While I've come to understand that folks need payday lending, I am concerned that our laws hinder self-sufficiency. I've heard a number of comments on the bill, but that there is no problem with payday lending, and two, that we should wait for the federal government to do something. I will address each of those in turn. First, let us illustrate the problem. A worker's car breaks down at the same time that her son's glasses are broken. She needs money and she's desperate. She remembers the payday lending shop in her neighborhood and goes in. She is told she can write a check for $500 and they will give her $425 in cash and they will hold her check until her next paycheck. The problem is that if the lender does deposit her check, she doesn't have enough in the next paycheck to cover that check as well as her regular expenses, like food, utilities, or rent. So she takes out a new loan. Ultimately, what is supposed to be a short-term fix results in a cycle of debt because our law requires the loan to be paid back in 34 days. There is no way to pay over time. The policy unintentionally traps people in prolonged debt with the average payday borrower reborrowing eight times. So the original loan, if you looked at that average of $425 with fees of $75, turns into a loan of $425 with fees of $500 or $600 more than the original loan. This repeated borrowing is brought into a lender's day-to-day operations. For example, one national lender's

employee handbook has a diagram of repeat borrowing and instructs the employer's employees to encourage customers to take out a new loan if they are struggling to pay on the original. You should know that our payday lending fees are among the highest in the country. In Nebraska, the annual percentage rate on a payday loan averages 461 percent--I'm going to repeat that--at 461 percent. Individuals who take out payday loans are four times more likely to file for bankruptcy, 16 percent more likely to go on food stamps, and often 50 percent of the year in debt. In the long-run, they can affect you and me as taxpayers. I introduced LB1036 precisely to address the systemic reborrowing that leads to a cycle of debt. The bill will make payday lending work for lenders and consumers. Because these consumers have few alternatives and because payday lenders cannot carry a loan longer than 34 days, it's hard to say that this problem exists simply because a borrower is uninformed, ignorant, or stupid. They are not. They are stuck with bad public policy. Payday lending should continue in Nebraska, but let's figure out a way to make it work for the borrower, too. LB1036 allows the borrower to pay back over time rather than having a huge payment within 34 days. When borrowers have time to pay back the loan, they can pay rent, buy groceries, and take care of their families, and we've started to make a dent in the cycle of poverty. LB1036 lets borrowers pay 5 percent of their income each month toward the loan. The bill allows lenders to continue to charge rates above the usury limit--36 percent per annum in addition to a maintenance fee of up to $20 per month. And you may say why did you choose 36 percent? The federal government noted a great number of payday lending shops near military bases and said...and passed a law that said payday lending cannot charge more than 36 percent to our active military members. The bill also allows lenders to forgo traditional underwriting measures so that administrative costs do not exceed revenues of these loans. LB1036 is a middle ground. It allows efficient lenders to offer loans, but ensures that these loans are affordable. Other testifiers will speak about Colorado's experience, showing that borrowers still have access to payday loans while avoiding the cycle of debt. Some say that we should wait for the federal government to act; that the Consumer Financial Protection Bureau is considering new regulations. But the possibility of federal action is no reason to wait. The CFPB expressly has stated that its rules should be "intended to coexist" with state, local, and tribal laws, including laws that "regulate the permissible cost of credit," which is exactly what LB1036 does. The CFPB proposals will complement state laws, such as LB1036. We have the chance to pass a good law that helps Nebraskans and to do it now. The possibility of new CFPB rules should not get in the way. Finally, I've asked Nick Bourke from the Pew Foundation to follow me to explain the data that Pew has compiled about the poverty trap payday lending creates. A great amount of research has gone into this bill with discussions with the department and the office of the Attorney General. And last week I sat down with representatives of the industry to understand their concerns and to see if we could find common ground. We hope to meet again after the hearing to see what the testimony tells us and continue that conversation. I would urge the committee to hold questions for me because you have a great number of testifiers on both sides of this issue that want to testify, and with the time limit I'd rather get to them and hold your questions 'til the end for me. [LB1036]

SENATOR SCHEER: Thank you, Senator. Any questions? Senator Craighead. [LB1036]

SENATOR CRAIGHEAD: I'm sorry. [LB1036]

SENATOR CAMPBELL: That's all right. [LB1036]

SENATOR CRAIGHEAD: I'm going to ask you anyway, Senator Campbell, three questions. One, how many complaints with the insurance commission have been filed regarding this issue in Nebraska? [LB1036]

SENATOR CAMPBELL: I think the director is going to cover that. [LB1036]

SENATOR CRAIGHEAD: All right. [LB1036]

SENATOR CAMPBELL: It is one. [LB1036]

SENATOR CRAIGHEAD: Okay. Thank you. I'll ask again. When I present these, I'm coming from the perspective of growing up in a single-parent family. My dad died when I was eight. I also became a single mom when my husband passed away of cancer, okay? I know what tough times are. Okay. With this, and I may be missing it in the bill, if people take out payday loans, are they required to attend a personal finance and budgeting class? [LB1036]

SENATOR CAMPBELL: No. [LB1036]

SENATOR CRAIGHEAD: Okay. The other thing, and obviously again, like I say, tough times, but sometimes we have to protect people from themselves. Is there a central clearinghouse on these payday loans where a lender can get in and see how many payday loans a person has taken out? [LB1036]

SENATOR CAMPBELL: No. But you may want to ask the folks who actually work in payday lending. [LB1036]

SENATOR CRAIGHEAD: Thank you. [LB1036]

SENATOR CAMPBELL: Uh-huh. [LB1036]

SENATOR SCHEER: Thank you, Senator Craighead. I see nothing else. Thank you, Senator Campbell. [LB1036]

SENATOR CAMPBELL: Thank you. [LB1036]

SENATOR SCHEER: While Mr. Bourke is coming forward, remembering, we will go proponent, opponent, and then a neutral basis for those that are wishing to testify. Welcome. Good morning. [LB1036]

NICK BOURKE: (Exhibit 1) Thank you. Thank you, Chairman Scheer and the committee. I appreciate the opportunity to be here. My name is Nick Bourke, that's B-o-u-r-k-e. I am with the Pew Charitable Trusts. I've worked in the consumer finance industry for more than 15 years, originally as a product manager and legal adviser, more recently as a researcher. I've been at Pew for a little over eight years. And Pew's core mission is to provide high-quality research and analysis that's relevant to important public policy challenges. We have amassed the most extensive collection of research and analysis about the payday lending and auto title loan industry, and my comments today are informed by that. My time is short, but I'd like to try to cover three things: one, I'd like to illustrate the problem a little bit more; two, I'd like to talk about how LB1036 tackles that problem using a proven model that has worked for more than half a decade elsewhere; and three, I'd like to address a little bit about why the federal government will not solve this problem in a state like Nebraska. Overall, this bill is about saving Nebraskans money while preserving access to credit. Multistate operators control 70 percent of the payday loan industry in this state, and they are overcharging Nebraskans today. They are charging Nebraskans three times what the same companies are charging similar borrowers in other states. LB1036 will save Nebraskans millions of dollars that will keep money in the communities and they will have no trade-offs in access to credit. Nobody here today is trying to stop lenders from providing credit. That's not the question. The question is will we implement a model that we know has worked elsewhere in order to improve the situation for borrowers? We're talking about updating an outdated payday loan law. The short version of the problem, Senator Campbell covered it really well, but I want you to think about income. Many of us in this room have steady income because we have salaries. We can predict. We get the same amount of income from month to month. But almost half of the households in this country are what you would call income volatile, meaning their income fluctuates by 25 percent or more from month to month. Almost half the households in this country, they're hourly wage workers, they're contract workers, they're self-employed. This creates liquidity problems. This explains why people turn to short-term loans in order to get a little bit of help. It also explains why seven in ten payday loan borrowers, when they first get a loan, get that loan because they're seeking help to pay for some kind of regular expense, like mortgages, rent, utilities, credit cards. Borrowers say that they get a short amount of relief from this until their next payday. And as Senator Campbell said, when that loan comes due in full because that's the way the Nebraska law requires it to be,

that loan takes more than one-third of the borrower's next paycheck, more than one-third before taxes. Now imagine that. You're living paycheck to paycheck, and you go and you get a short-term loan because you need help paying your bills, and that loan comes due in two weeks and it takes more than a third of your income. It does not work. That is the problem. So borrowers acknowledge that they like getting access to credit, but they also overwhelmingly say they dislike being trapped by it. That's why 72 percent of borrowers want policymakers like you to change the law. LB1036 does what Colorado did in 2010. They were seeking a solution that was a compromise that would keep access to credit available and would tackle this big problem that exists in the payday loan market. The solution is actually rather straightforward. Instead of big balloon payments that take more than a third of a borrower's paycheck, have smaller monthly payments that take no more than 5 percent of their income. Give borrowers enough time to repay, several weeks...several months, rather, not just a couple of weeks. Have reasonable fees. Yes, it's higher than a credit card, but it does not need to be 461 percent like it is in Nebraska today. Other...the same companies that operate in Nebraska are charging two-thirds less in other states to the same type of borrowers. It can be done; it has been done. We know this works because LB1036 copies the approach that Colorado implemented in 2010. More than half a decade later, access to credit is widespread in Colorado. There are better outcomes for borrowers. Borrowers, consumer advocates, credit counselors, and a bipartisan group of state officials in Colorado all say the same thing--the situation is much better now with no trade-off in access to credit. And that's what LB1036 is built off of. LB1036 has a few improvements over Colorado's law, things that lenders in Colorado said would make the law better, like: give us a little more income in the early months of the loan; streamline the pricing system so that it's easier for us to code in our computer systems, easier for us to disclose to borrowers; give us a little more flexibility in whether the loan lasts three months or nine months, depending on the borrower's needs. LB1036 does all of that. And finally, it would be a mistake to assume that the federal government will stop multistate payday lenders from overcharging Nebraska residents. They will not. Only the Nebraska Legislature can do that. There are serious gaps in federal regulatory framework for payday lending. The CFPB, the Consumer Financial Protection Bureau, is essentially doing this. May I finish this last point? [LB1036]

SENATOR SCHEER: Yes, very briefly, please. [LB1036]

NICK BOURKE: The CFPB is essentially doing this. They're requiring payday lenders to get more documentation from the borrower to screen out people who simply can't afford to take on any more credit. But they're not saying anything about the key terms of the loan and they have absolutely zero power to regulate pricing. Only states can do that and the CFPB has been very clear about that, and when they published their framework a year ago, they were very clear about that. And when I talk to people at the bureau on a, virtually, monthly basis, which I've done for more than three years now since they started working on this policy, they've been very clear states must still regulate payday lending because payday lenders are state licensed and the

CFPB's authority is very limited. So I'd just like to close by saying that Pew supports this bill because now is a good time to implement a change to the payday loan law that accommodates, frankly, the future of where payday lending is going. It accommodates longer term loans. It accommodates the federal framework and it does it based on a model that has been proven to work for more than half a decade elsewhere. Thank you. [LB1036]

SENATOR SCHEER: Thank you, Mr. Bourke. Any questions? Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Mr. Bourke, for being here today. Appreciate that. Over the course of the rest of this morning, I know we're going to hear testimony about horror stories of payday lending. We're also going to hear from the payday lending businesses about what they do and what they can't do. What light can you shed for me, since you have mentioned Colorado, how many payday lenders were closed in Colorado following the adoption of their legislation? [LB1036]

NICK BOURKE: A lot of stores closed in Colorado. There was one zip code in Denver, for example, where there used to be seven stores aligned along several blocks in the city. Now there are three. Overall, about 55 percent of stores closed in Colorado. The key is it's... [LB1036]

SENATOR WILLIAMS: What was that percentage again? [LB1036]

NICK BOURKE: About 55 percent. The key is that it was a thinning out. Wherever there used to be a store in the state, there still is one now. The remaining stores serve twice as many borrowers per store. You know, the typical payday loan store only serves about 500 customers per year. [LB1036]

SENATOR WILLIAMS: In Nebraska right now we seem to have what I would call two groups of payday lenders. We have the national firms that operate in multistates,... [LB1036]

NICK BOURKE: Uh-huh. [LB1036]

SENATOR WILLIAMS: ...and then we have some small businesses, private individuals that are complying with the law regulated by the state Department of Banking, loaning their personal money in these situations. Would you say that in Colorado those that closed were the private ones and you ended up with the national multistate-licensed payday lenders? [LB1036]

NICK BOURKE: No. In Colorado, approximately 25 percent of the stores are locally owned, 75 percent are multistate operators. It's very similar to where you are in Nebraska today. In

Nebraska, about 30 percent of the stores are locally owned and 70 percent are multistate operators. [LB1036]

SENATOR WILLIAMS: Okay. One of the real concerns in some areas of our state, in particular in my district, if we lose the availability of the payday lender as an alternative, what...where are we driving these consumers and what would your research show there, Mr. Bourke? [LB1036]

NICK BOURKE: The prospect of losing credit is an important one and that actually is why we support this bill, because it maintains access to credit and updates the payday loan law so that it can accommodate the future, where the market is already going in 20...has already gone in 20 states--longer term payday loans that last more than a couple of weeks. Nebraska law does not allow payday loans to last more than 34 days. LB1036 allows the loans to last many months, and that accommodates the overall trend in this industry and where the federal government is requiring these loans to go--loans that last several months. [LB1036]

SENATOR WILLIAMS: Okay. You mentioned the CFPB. And as a banker, I've had pretty extensive experience with the CFPB. In fact, the deputy director of the CFPB, David Silberman, at a request from me, actually came to Nebraska and visited our small bank in Nebraska to look at how banks are serving their customers. He was not here to look at payday lending. He has given me the time line that they are looking at for announcing their rules and regulations, which would be, under his information to me, that they would be releasing their regs during the first quarter of 2016, would be putting them out for public comment, and that comment period could be anywhere from 30 days; it could be as long as 90 days, and then they would hope to have final rules out yet this calendar year. Does that coincide with the information that you're given? [LB1036]

NICK BOURKE: Yes, it does. I would add that the rule will probably not be effective until sometime in 2017 or 2018. [LB1036]

SENATOR WILLIAMS: Right. Right. That's all for now. Thank you. [LB1036]

NICK BOURKE: Thank you. [LB1036]

SENATOR SCHEER: Senator Craighead. [LB1036]

SENATOR CRAIGHEAD: Thank you, Senator Scheer. Thank you, Mr. Bourke, for being here today. Two questions for you. As I mentioned, I was a single mom with a family. I worked three

jobs, all with volatile income. What's the average number of jobs people who get payday loans work simultaneously? [LB1036]

NICK BOURKE: I actually don't know that. Most people who use payday loans are employed. I can tell you, from talking with several...a couple of hundred payday loan borrowers and doing 20 focus groups that many people do have two or three jobs. Some people that we talk to say that once they've carried these loans for several months and they're unable to find a way out of them, they find a way to get another job in order to pay off their payday loan. But overall, the vast majority of payday loan borrowers are employed and are struggling to pay their bills. [LB1036]

SENATOR CRAIGHEAD: And what are your statistics. I'm not seeing those. When people take a personal finance class after they've gotten a payday loan, how do those numbers drop as far as payday loans? How are their financial situations? [LB1036]

NICK BOURKE: There's not good data that I'm aware of that shows that. And I'm not surprised because education and literacy are very important parts of this equation, but they cannot overcome the fact that the law prevents lenders from making loans that better suit people's needs. People who use payday loans have very limited options today because the lenders are basically able only to give them one type of loan and that's a short-term balloon payment loan that does not work very well for borrowers. So they have the choice of either not taking the loan, or taking the loan and hoping that things improve in a couple of weeks, and inevitably they don't for most people. [LB1036]

SENATOR CRAIGHEAD: Thank you. [LB1036]

SENATOR SCHEER: Senator Schumacher. [LB1036]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Senator Campbell alluded to it. You alluded to it. And if you're not the right person, just say so and I'll let the people know that I'm interested in the question. The 34-day limit that we must have in our statutes now to...that cuts off the loan term at 34 days, is that the core of the problem? [LB1036]

NICK BOURKE: In one sense, yes, and one sense, no. It's the core of the problem because it prevents the loan from lasting longer which, in turn, prevents the payment from being small and reasonable. It's not the only problem because simply allowing the loans to last for three or four or five or six months doesn't do...doesn't solve the whole equation. You need to have a whole policy in place to ensure that there's appropriate pricing, to ensure that the loans don't last too long, to ensure that there aren't large up-front fees that can distort the market and lead lenders to

encourage borrowers to refinance frequently and generate more revenue that way. So that's why LB1036 both extends the term of the loan, it extends it out months, but it also puts in place a clear pricing framework that's based on interest and a monthly fee, but no big up-front fees. It's why it puts in place some policies to protect against loans lasting too long. I'll give you an example. We look in other states at what payday lenders are doing. And in places where the law allows them to make longer term loans, but does not put the type of protections in place that LB1036 has, like in Texas or other places, payday lenders today are making $500 loans that last 16 or 18 months and have fees of $1,100 or more on top of the $500 originally borrowed. So, yes, the loans need to last longer. They also need to have a reasonable framework in place that's good for borrowers and lenders. [LB1036]

SENATOR SCHUMACHER: And that reasonable framework comes essentially from reducing the number of stores. [LB1036]

NICK BOURKE: No, it has nothing to do with the number of stores because it's about what the product looks like itself. So this is not about trying to prevent people from borrowing or prevent people from lending. It's about looking at what does the product look like and how much does it cost whenever somebody does get that product. [LB1036]

SENATOR SCHUMACHER: And if somebody comes up with a better mousetrap, if we remove the 34-day limit, that would be a place where the word would get out that people should go, wouldn't it? Why aren't we letting the market work... [LB1036]

NICK BOURKE: You know... [LB1036]

SENATOR SCHUMACHER: ...and remove the 34-day limit? [LB1036]

NICK BOURKE: It's a good question. In order for markets to work, they have to be transparent and they have to be competitive. Payday loan markets simply are not competitive unless good rules are in place that focus on the things that are important, but that borrowers and lenders tend not to focus on, which is really price. The payday loan borrower is really interested in how fast can I get the loan? How big is the loan going to be? How certain am I to get the loan if I ask for it? And that is what payday lenders compete on. This market is not price competitive. That's why 46 states, including the District of Columbia, regulate some form of consumer finance industry. That's, frankly, why Nebraska law currently regulates prices on payday loans. It's the traditional and proper thing to do. The question is, what is that pricing policy? And under (LB)1036 they're allowing the loans to last longer, but they're preserving some form of a pricing policy that's been proven to work elsewhere in maintaining access to credit and then allowing the lenders to be profitable. [LB1036]

SENATOR SCHUMACHER: Okay. Thank you. [LB1036]

SENATOR SCHEER: Senator Craighead. [LB1036]

SENATOR CRAIGHEAD: Thank you, Chairman. Mr. Bourke, just a couple other questions that kind of piggybacks on Senator Schumacher's question. Okay, if you don't pay your rent, you get evicted. If you don't pay your cell phone bill, you lose your cell phone. If you don't pay your mortgage, you go into foreclosure and you lose your house, okay? And all these bills have a limited time in which you must pay them. Why should we be giving people preferential treatment to extend this time frame on payday loans when we don't get that in the normal world? [LB1036]

NICK BOURKE: I would put it the reverse way. Why, when all of those other loan products you mentioned, when the lender and the law inevitably makes those loans structured in a way that people have a chance to pay them off over time, in smaller, more manageable payments, why, when the entire rest of the consumer finance system is designed that way, why do we give payday lenders the requirement, basically, to have that loan be due back in only two weeks? Why do we let the payday lender have access to the borrower's checking account and essentially control their income stream in order to make sure that the payday lenders are paid, but we don't allow the payday lender to structure that loan in a way that works better for borrowers with smaller, more manageable payments? Really, I think that's what this is about. It's not about taking away the payday loan or letting people take out a loan and not repay it. It's about giving them a chance to get back on their feet with smaller, more manageable payments. [LB1036]

SENATOR CRAIGHEAD: Thank you. [LB1036]

SENATOR SCHEER: Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer. And like Senator Craighead, sitting here I'm thinking of more questions that you may be the best expert to ask. I don't think there's any doubt LB1036 changes the business model substantially from what we have had for a significant portion of time, a portion of time that's always been regulated by our state Department of Banking during that. Again, I'm particularly concerned by a situation in my district. In my district, I have one community that has a significant Somali population. That population is, as you would know, is Muslim. The Muslim religion precludes people from paying interest or receiving interest. And it seems to me, in reading this bill, we are switching from a product that is fee-based to a product which has a loan component and an interest rate component. So my question is, knowing the payday lenders in my area that are currently serving this population,

that whether they should or should not be served by the banking industry aren't because everything is tied to interest. How do we deal with that? [LB1036]

NICK BOURKE: Well, I'm not...certainly not an expert on sharia law or Muslim rules regarding lending. But I will say that the fee structure in LB1036 is intended to give the lender a reasonable revenue stream so that they can be profitable and make credit available whenever people choose to take that credit. So if that is, indeed, a problem that there's an interest component to the law, you could easily only charge the monthly fee and avoid that problem. You know, this...I cannot perceive that this law is designed in a way that would make it impossible to provide these loans. In fact, 36 percent interest on a $300 or $400 loan on a monthly basis does not provide that much revenue. The larger component of the revenue here is probably going to be the monthly fee, so that could be adjusted. [LB1036]

SENATOR WILLIAMS: We'll see. Thank you. [LB1036]

SENATOR SCHEER: Thank you, Mr. Bourke. [LB1036]

NICK BOURKE: Thank you. [LB1036]

SENATOR SCHEER: Now for the first opponent. Good morning. Welcome. [LB1036]

JULIE TOWNSEND: (Exhibit 2) Good morning. Thank you, Mr. Chairman, members of the committee, thank you for the opportunity to testify in opposition to LB1036. My name is Julie Townsend, for the record, J-u-l-i-e T-o-w-n-s-e-n-d. I am government affairs director for Advance America. We are a national company operating in 29 states across the nation. We have about 2,300 stores nationwide and 19 here in Nebraska. As you've heard, LB1036 is based on the current Colorado statutes governing short-term lending, but it's even more restrictive than the Colorado law. And in Colorado many storefronts closed after this law took effect. In fact, Advance America closed two-thirds of our centers there. When stores close in communities, consumers often turn to unlicensed, unregulated, on-line lending that states cannot reach in any way. Nebraskans value the reliability, the flexibility, and the transparency of the laws of the state that allow them to take out a short-term loan when they need to bridge an income gap. Those consumers would lose access to credit under LB1036. And I also think it's important to note that this particular bill chooses winners and losers. And an installment loan, which is the Colorado model--it changes from a traditional payday loan to an installment platform--might work for some consumers, but consumers know what their needs are. And some prefer to have a shorter term loan to bridge a short-term gap. Some prefer to have a longer term loan that they would pay back in installments and we advocate a platform that allows the consumer to choose what works best for them. Additionally, as you've already heard, the Consumer Financial Protection Bureau

is planning to propose federal rules regarding short-term lending. In March of 2015, the CFPB released an outline of those federal rules and we expect the proposed rules to come out sometime this month or next. Obviously, that will be followed by a public comment period and we understand from the CFPB that they would like to have the rules in place by fall of this year and operational by 2017. We don't know what the exact provisions are going to be, but we do know that by the CFPB's own outline they predict revenue declines of up to 84 percent for nonbank financial providers. And an independent analysis by a former CFPB assistant director of research indicates that monoline payday storefront businesses would lose more than 70 percent of its volume and expected to be eliminated. We know that the federal regulations will preempt the laws of 35 states currently regulating short-term credit, including the laws here in Nebraska, laws that have been crafted and debated by you and your colleagues over decades, the policymakers who know your constituents best. Nebraska lending regulations successfully balance protection, consumer protect... [LB1036]

SENATOR SCHEER: If I might...if you could please finish. [LB1036]

JULIE TOWNSEND: Yep, I'm wrapping up. [LB1036]

SENATOR SCHEER: Thank you. [LB1036]

JULIE TOWNSEND: Thank you. Consumer protection with equitable access to credit. And I think that it's important to note that as these new rules come out, you will undoubtedly be working with Mr. Quandahl over the next year to determine how to make Nebraska law conform to the CFPB rules. And we feel like it would be very unsettling and confusing to Nebraska consumers to change the law drastically this year only to come back and revisit that and change it again after the CFPB rules take effect next year. Thank you. [LB1036]

SENATOR SCHEER: Thank you. Any questions? [LB1036]

JULIE TOWNSEND: No? [LB1036]

SENATOR SCHEER: Seeing none, thank you very much. [LB1036]

JULIE TOWNSEND: Thanks. [LB1036]

SENATOR SCHEER: Now entertain a neutral position. Good morning and welcome, Director. [LB1036]

MARK QUANDAHL: (Exhibits 3 and 4) Thank you. Chairman Scheer and members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl, it's Q-u-a-n-d-a-h-l, and I'm director of the Nebraska Department of Banking and Finance. I'm appearing here today in a neutral capacity with regard to LB1036 at the request of Chairman Scheer. I'm here to address three topics: the history of the Delayed Deposit Services Licensing Act; the department's practices and experience in regulating this industry; and finally, the potential for regulation by the CFPB. And so handing around a number of things. I guess I'd direct your attention to the appendices that are attached there. The department has been responsible for the enforcement of the Delayed Deposit Services Licensing Act, the DDS Act, since its adoption in 1994. Attachment A in the packet handed out shows the number of licensees by fiscal year since 1994. As of January 1, 2016, there were 91 licensed DDS entities and 49 licensed branch locations in Nebraska. The 91 licensees include 29 institutions with locations in only one county. The department examines all licensed locations at least once every 18 months, with our target being every 14 months. In 2015, the department conducted 66 DDS examinations. If violations are found during the course of the examination, the licensee is advised by our Consumer Finance Review examiner that a written response is required. During calendar year 2015, the department issued 25 DDS orders that included fines. Fines levied in 2015 totaled $123,400.00. Attachment B in the packet is a chart showing the number of fine violations by statute over the last ten years. The most common violations were for not maintaining records in a manner consistent with accepted accounting practices--640 instances of incorrect or unavailable records, and for same-day transaction verification forms that were either unavailable or incomplete--that was 126 instances. Attachment C provides a compilation of all complaints received by the department for 2014, 2015, and 2016 to date. It shows one complaint against a DDS licensee was received during that time frame. Each DDS licensee must renew its license on May 1. The 2015 license renewal applications included 299 full-time and 66 part-time employees at the business sites. The DDS Act is essentially black and white. A licensee must have a physical location in the state. Only two checks may be outstanding at any one time, and those checks must not total more than $500 at one time. And I see my time is up, but can I look... [LB1036]

SENATOR SCHEER: Please. [LB1036]

MARK QUANDAHL: ...plaintively at... [LB1036]

SENATOR SCHEER: Sure. [LB1036]

MARK QUANDAHL: ...the Chair and ask for some additional time? [LB1036]

SENATOR SCHEER: Sure. [LB1036]

SENATOR QUANDAHL: Attachment D is a chart of information compiled by the Conference of State Bank Supervisors showing the status of payday lending statutes across the country as of January 1, 2015. And so finally, I'll address the CFPB. The CFPB is a federal entity authorized by Congress to regulate payday lenders. The CFPB has been evaluating the payday loan industry since 2012 through meetings with small entity representatives, consumer advisory boards, several field hearings, information sharing agreements, review of complaints, and studies. For example, in June of 2015, CFPB Director Richard Cordray conducted a daylong public hearing in Omaha on the bureau's proposed payday lending rules. And so in 2016, as you heard from previous, they're expected to incorporate feedback and publish a proposed rule. Now when that's going to happen is a matter of opinion as to who you talk to, but we expect them sometime in 2016. The proposed rules are expected to require covered lenders in all 50 states to determine before a loan is taken out whether borrowers have the ability to repay a loan without reborrowing or defaulting. Lenders would be required to collect and verify a borrower's income information, consult certain databases to look for multiple simultaneous loans by a single borrower, and maintain loan records for 36 months to demonstrate the lender has complied with the ability to pay determinations. Any proposed rule will be published in the Federal Register, and as before, there's probably either going to be a 30- or 60-day, quite possibly a 90-day comment period. The department believes it has fairly and efficiently administered the act over the last 21 years and will continue to regulate as the law directs. So I'd stand ready to answer any questions that you have at this time. [LB1036]

SENATOR SCHEER: Thank you, Director. For the committee's purpose, I just wanted to make sure everybody had some base knowledge on the activities that have been going on in relationship to the banking department's responsibility in relationship to this. So with that, Senator Craighead and then Senator Williams. [LB1036]

SENATOR CRAIGHEAD: Thank you, Chairman. Welcome, Director Quandahl. Okay, I fully believe that if people are going to complain, they're going to find a way to complain, okay? You mentioned you had one payday lending complaint. Can you talk a little bit about the number of complaints in the state of Nebraska last year and maybe what those were... [LB1036]

MARK QUANDAHL: Sure. [LB1036]

SENATOR CRAIGHEAD: ...so we'd have some comparison? [LB1036]

MARK QUANDAHL: That would be your Attachment C. [LB1036]

SENATOR CRAIGHEAD: Okay. [LB1036]

MARK QUANDAHL: If you look at Attachment C, and that shows a total of 154 consumer complaints that were made to the department in 2014. And so just to kind of give you an example, for example, all banks, whether federally or state chartered, 39 complaints; unlicensed on-line lenders, 41; mortgage bankers, 56. And it totals up to be 154. Like I said, there was one DDS complaint in 2014. Now in 2015 the amount of total complaints dropped to 87 in the state of Nebraska. There were none against DDS. And so you might say, well, why did they drop off by about a half in a year? And we don't know for sure, but we suspect it's because we were on kind of the tail end of the mortgage crisis. And so if you look at some of the complaints from the previous year, it came from primarily the mortgage industry was the largest complaint, so. And then so far this year no complaints against DDS licensees. [LB1036]

SENATOR CRAIGHEAD: Thank you. [LB1036]

SENATOR SCHEER: Thank you. Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Director Quandahl, for being here. I wanted to talk a little bit about, if LB1036 were to become law, the extra burden that that would place on the Department of Banking to regulate this industry and how that fits into the fiscal note that is supplied with the bill. And not digging into it too deep, but trying to follow through, and wonder was the fiscal note also based on the fact that, if we follow the Colorado model, that 55 percent of the payday lenders in Colorado closed. So there would be much...there would be a much smaller industry to regulate than currently. [LB1036]

MARK QUANDAHL: Actually, no. We didn't know exactly what the impact or where the legislation would end up, and so even though we noted that there probably would be some sort of an impact to the industry, the fiscal note that we prepared reflects or basically was based on the number of licensees that we have at the present. [LB1036]

SENATOR WILLIAMS: Right. So that, if I follow that through then, the fiscal note is probably not accurate. [LB1036]

MARK QUANDAHL: It's...well, I'd say it is accurate. However, if the same impact happens in Nebraska as happened in some other states, it probably would... [LB1036]

SENATOR WILLIAMS: It will change that. [LB1036]

MARK QUANDAHL: ...would be changed, yes. [LB1036]

SENATOR WILLIAMS: One of the problems that we have talked about with the Department of Banking is the ability to hire and maintain and keep quality staff for the examining crews around. And LB1036 would require, according to the fiscal note, the hiring of additional staff. Are you confident that that staff can be hired and be trained in this area? [LB1036]

MARK QUANDAHL: Well, I guess I think I'm confident that they can be hired. At this point, basically, finding qualified individuals to apply for our current examiner positions is becoming increasingly, increasingly difficult. And so we've traditionally hired people and then trained them up for the position afterwards and it takes time to find those people to fill those positions. But, just like you said, we've had a difficult time in finding and maintaining our existing examiner staff for the depository side, which are the banks and the credit unions and our one savings and loan. [LB1036]

SENATOR WILLIAMS: Plus the fact that we know, for those of us that work with your department on a regular basis, you have a very senior staff and are going to be faced with significant retirements... [LB1036]

MARK QUANDAHL: Yeah, that's correct. [LB1036]

SENATOR WILLIAMS: ...in the next upcoming years. I'd like to also address the issue of what we have all known for a long time as the dual banking system. And knowing the fact that we have state-chartered banks and we have federally chartered banks, and understanding that they are regulated differently, but the regulators have to get along and do that. That is what I am envisioning will happen with the CFPB's oversight and regulation of the payday lending industry, just like they will have impact onto the banking industry. How do you see us moving forward with the fact that we're faced with creating state law right now that may set a higher bar, may set a lower bar? We can't predict where that will be and yet we know that within a short period of time we're going to have federal laws in this area. How do you see that working, Director? [LB1036]

MARK QUANDAHL: It's kind of tough to answer, but I will say that, you know, the Legislature, I mean this committee is the one that sets the public policy. Whatever that public policy is, the department will carry out the dictates of that. I think kind of in your question you were going to say is, how do we know when the CFPB is going to act and what is that going to look like? I tell you, if I have the answer to that, as how fast the federal government works and what the reasoning and what that looks like at the tail end of that, I'd have something. And I can't...I can't and I won't predict that, so. [LB1036]

SENATOR WILLIAMS: And I'm not asking that. I have the letter from the deputy director that tells me there. That's all my questions. Thank you. [LB1036]

SENATOR SCHEER: Thank you. Seeing no others, thank you, Director. [LB1036]

MARK QUANDAHL: Thank you. [LB1036]

SENATOR SCHEER: Appreciate it. We are now back to proponent. Could he get your pink sheet from you, please? [LB1036]

JOHN KOTOUC: I don't have a pink sheet. Chairman Scheer, members of committee, appreciate having a chance to appear here. My name is John Kotouc. I'm executive chairman of American National Bank, headquartered in Omaha. [LB1036]

SENATOR SCHEER: Could you please spell your name just for the record, please. [LB1036]

JOHN KOTOUC: K-o-t-o-u-c. [LB1036]

SENATOR SCHEER: Thank you. [LB1036]

JOHN KOTOUC: Proud to be one of those Czechs in Nebraska. I would like to appear here to support meaningful and progressive legislation of payday lending. And I do support LB1036. I believe that this is an industry that's significantly underruled and underregulated and in need of reform. Eighty percent of individuals who take a payday loan are back to the well within 14 days. This is a very recurring problem for many individuals. It needs reform. There's been mention that the CFPB may come in with some guidelines. I hope they do, but we've, in our conversations with the CFPB, we do not believe that they will make rules with respect to maximum rates or terms. Under the current law, it's really very unregulated. Every 34 days you can just...80 percent of the people can expect another fee. And the overall impact to consumers is significant: APRs that are significantly higher than any other industry, 400-plus percent. So I would not be in favor of regulation in general unless it's necessary. I think it's a very serious issue to bring forward any kind of regulation or rule making, but my review of the industry currently is that it is ripe for review and it's ripe for reform. Thank you. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, John, for being here. A couple of questions about the finance industry in general that I think you could shed some light on and help us with. What we have seen in our career in the banking industry is that regulation has pushed us away from lending. We have fewer and fewer banks, based on regulation, that are making home loans today. We have fewer and fewer banks that are making small consumer loans today because of regulation. My concern about limiting payday lending to the extent that LB1036 is, is that we push people to a lending source that is totally unregulated and breaks your knees if you don't pay, versus one that has some form of regulation right now. Would you address that issue for me? [LB1036]

JOHN KOTOUC: It is an important issue that you raise as far as any constriction of credit that any regulation or new law might bring. It has to be certainly weighed. The question I would raise is, how much of that is now legitimate credit? How much of it is really serving the persons who are gaining those loans and how much of it is actually making loans to individuals who are caught in a very serious cycle of debt and cannot get out? So generally you have to be very careful about regulating because it can have an effect on credit, but in this case, I believe there are...this is a credit situation where it's important to actually have regulation. [LB1036]

SENATOR WILLIAMS: So you would not be concerned then that this regulation, which will close at least one store in Lexington that currently serves the Muslim population, you would not be concerned that they would not have access to credit. [LB1036]

JOHN KOTOUC: Well, I'm always concerned if someone doesn't have access to credit. I think the issue in front of us is whether or not it's right to regulate an industry that's pretty much unregulated, and I believe it is. I think there are other avenues for credit besides payday lending that the Colorado example has shown that individuals find that credit in other ways. And so I think that it also encourages more responsible borrowing and is helpful to the public. [LB1036]

SENATOR WILLIAMS: Thank you, John. [LB1036]

SENATOR SCHEER: Senator Schumacher. [LB1036]

SENATOR SCHUMACHER: Thank you, Senator Scheer. If we begin to intervene in private company transactions because, well, you know, it puts people in a real jam, I had a person the other day complain to me that they ran over the gigabyte limit on their cell phone and didn't really realize it, and now they've got a $1,000 cell phone bill. And it kind of sounded wrong. This person didn't have any real money, any ability to repay it. Phone company threatening to cancel the cell phone if they don't pay, change their number and everything. You know, that is

equally as bad a situation as it was described here today. Where do we stop? Where do we stop and say, you know, at a certain point we've done the best we can? [LB1036]

JOHN KOTOUC: I think we really...that's a fair question. I really think we have to look at what is the impact upon individuals within the current lack of legislation, within the current lack of rule making? And there are significant numbers of individuals who are so negatively affected, I think it is possible that someone occasionally may have a cell phone bill that has to be adjusted, but this is an everyday occurrence for a fair portion of the population. So I think that there are certain areas which need to be regulated. I come from an industry that, other than maybe the Atomic Energy Commission, is more (laughter) is more regulated than any industry, and we are always dealing with regulations. But on the whole, most of the regulations are well-intended and have a positive impact. And that's what I believe should happen here, is we need to take a look at this and say, what can we do that can affect this industry and can affect the cycle of poverty, which is very real in our communities? [LB1036]

SENATOR SCHUMACHER: Thank you. [LB1036]

SENATOR SCHEER: Senator Craighead. [LB1036]

SENATOR CRAIGHEAD: Thank you, Chairman. Hi, Mr. Kotouc. [LB1036]

JOHN KOTOUC: Hi. [LB1036]

SENATOR CRAIGHEAD: Great to see you today. So I'm going to ask this question too. Do you think that people who receive payday lending should have to go through personal finance and budgeting classes? [LB1036]

JOHN KOTOUC: I think that would be perhaps advantageous for those who have real, significant problems. But generally speaking, that would be at their volition. I think it should be available. [LB1036]

SENATOR CRAIGHEAD: Okay. All right. Thank you. [LB1036]

SENATOR SCHEER: Seeing no other questions, thank you very much. [LB1036]

JOHN KOTOUC: Thank you very much. [LB1036]

SENATOR SCHEER: And we're now to an opponent of (LB)1036. Good morning. [LB1036]

BRAD HILL: Good morning. My name is Brad Hill, B-r-a-d H-i-l-l. I'm the president of the Nebraska Financial Services Association. I'm also the regional director for MM Finance, which is located in Bellevue, which has 11 stores in Nebraska. I've been involved in check cashing and payday lending for over 30 years in Nebraska. I'll cut right to the chase. The law...this current bill, as it's constituted, would virtually eliminate our industry. It's more restrictive than the Colorado law. We have an excellent law now that works for everybody. You heard the director of banking. We had one complaint in, I think, two calendar years. The Better Business Bureau gets virtually no complaints on us. The CFPB gets fewer complaints on us than any other industry. I think this is paternalistic legislation, that we know what people should do with their money more than they know what they should do with their money. Thank you. [LB1036]

SENATOR SCHEER: Thank you, Mr. Hill. Any questions? Seeing none, appreciate your patience. [LB1036]

SENATOR WILLIAMS: I do have one quick question, Mr. Chair. [LB1036]

SENATOR SCHEER: Oh, excuse me. [LB1036]

SENATOR WILLIAMS: And thank you for being here. I guess I will just follow up. With 11 stores in the state and your analysis of (LB)1036, how many of your stores do you think will survive if we pass (LB)1036? [LB1036]

BRAD HILL: I would say maybe two. [LB1036]

SENATOR WILLIAMS: Thank you. [LB1036]

BRAD HILL: Uh-huh. [LB1036]

SENATOR SCHEER: Thank you, Mr. Hill. Now a person in the neutral position. Good morning. Welcome. [LB1036]

JENNIFER DAVIDSON: (Exhibit 5) Good morning. Good morning. I'm Jennifer Davidson, J-e-n-n-i-f-e-r D-a-v-i-d-s-o-n. I am president of the Nebraska Council on Economic Education and an assistant professor of practice in economics at the University of Nebraska at Lincoln. The Nebraska Council on Economic Education is a nonprofit entity, housed at the University of

Nebraska in the College of Business. We're in our 53rd year of operation. Our entire mission is economic and financial literacy, and we focus on K-12 teachers and students. The council has been the beneficiary of past legislation affecting the delayed deposit industry in Nebraska. In 2012, the One Hundred Second Legislature passed LB269 increasing the application fees for each delayed deposit location and depositing these increases into the newly created Financial Literacy Cash Fund. This fund is administered by the University of Nebraska to provide assistance to nonprofits that offer financial literacy programming to students in grades K through 12. As a result of LB269, in 2013 we received $60,561, in 2014 we received $57,131, and in 2015 we received $56,640, so just under $175,000 in the last three years. These annual amounts account for about 30 percent of our budget. This is the only funding we receive through the Legislature. The remainder of our funding comes from private donations, corporate donations, and foundation grants. The council works very closely with the Department of Education, the educational service units, and all the school districts across the state to provide economic and financial literacy professional development training for teachers. In addition to teacher professional development, we have direct to student programming that teachers utilize as a way to increase student engagement in the classroom. And due to time constraints, I'm just going to briefly mention three. The Finance Challenge is a multistage competition that begins on-line, continues as a regional competition with events in Lincoln, Omaha, and Curtis, Nebraska. Students address issues of income, money management, credit, debt, investment, insurance, and more, with a great partnership with the State Treasurer on that to provide scholarships. The stock market game is a simulation of the stock market for students in grades 4 through 12, and then we also have an in-school savings program where we partner with elementary schools to actually open a branch of a savings institution inside a school. We currently have 22 of those. With LB1036, I very much appreciate the intent of the committee to help ensure consumers understand what they're getting into when they take out this type of short-term loan. I'm certainly a proponent of oversight and consumer protection. That said, I'm also a huge proponent of mom-and-pop businesses, consumer choice, and personal responsibility. These are foundational aspects of our country. LB1036 drastically increases the cost of business for these entities, and many are very small mom-and-pop outfits and will just close and then not be available when a consumer, understanding the costs and benefits of the short-term loan, decides that this is their best alternative. Even better, I think we need more education and funding for economic and financial literacy education. We need all students to have coursework in economics and personal finance, and the importance of economic and financial literacy really cannot be overstated. Thank you. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you for your patience in waiting. Next proponent. Good morning. Welcome. [LB1036]

ROBIN MERSEREAU: (Exhibit 6) Good morning, ladies and gentlemen. My name is Robin Mersereau, it's R-o-b-i-n N. M-e-r-s-e-r-e-a-u. I come to you as a component...as a consumer,

someone from your community who has been in the position of having to seek these loans, but I want to share with you very briefly the cause of me needing to seek the loan. And then I also want to share with you, if I have time, most importantly I had an opportunity to work in a model program who has worked out many of these components with a lower interest and a longer term payback time and how that has affected my family and, therefore, also impacted our community in a positive way. I started the payday journey as a foster parent. My husband and I, we're foster parents. We're also employed in the community. When we received some new foster children, we had some complications, and then causing me to lose my job. Shortly after that, one of our foster children was removed from my home after pulling a knife on me, and then he accused me of abuse. There was a 12-month investigation that happened, but I did not turn to the payday loans knowing of the high interest for ten months. I worked every little job I could. I made all kinds of furniture, photography, anything I could to pay the bills. But it came down to I am passionate about being a foster parent and wanted to save the large home that we had been renting. And we had come to a point, after ten months of using up our savings, community resources, family, that there was no one to turn to. So in this situation, we did turn to payday loans. And I am thankful that they are there because it did help save my house for that position, but because of the high interest and the quick turnaround, that two weeks that we are turning around with a single income, it quickly turned into a situation where we were really stressed trying to keep up with it. We ended up, because of the stress of the phone calls and at one point they turned it to a...they turned it to an electronic payment and caused us to have a lot of fees. We...it absorbed our whole paycheck. And so at that point, we got in a position where we were being...they were seeking their money, but the way they were doing it, it was very aggressive and extremely stressful. My husband and I were fighting all the time. Because of the stress, we were not parenting my child very well. We were on the edge. We were literally holding on by our fingernails. And you wonder, if people are saying why aren't we hearing more about what's going on, why are there not more complaints? When you're holding on by your fingernails, you don't have an extra hand to call and make a complaint. I was very excited to be part of a model program that was run through Creighton Financial Hope here in Omaha. It gave us nine-week educational classes and taught us about the psychology of money. It taught us budgeting plans and gave us a real grasp on how money really affects us. But after the completion of these classes, we were eligible for a short-term loan through some community banks that have partnered with them. Even though, because I've been a missionary, I haven't been building my credit, they partnered with them because this charity had the credit and they were willing to back us in the community. And so we were able to get a short-term loan. So it went from $12,000...I mean $1,200 a month to $250. We can suddenly breathe again. Now we have time to have conversations again. My husband and I took off the boxing gloves. We started communicating again. We had time to parent our child effectively again. And since then, we have fostered seven foster children in our home. Because of... [LB1036]

SENATOR SCHEER: Robin,... [LB1036]

ROBIN MERSEREAU: ...these classes,... [LB1036]

SENATOR SCHEER: Robin, I've let you go about an extra minute. If you could just... [LB1036]

ROBIN MERSEREAU: Wrap it up. [LB1036]

SENATOR SCHEER: ...wrap up real quick (inaudible). [LB1036]

ROBIN MERSEREAU: Yes. Thank you. I just want to encourage you, I know you might not be hearing about this, but this is a real issue in our community, the interest rates and having to turn it around so fast. I'm not asking you to send the creditors away. I'm just asking you to help do something today. I know the government says that they're going to do something, but people in our community need answers today and we don't need maybes and somedays. We need help today. Thank you. [LB1036]

SENATOR SCHEER: Thank you. And just a second. There might be a question. Any questions? Senator Schumacher. [LB1036]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Just quickly: Did credit card debt also contribute to your situation? [LB1036]

ROBIN MERSEREAU: No, I don't have any credit cards. [LB1036]

SENATOR SCHUMACHER: Okay. Thank you. [LB1036]

SENATOR SCHEER: Any other questions? Thank you for your testimony. I apologize for the briefness... [LB1036]

ROBIN MERSEREAU: Oh, no problem. [LB1036]

SENATOR SCHEER: ...but just out of courtesy to the rest as well. Next opponent. Good morning. [LB1036]

PAUL BENCKER: Good morning. Thank you for letting me speak here. I'm one of the mom-and-pop stores. My name is... [LB1036]

SENATOR SCHEER: Could you give us your name and spell it, please. [LB1036]

PAUL BENCKER: My name is Paul Bencker Sr., P-a-u-l B-e-n-c-k-e-r, Sr. I'm one of the mom-and-pop stores that you talk about. I personally own two stores in Omaha. I've been in it for 14 years. This bill would affect us totally. I'd be out of business the next day. The business has been good. I have a lot of local banks. I have a store on 90th and, roughly, Maple, if you know where that is. They refer me customers. Most every customer I have know that Paul, I am the owner, and I personally deal with most of my customers. I have four staff members and this bill, (LB)1036, would close my two stores and affect our four families. And I'm mostly family owned, too. Have a lot of relatives that work for me. So it would personally shut us down and it would affect four families' income and future, because three of us are the breadwinners in the families. So I just want to thank you for letting me speak. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer, and thank you for being here. So the situation with (LB)1036, it's the complication of complying and the reduction of the potential income that would close your store. [LB1036]

PAUL BENCKER: That is correct. [LB1036]

SENATOR WILLIAMS: Where would your customers go? [LB1036]

PAUL BENCKER: I don't know, because banks already turned them down. Customers we mostly get have a lower credit standing, so we give them an alternative base. Instead of going to a pawn shop and pawning stuff, they come to us and get their cash that they need and we help them out. [LB1036]

SENATOR WILLIAMS: I think that's one of my real concerns, is where that customer goes if you are limited from not being there. That's all for now. Thank you. [LB1036]

SENATOR SCHEER: Any other questions? Senator Schumacher. [LB1036]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony. I asked this question of somebody earlier. What if we took off this 34-day limit and they didn't have to recycle? Could you make the terms easier and put them on an installment system if we didn't have that 34-day thing? How does that affect you? [LB1036]

PAUL BENCKER: At the rate of this bill, (LB)1036, no, I'd have to shut down next month. [LB1036]

SENATOR SCHUMACHER: But let's just forget about (LB)1036. Let's just say we did a single thing and that is took off the 34-day rule. What impact would that have, just curious? [LB1036]

PAUL BENCKER: Drop in revenue probably 20-25 percent each month. [LB1036]

SENATOR SCHUMACHER: Is that a killer? [LB1036]

PAUL BENCKER: No. Me as a small business, I'd be cutting staff. We'd probably go down to just one person in the store and there would probably be two people that lose their job, yes, because there's a fine line on amount of fixed expenses compared to revenue. People don't realize that rent, utilities, phone, and everything keeps going up. So it's tough to keep the fixed expenses at a bare minimum to survive. [LB1036]

SENATOR SCHUMACHER: And your hours of operation are somewhat more extended than a typical bank. [LB1036]

PAUL BENCKER: We're open Monday through Friday, 9:00 to 6:00, and Saturday, 9:30 to 1:00. So standard...we're open a little bit more hours, but not much. [LB1036]

SENATOR SCHUMACHER: Thank you. [LB1036]

SENATOR SCHEER: Seeing no others, thank you very much for your patience and your testimony again. [LB1036]

PAUL BENCKER: Thank you, guys. [LB1036]

SENATOR SCHEER: Anyone speaking in a neutral capacity? Good morning. [LB1036]

BRANDON LUETKENHAUS: Good morning, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League testifying in a neutral capacity. Simply here to testify and let you know that credit unions do offer small-term loans. We created a program in 2011, October of 2011, called the Credit Union Quick Cash Program. And so members could come in from the credit unions that participated in, and today there are seven

credit unions, mostly in the Lincoln area. There's one in Kearney, one in Columbus, and then Scottsbluff that offer this program. It's an 18 percent APR rate. It's a 60- to 90-day payoff term. Originally, it was 60 days and as we talked through with the credit unions that are participating, we made it available that it could go to 90 days. So that allows people more time to pay those loans off and we think helps alleviate some of the issues. The reason credit unions can offer this program is because the National Credit Union Administration, which is our federal regulatory, wrote a rule around that time, 2010-2011, that said credit unions could offer loans up to $1,000 to consumers. They could offer those at a 28 percent interest rate. Ours just happens to be 18 (percent). We decided on the 18 (percent). And they had, I believe it was several months, I think it might even been six months, that these folks...that credit unions could decide to offer these loans as a payback term. So I just wanted to let you know that credit unions, at least seven of them, do offer that program. We also have many credit unions in the state that offer other short-term loan programs of their own, and it may be a lesser amount it may be more...a greater amount. But as we did our survey before we implemented the program, there weren't many credit unions that offered a $250 loan or a $300 loan. The issue, of course...I see the red light here coming on. The issue, of course, is that we do have credit unions that are closed membership, so they may serve an employer such as the credit union in Nebraska or in Columbus that offered the program as Dale employees. So it's offered to Dale employees and their families. And so it's not open to the entire community there, but other Columbus credit unions, Columbus United Federal Credit Union I believe also offers a short-term loan program. So anyway, in summary, credit unions are offering a program. This program happens to be one in which the seven credit unions participating have the same...pretty much the same terms and conditions as the others, but other credit unions are offering such loans. Because credit unions are not for profit and, therefore, it's much easier for them to offer this type of product and service. Thank you. I'd answer any questions if I can. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Senator Williams. [LB1036]

SENATOR WILLIAMS: Thank you, Senator Scheer. Just one quick comment. And, Mr. Luetkenhaus, thank you for being here and representing the credit unions. There's a distinction that I want people to understand so that we know. When a credit union loans money, whose money are you loaning? [LB1036]

BRANDON LUETKENHAUS: We are loaning the members' money, the membership. [LB1036]

SENATOR WILLIAMS: And when a bank is loaning money, they are loaning depositors' money. When the previous testifier, our mom-and-pop store in Omaha, is loaning money, whose money is he loaning? [LB1036]

BRANDON LUETKENHAUS: Well, if it's a mom-and-pop store, I would imagine it's his own money. [LB1036]

SENATOR WILLIAMS: It's his own money. [LB1036]

BRANDON LUETKENHAUS: Uh-huh. [LB1036]

SENATOR WILLIAMS: Thank you. [LB1036]

BRANDON LUETKENHAUS: Yep. [LB1036]

SENATOR SCHEER: Any other? Senator Schumacher. [LB1036]

SENATOR SCHUMACHER: Two quick questions, and thank you for your testimony. One, on these loans that the credit unions do, are the people screened for creditworthiness or can anybody get one? [LB1036]

BRANDON LUETKENHAUS: Originally, when we implemented the program, there was no credit report required. However, they do have to show proof of income and they have to be a member of the credit union for 30 days so we don't get folks just coming in to the credit union and getting the loan day one. They have to actually be a member of that credit union for 30 days. And there is no report required, but now we've changed the program to allow a credit report to be taken if need be. And that's to the discretion of the credit union because what we found is folks that are coming back for their second or third, the credit union wants to find out what the issues are and why they have to continually come back for those loans. And so sometimes showing a credit report can help them, help the member better budget. [LB1036]

SENATOR SCHUMACHER: And then finally, what's your burn rate? How many of these loans do you get burned on? [LB1036]

BRANDON LUETKENHAUS: Last time I checked...now we have a self-reporting system so our credit unions that participate in this quick cash program self-report. So we don't have up to today numbers, but the last report I looked at, which some credit unions are out a month or two, about 3 percent is charge off. [LB1036]

SENATOR SCHUMACHER: Otherwise, 97 percent of the money and interest you get back. [LB1036]

BRANDON LUETKENHAUS: For the most part, yes. [LB1036]

SENATOR SCHUMACHER: Okay. Thank you. [LB1036]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB1036]

BRANDON LUETKENHAUS: Thank you. [LB1036]

SENATOR SCHEER: We are back to proponent. [LB1036]

GREG SCHLEPPENBACH: Good morning, Senator Scheer and members of the committee. My name is Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h. I'm executive director of the Nebraska Catholic Conference which represents the mutual interests and concerns of the Catholic Archdiocese of Omaha and the Catholic Dioceses of Lincoln and Grand Island. The conference views LB1036 as a measured, reasonable, and necessary reform. It offers an enhanced enforcement tool that can help to protect the poor, debts of the desperate, and the vulnerable from exploitation and entrapment in a cycle of debt. The teachings of our faith, we have many warnings about usury and exploitation of people in need. Lending practices that can take unfair advantage of one's desperate circumstances are unjust. Catholic social teaching demands respect for the dignity of persons, preferential concern for the poor and vulnerable, and pursuit of the common good. These principles, coupled with our teaching on economic justice, animate our concern with regard to delayed deposit lending practices and deficiencies in the regulation thereof. In our view, putting limits on the practices of payday lending are not only legitimate as a matter of sound public policy, but also a matter of basic justice in our society. Poor and vulnerable working people deserve loan options that they can repay in a timely manner and that advance their long-term financial security rather than confine them to a cycle of debt. We believe that LB1036 proposes an improvement in Nebraska's act and will go a long way toward accomplishing sound public policy purposes. We urge you to advance it to the full Legislature. Thank you. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much again for your patience. Next opponent. Good morning. [LB1036]

JUSTIN BRADY: Good morning. Senator Scheer and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for Advance America. I just want to take a step back, as I've listened to people, and give you more of a broad view of the country, start there. Right now with the 50 states, you've got 35 states that operate very similarly to Nebraska. You have 14 states that just outright ban the industry. And

then you have the outlier of Colorado. This bill is saying we want to be like Colorado. That's what you've heard from the proponents. The bill isn't Colorado law. So, in essence, you would create a second outlier that would be Nebraska. And I just thought starting there, to have an idea of what the country is doing. As opposed to just saying focus on the details, start, take a step back. The other thing I'd like to talk about, Colorado just a little bit, Colorado in 2007 made an attempt to change their law and, therefore, change the industry. I think everybody, whether you talk to consumers, whether you talk to businesses, whether you talk to the Pew Institute, would all agree that the 2007 change failed miserably in Colorado. Therefore, they were forced, because of their hand, to come back and rewrite the law. That's where they ended up with their changes. You aren't, I would argue, in Nebraska aren't in that position of having a case where you are being forced to change because of what a previous body did. You know, it's talked about, Senator Williams and others have asked, where do people go? Again, you know, the Pew Institute does have, if you take out some of their biased statements on their research, has done a lot of research on the industry and I've went through it. I mean the Pew Institute even says, storefront borrowing is far lower in restrictive states than permissive or hybrid. Nebraska would be permissive, by their definition. Colorado is the hybrid. And then you've got states, obviously, that don't allow it at all that would be restrictive. So people do turn to the Internet that is unregulated. Again, looking at the Pew Institute's numbers, 90 percent of the complaints are about on-line lenders. Why would we, as Nebraskans, want to drive people to an industry that can't be regulated, that isn't regulated? I think some of the other numbers, you know, that I saw on their research was it isn't all income driven. If you're a renter, you're more likely...a renter making $40,000 to $100,000, there's a higher percentage chance you'll use a payday loan industry than if you were a homeowner that had a $15,000 to $45,000 income. So it isn't truly all income driven. It is...there are a lot of reasons that go into why people go to these...this industry. So let me just look through my notes here real quick. So, no, I guess what I would say at the end is that you have heard here today that the industry is going to have to change. There will be a federal change and I don't see the need to make a change today, let the feds change, and come back and make a change again. So with that, I'd try to answer any questions. [LB1036]

SENATOR SCHEER: Thank you. Any questions? Senator Fox. [LB1036]

SENATOR FOX: Thank you, Senator Scheer. You made mention of people turning to the Internet for these type of loans. I mean in my personal life, sometimes I go to the Internet to buy things just out of convenience because it's cold outside or,... [LB1036]

JUSTIN BRADY: Uh-huh. [LB1036]

SENATOR FOX: ...you know, I don't have to change clothes. I can shop in my pajamas. I mean do you know that...whether or not payday loans exist influences payday lending over the Internet that much? [LB1036]

JUSTIN BRADY: As far as the convenience factor, Senator? I would argue that that would probably be one of the reasons people would turn to the Internet, yes, and that convenience would be, yeah, whether or not they can stay at home in their pajamas or whether the fact that the seven stores that they were used to driving by going from work to home are no longer there and, therefore, the only place to turn was, when they got home, was to the Internet. [LB1036]

SENATOR SCHEER: Yeah. Any other questions? Seeing none, we are at the appointed time of closing. If there are any that would...were still waiting to testify, if you would bring your pink sheets up and I will be glad to read those into the record if you would do so now so that we can get those in before the hearing is closed. If you could note on those, you know, does it say support or opposed on the...? Okay. Hopefully you've checked if you're supporting or opposing the legislation. And I apologize for the delay, Senator Campbell, but I want to try to get (inaudible). [LB1036]

SENATOR CAMPBELL: Oh, no, you're fine. I'm not going to be that long. You all know where to find me anyway. (Laughter) [LB1036]

SENATOR SCHEER: (Exhibits 7-12.) Well, we aren't going to (laughter) let you leave till we're done, so. Okay, first one be a proponent of LB1036, Amanda Brewer. Welcome, Mandy. I did see you sitting back there. From Norfolk originally, one of the best places in the state. (Laughter) I know she lives in La Vista now, I can see by that, but, you know, you don't win them all, but representing Habitat for Humanity in Omaha. Another proponent is Robert Haller representing St. Vincent de Paul Society and Voices of the Poor. I, well, screwed up. Amanda Brewer, A-m-a-n-d-a B-r-e-w-e-r; Robert Haller is R-o-b-e-r-t H-a-l-l-e-r; James Goddard, a proponent representing Nebraska Appleseed in Lincoln, J-a-m-e-s G-o-d-d-a-r-d; proponent is Catherine Wilson, C-a-t-h-e-r-i-n-e W-i-l-s-o-n, from Lincoln, Nebraska; and proponent Matt Troyer-Miller, M-a-t-t T-r-o-y-e-r-dash-M-i-l-l-e-r, representing himself and the Wood River Ministerial Association. In neutral capacity, Mark Koller from Community Development Resources in Lincoln; proponent would be Glenda Wood, G-l-e-n-d-a W-o-o-d, from Bellevue representing herself; and Julie Kallcowski, J-u-l-i-e K-a-l-l-c-o-w-s-k-i, I hope I'm spelling that correctly. [LB1036]

JULIE KALKOWSKI: Missed a "k." It was a "k" and not a "c." [LB1036]

SENATOR SCHEER: Oh, well, it was not attached. Your penmanship needs improvement. (Laughter) [LB1036]

JULIE KALKOWSKI: That's why I went into (inaudible). [LB1036]

SENATOR SCHEER: Touche! Okay, representing herself. So with all those entered in, I would make the note that these folks were here to testify in reference to LB1036, because of time restraints were unable to, and should be noted in the committee report of support or neutral or positive...opponent positions. And with that, Senator Campbell to close. [LB1036]

SENATOR CAMPBELL: (Exhibit 24) Thank you, Senator Scheer and colleagues. I very much appreciate the good questions that you addressed and all the people who came to testify today. This is an issue in which we not only need to listen carefully to the proponents, but to those people who had concerns and stepped forward. I do want to indicate, you know, when you look at this from a national perspective, there are 12 million people in this country who use payday lending. Forty-one percent of those people own a home. What I was not surprised at was the one complaint. I believe that the payday lenders in the state certainly are following Nebraska law. It's not that they are not. It's that I think the law is bad and I think it's a bad policy. I want to go to the question that Senator Craighead talked about in terms of the financial education. I was very pleased to see the university come forward and explain to you, because that program is financed by the fees and I think begins to address what Senator Craighead was talking about. I think it was unfortunate that we could not hear more about the education programs that are being offered in Omaha to people. I do want to go back to one of the comments that was made. We would like to have people choose what works best for them. That's exactly what we're trying to do in (LB)1036, is to find that balance. And I certainly would pledge to the committee, I would like an opportunity to sit down with the people who testified in opposition to see where can we find that right balance. I think Senator Schumacher's question is very valid in terms of what throws that balance off, what takes a business out of business. But, on the other hand, we know there needs to be some balancing for the people who use it and paying, at this point, 461 percent. I have to ask you, I'm not sure that's in the balance. I am going to distribute to all of you, just because I found it extremely interesting and I'll have the pages...but one of the articles that I found in researching this was from PBS Newshour. And it's an article. We've spent a lot of time this morning and we wondered about are most of these people just really the working poor or people who really are in a cycle of poverty. This article was very interesting because what it calls is that why millennials are turning to payday loans and pawn shops. So I want you all to have some idea that, from a national perspective, it's not just people who have not had the education to understand what their options are, but they're turning to it. And I would hazard a guess, my own personal opinion, is that I agree in the article with the person who talked about that this has a great amount to do with student loan debt. But it illustrates that we cannot just put people who use this in a particular box. So I would like the time at least to talk to the people to see if we can

find some balance, if there's something else that we can do, but we do have a problem for people who are paying that in 34 days. That's the law we set. I think that's a law we need to change. And with that, I really thank the Chairman for helping us guide through in a limited time. [LB1036]

SENATOR SCHEER: (Exhibits 13-23, 25-28) Before we close the hearing, there are several letters that have been provided for support of LB1036: Voices for Children in Ralston, Nebraska; Youth Emergency Services in Omaha, Nebraska; Teia Goodwin from Omaha; Northeast Nebraska Community Action Partnership in Norfolk, Nebraska; Diana LaCroix from Omaha, Nebraska; Marge Black from Omaha, Nebraska; the National Association of Social Workers, the Nebraska Chapter here in Lincoln; oh, Charles Karpf from Mitchell, Nebraska; the Greater Omaha Chamber of Commerce in Omaha; Children and Family Coalition of Nebraska; Mutual of Omaha Bank in Omaha; and Accelerate Business Anywhere; CSG International from Omaha as well. And are there any questions or final comments to Senator Campbell? Yes, Senator Campbell, do you have anything? [LB1036]

SENATOR CAMPBELL: I do not. [LB1036]

SENATOR SCHEER: And with that, the hearing is closed and I appreciate everyone's patience and attention. [LB1036]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 9, 2016, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB706, LB801, and LB1060. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Nicole Fox; Mike Gloor; Brett Lindstrom; and Paul Schumacher. Senators absent: Joni Craighead.

SENATOR SCHEER: (Recorder malfunction)...Banking, Commerce and Insurance Committee. This is...whoops, back up. I'm Jim Scheer, representing District 19, Legislative District, and I'll serve as Chair of committee this year. The committee will take up the bills in order as they are posted. Our hearing today is your public part of the legislative process. It's your opportunity to express your position on the proposed legislation before us today. Committee members may come and go during the hearing. We have to introduce bills in other committees and are called away. It's not an indication of our interest in the bill that's being heard, it's just part of the process that we have to conform to. To better facilitate today's proceedings I would ask you to abide by a few things. First of all, if you could all check your phones and make sure they are either on vibrate or on silence. If you're going to be testifying, if you could move to the front three chairs on each set when you are in that position to do so, so we know as we are getting full and we aren't wasting time waiting for people to come up to testify. We'll use the time more productively. The order of the testimony this afternoon will be the senator will introduce the bill.

We will then move to proponents, then opponents, and then neutral capacity and then the senator is given the opportunity to close on the bill as well. Testifiers will need to sign in. If you are going to testify you will need a pink sheet, which are available at the back of the room. Please make sure you sign...fill it out completely. When you do come up to testify if you...the first thing that you will do, please, is to say and spell your name so that the transcribers can get that in correctly as they do their work. You're turning the pink sheet in to Jan, our committee clerk, to your far right at the end of the table. I want to tell you that we are on a light system. They're not on right now, but there are a bank of three lights in front of the chair. There is a green light, a yellow light, and a red light. The green light will be on for the first four minutes of your testimony if you last that long. If you get to the end of four minutes, the yellow light will come on. That is your warning you have one minute left. If the red light comes on, that means your time has expired and if you do not get that hint I will help you get that hint at some point in time. When you are testifying, please make sure that you're speaking into the microphone so that they can pick up all the testimony as they do their work later. Written material...if you have things that you would like to disseminate to the committee we will need ten copies. If you do not have ten copies with you today that's fine. We will have...Kaylee? Kaylee is our page. She's working on her own this afternoon. She will get copies for you if you need copies, so if you only have one or two, just get her attention before you come up so that at least we have your material while you are testifying. To my immediate right is our legal counsel, Bill Marienau, that has been serving this committee for 38 sessions. And our committee clerk, to your far right, is Jan Foster and she has been serving this committee for 34 years. So we have a bit of longevity on the committee, even though the senators only get to last eight, so somebody up here really knows what they're doing and it may not be us. So I will ask the rest of the committee to introduce themselves and we'll start with Senator Schumacher.

SENATOR SCHUMACHER: I'm Paul Schumacher, District 22, that's Platte and part of Colfax and Stanton Counties.

SENATOR FOX: Senator Nicole Fox, District 7, which is downtown and south Omaha.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson County, Custer County, and the north part of Buffalo County.

SENATOR CAMPBELL: I'm Kathy Campbell, District 25, east Lincoln.

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

SENATOR SCHEER: Our remaining participant would be Senator Craighead from Omaha and she did go home over the noon hour ill, so she will not be attending this afternoon and regrets that, but I don't think any of us would like her to be here. So having said that, we will go ahead and start with our first bill. Senator Coash, you're welcome to introduce your bill.

SENATOR COASH: (Exhibit 1) All right. Well, thank you, Chairman Scheer. Good afternoon, members of the Banking (Commerce) and Insurance Committee. Colby Coash, C-o-a-s-h, represent the 27th District right here in Lincoln. My legislative career has focused on a handful of key policies, but none are more important to me than making sure the Nebraska children receive the treatment and healthcare that they need. And one of the most important treatments for children who have autism is applied behavioral analysis or ABA. In 2012, this committee advanced, the Legislature passed, and the Governor signed LB254 to ensure that a large number of families who had certain types of health insurance would be able to get access to this treatment. And I'm proud that our state took that action. Last year Nebraska lost a lawsuit in the Medicaid system that, among other things, said that children and youth must have access to ABA treatment if it is found to be medically necessary. The bill in front of you, LB706, allows us to close the final gap to allow families who have previously excluded health insurance plans from accessing treatment for their children who have been diagnosed with autism. Here's a pie chart that I'd like the committee to have and it shows the type of plans that are covered under LB254, which we passed a few years ago. The Medicaid system is now covered because of a lawsuit and the final types of state regulated plans that are not covered or nongrandfathered plans in the small group and individual market. When we passed LB254 it did not cover those nongrandfathered plans because if we did so it would have had an unknown financial impact on the state per language in the federal Affordable Care Act. For that reason, we excluded those plans at that time. This year we know from actual Nebraska data that the financial impact of implementing the coverage for ABA is minimal despite previous claims to the contrary. In the Medicaid system dire financial proclamations by the Department of HHS prior to the loss of the lawsuit were unfounded when the Governor submitted his second-year biennium budget. The Governor did not ask for one additional dollar in order to cover this under ABA, despite the contention during the lawsuit that this would be very expensive. When I asked why there were no new dollars I was told through the Policy Research...PRO that the current Medicaid system had enough current funding to meet this new requirement. The old arguments of everything blowing up the budget or that extraordinary increases in premiums from all Nebraskans would be needed to provide this coverage for our children have failed and they failed because the facts do not support those arguments. So I bring LB706 to end the discrimination and start empowering these families to treat their children and allow them to be the best they can be. We know it costs more not to do this, so I'm asking that we do the right thing here. I also believe that the actual data does not justify the high cost listed in this fiscal note and we're going to talk about that and why we believe it is inaccurate. So I will leave it at that. There are a lot of people who want to testify and I want to give them the time. Thank you. [LB706]

SENATOR SCHEER: Thank you, Senator Coash. Any questions? [LB706]

SENATOR CAMPBELL: I have a question. [LB706]

SENATOR SCHEER: Senator Campbell. [LB706]

SENATOR CAMPBELL: Thank you, Senator Scheer. For the record, Senator Coash, what is the...you've defined pretty well here I think what habilitative is. What...how much different is that from rehabilitative services? [LB706]

SENATOR COASH: Well, I'm going to give you my pedestrian understanding of that. [LB706]

SENATOR CAMPBELL: That's good. [LB706]

SENATOR COASH: But rehabilitation would be something that I would say restores something that was once lost... [LB706]

SENATOR CAMPBELL: Okay. [LB706]

SENATOR COASH: ...whereas habilitation brings you up. And there are parents here that can speak much more clearly than I can about how this therapy assists their children, but habilitation takes...the applied behavioral analysis, which is the approach, is an approach that is used to take a child--because it's most effective with children who has autism--works with them to bring them up, where as rehabilitation in my mind kind of takes something that was lost and then needs to bring them back up. What I would tell you is this, and I mentioned this when we talked about LB505 which turned into LB254 a couple of years ago, I work with children who have had this treatment and I've worked with adults who because of their age never had this treatment and the difference is night and day. The adults who had this treatment when they were children are much more likely to secure employment, to have more meaningful relationships, and to live more independently. The adults that I used to work with who never had the opportunity for this type of treatment because the science wasn't there, because of their age, a lot of different factors, but those adults who had the exact same needs as children have a high reliance on state-funded services. They need support with just about everything in their day. And had that behavorial...ABA been available to them as children, very likely that would have been a different story for them. So there's a reason beyond this that I think if we're going to be forward looking as a state and say, how can we save money in the long run, we're always looking for that and I think this fits that bill very well. [LB706]

KATHY CAMPBELL: Can I follow up? [LB706]

SENATOR SCHEER: Sure. [LB706]

SENATOR CAMPBELL: My second question, Senator, and maybe you're going to cover that when you talk about the fiscal note, is the number of kids that would be...and if you want to wait until we get to the fiscal note, that would be great. [LB706]

SENATOR COASH: I think so. [LB706]

KATHY CAMPBELL: Okay. [LB706]

SENATOR SCHEER: Any other questions? You going to stick around to close? [LB706]

SENATOR COASH: I'll be here. [LB706]

SENATOR SCHEER: Okay. We'll now have the first proponent. Good afternoon and welcome. [LB706]

LORRI UNUMB: (Exhibits 2, 3, 4, 5, and 6) Good afternoon, Mr. Chairman, members of the committee. [LB706]

SENATOR SCHEER: Is that a Nebraska accent, by the way? [LB706]

LORRI UNUMB: It's not. Boy, that didn't take long at all, did it? [LB706]

SENATOR SCHEER: Just was wondering if you were in the southern part of Nebraska. [LB706]

LORRI UNUMB: Very southern, South Carolina. [LB706]

SENATOR SCHEER: Okay. [LB706]

LORRI UNUMB: My name is Lorri Unumb, that's L-o-r-r-i U-n-u-m-b. I am vice president for state government affairs at Autism Speaks, which is the world's leading nonprofit autism research and advocacy organization. I'm also a law professor; I teach a class at George Washington University of Law School called Autism and the Law. It's a semester-long course

that I've been teaching for five years. And most importantly, I'm the parent of a child with autism who's severally impacted with autism and has benefited greatly by ABA treatment, applied behavior analysis. Thank you for the opportunity to testify before you today. In the course of my career with Autism Speaks over the last eight years I've had the opportunity to work in most of the 43 states that have passed legislation to require health insurance coverage for children with autism and particularly ABA coverage. And I want to start by thanking you for passing LB254 a few years ago. Many children have benefited dramatically from your efforts to make sure that this coverage exists in Nebraska. And so at the time you passed that legislation you cautiously carved out qualified health plans, the plans that are available pursuant to the Affordable Care Act because of some uncertainty about the cost and fiscal impact to the state. And now my understanding is you're interested in making sure that those Nebraska families who are insured under the Affordable Care Act also have access to applied behavior analysis coverage. So the question is, how to achieve that? One way to achieve it is by defining habilitative services, which is what LB706 does. Habilitative services, as Senator Campbell pointed out, is for a child that never had the skill to begin with. And to cover rehabilitative services and not habilitative services is rather cruel to children with autism. It's not their fault that they were born without the skills that a typically developing child has. So the Affordable Care Act requires coverage of habilitative services. The question is, what is meant by that? The Affordable Care Act gives a default definition or the regulations implementing it give a default definition: services to help a person keep, maintain, or learn new skills and functioning for daily living; I'm paraphrasing there. And applied behavior analysis falls squarely within that. But the benchmark plan for Nebraska specifically excludes applied behavior analysis; singles out ABA and excludes it from the definition of habilitative services. So it's quite clear that the families who buy ACA plans in Nebraska will not have access to this treatment if you don't act. The primary concern, I assume, is what is this going to cost the state? Obviously, normally it costs nothing when it's in private commercial health insurance plans, but under the Affordable Care Act, as Senator Coash mentioned, the state does have an obligation to defray the cost of a new benefit that exceeds the essential health benefits. And so what is that cost going to be? Let me say that the feds have been a little bit unclear on this issue. Just a few weeks ago...up until a few weeks ago, your Department of Insurance, myself personally had received guidance from the federal CMS agency that there would be no cost to define habilitative services to include ABA. The feds seem to have reversed course on that. They wrote a letter to the Tennessee Department of Insurance a few weeks ago, which I understand you all have here in Nebraska, and have said that you will have to defray the cost. The state will have to defray the cost of adding this new benefit to qualified health plans, but the cost is likely to be quite minimal. We're looking at under $.5 million. I do want to touch base on the fiscal note that came out. The fiscal note takes a look at the Missouri data that's produced yearly. Missouri Department of Insurance puts out a great report detailing exactly what applied behavior analysis has done to premiums each year. And I like the approach your fiscal analysts have taken here, except I want to take issue with one little piece of it. And that is the Missouri Department of Insurance shows a $5 million total claim for applied behavior

analysis. And then the note says, Nebraska has a population that is about 31 percent of that of Missouri so it cuts that $5 million down to $1.5 million. The problem with that analysis--that's not a bad way to go about it--but the problem is that the Missouri $5 million figure is covering the entire state-regulated market, large group plans, small group plans, individual plans, grandfathered, nongrandfathered, and state employee health plan. All of those pieces of the market are already covered here in Nebraska, pursuant to LB254. And so you can't just take the $5 million in Nebraska and cut it by 70 percent to reflect the population...the $5 million in Missouri and cut it by 70 percent to reflect the population of Nebraska because the bulk of that population already has coverage. So this bill then reflects only this small piece of pie, the one remaining piece of pie of the state-regulated market that was left out by LB254, which is about a third of the third. So where the fiscal note projects about $1.5 million I think you need to cut that by another two-thirds or probably even a little bit more to get the actual projected cost. Is that clear as mud? You all are looking at me kind of like you're not...are you with me? Okay, very good. Oh, my light is already red. I apologize. I was looking all around. Could I open it for questions or... [LB706]

SENATOR SCHEER: Sure. [LB706]

LORRI UNUMB: Okay. [LB706]

SENATOR SCHEER: Any questions? Senator Williams. [LB706]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you for coming. Can you describe to us what ABA treatment is? [LB706]

LORRI UNUMB: Yes, I can. So ABA treatment is an individualized therapy in which a trained behavior analyst--that's the name of the provider--sits down with one child, one-on-one, and assesses the individual strengths and weaknesses of that child. So they might sit down...well, they sat down with my two-year-old when he started and said, okay, this child doesn't know how to sit at a table, doesn't know how to imitate other people, doesn't have gross motor skills or fine motor skills that a typical two-year-old would have. They look and they make a list of every deficit that that child has and then they develop an individualized therapy program to build that skill in that child. And the way it's done is by repetition and positive reinforcement. So if I'm trying to teach you, Senator Williams, the skill of repetition I might say, Senator, touch your head. Touch your head. Touch your head. And you repeatedly don't do it. And eventually, I'm going to prompt you. I'm going to put my hand on top of your hand and make you touch your head and we're going to do that a hundred times or a thousand times or maybe ten thousand times and eventually one time you're going touch your head on your own. And when you do, I'm going to say, Senator Williams, you're so smart. You're the greatest. I'm going to reinforce you

positively. I'm going to hand you an M&M or a Cheerio or maybe a $20 bill since you're an adult, you're not a child. I'm going to reinforce... [LB706]

SENATOR WILLIAMS: I'm going to start doing that. [LB706]

LORRI UNUMB: Whatever it is that's reinforcing to you, I'm going to just shower you with that. And then the child says, whoa, I got a Cheerio just for doing what she did? I'm going to do that next time. And so using that repetition and positive reinforcement you build in the child every skill that's missing that the child needs to function in human life. And it's incredibly effective. I'd love to send you all...I've got a four-minute video--I don't have it with me here today, but I could e-mail it to you--of a child who didn't even start ABA therapy until she was almost seven and it shows a couple of minutes of her starting; she can't even sit at the table. And then it shows her a year and a half later. And she's not one of the best responders to the therapy, but it shows a world of difference. Her entire life trajectory is clearly changed by the ability to just pick up some basic imitation skills, communication skills, she stopped injury herself, she stopped being aggressive to her siblings. [LB706]

SENATOR WILLIAMS: Senator Coash mentioned in his opening that this treatment worked better on younger people. Could you talk about that briefly? [LB706]

LORRI UNUMB: The younger the better, but what applied behavior analysis is technically, is just applying the principles of human behavior to someone to achieve a desired result. Okay? If you just think about how we work as humans, it's using those principles of how we work as humans to try to get you to touch your head, to achieve the desired result. And brains are so malleable when they're toddlers, you know, two, three, four years old. Thus, it works best then, but actually ABA works across the life span. [LB706]

SENATOR WILLIAMS: Thank you. [LB706]

LORRI UNUMB: Thank you. [LB706]

SENATOR SCHEER: Senator Schumacher. [LB706]

SENATOR SCHUMACHER: Thank you, Senator Scheer. And thank you for coming and testifying before our committee. So basically, you're talking operant conditioning? [LB706]

LORRI UNUMB: Yes. [LB706]

SENATOR SCHUMACHER: Thank you. [LB706]

LORRI UNUMB: It grew from Skinner. [LB706]

SENATOR SCHUMACHER: Okay, thank you. [LB706]

LORRI UNUMB: I've never had anybody ask me that in a committee hearing before. [LB706]

SENATOR SCHEER: Senator Gloor. [LB706]

SENATOR GLOOR: Thank you, Senator Scheer. And welcome. [LB706]

LORRI UNUMB: Thank you. [LB706]

SENATOR GLOOR: I remember when ADD first hit the...probably the diagnostic arena and you found a lot of people gravitating to provide care for ADD, pediatricians who gave up their practice who decided, I want to focus on ADD. And that actually grew until the insurers put their foot down and said, we're saying no until we get a better handle on the training required to appropriately treat children who have attention deficit disorder. How is that control in place for ABA? I mean, who can provide this service in a manner such that the insurers won't say, we're not going to cover it because the person providing the coverage really doesn't have the kind of training that's necessary? [LB706]

LORRI UNUMB: That is a great question. And we share the insurers' interest in making sure that only qualified providers are doing this. We want it to be effective for these children. [LB706]

SENATOR GLOOR: Sure. [LB706]

LORRI UNUMB: The providers...well, ABA is provided in a multi-...two-tiered structure. At the top is a board certified behavior analyst. And that's a national board certification from a nonprofit entity that is NCCA approved, so it's a real certification. In order to become a board certified behavior analyst you have to take six graduate level university courses; you have to work 1,500 supervised hours before you can even sit for the national exam. The national exam has a pass rate in the 55 percent to 60 percent range, so this is a real stringent credential. Underneath the board certified behavior analyst are behavior technicians, the registered behavior technicians. They don't have the same level of training, they get trained by the upper level person. And certainly the upper level person, the board certified behavior analyst, we'd love it if

that trained person were providing all of the hours, but this therapy is frequently administered 20, 30, 40 hours per week to a child. So in order to be realistic from a cost standpoint this board certified person trains a team of behavior technicians who are implementing the program designed by this person. [LB706]

SENATOR GLOOR: Can I ask a follow-up? [LB706]

SENATOR SCHEER: Sure. [LB706]

SENATOR GLOOR: So if an insurer declines coverage and there are always appeals processes through there, but what kinds of...what are the reasons or rationales behind the denials that we see from insurers who are saying, this isn't appropriate, we're not going to provide the coverage? Who gets pulled in to make that determination that has the credentials to be able to fairly weigh it if we're dealing with such a small subset of professionals who can do this? [LB706]

LORRI UNUMB: Two parts to my answer. One is, I'll be honest, in the 43 states where this is required, we're not seeing a rash of denials. The insurers have been pretty good about, as long as there's the qualified person there administering the program. Where you do see denials, if an insurer determines it's not medically necessary for a particular child or maybe it's been ongoing long enough. Some of the insurers had actually hired the board certified behavior analyst to be on their medical review panels. [LB706]

SENATOR GLOOR: Okay. [LB706]

LORRI UNUMB: So we're not seeing big problems with that. [LB706]

SENATOR GLOOR: Thank you. [LB706]

LORRI UNUMB: Thank you for the question. [LB706]

SENATOR SCHEER: Any other questions? Thank you so much for coming up and joining us this afternoon. [LB706]

LORRI UNUMB: Thank you. [LB706]

SENATOR SCHEER: Next proponent. Good afternoon and welcome. [LB706]

COLLEEN JANKOVICH: (Exhibit 7) Good afternoon. My name is Colleen Jankovich, C-o-l-l-e-e-n, Jankovich, J-a-n-k-o-v-i-c-h. I'm here testifying on behalf of my son, Matthew, who was born June 19, 2002. And he was diagnosed with autism spectrum disorder at the age of two. Some of you may already be familiar with Matthew and my story, as I've testified here on his behalf in the past and have been his voice for years. Matthew did receive ABA services for a very short time, only five weeks, and then our insurance...they stopped coverage. And it was really heartbreaking to know that the help my son needed desperately he couldn't get. Unfortunately, I lost my Matthew on September 21, 2015, to a seizure. I went to wake him up for school and he had passed away in his sleep. He never had the chance to reap the benefits from his advocacy work. And I tried my hardest to give Matthew the best life possible, but he was severely affected by autism, his symptoms showing as behavior disorder, communication deficit, and aggression. Every day was a struggle for Matthew and ABA could have helped resolve these issues. It's my belief that everyone should have the opportunity to live a fulfilling and successful life. Our family is insured by my husband's employer and therefore it falls under ERISA. And my understanding is that because they're self insured, they don't have to pay for it. Autism severely limited the quality of life for Matthew and I'm sure we can all agree that the legislative process here is far too slow for our children. So I really ask that you pass LB706 so that families such as mine can purchase individual plans for our children when necessary. And, please, do not allow one more child to fall through the cracks. This is a quality of life issue and if it were your child, what would you want for him or her? That's all. Thank you. [LB706]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you so much for coming this afternoon. [LB706]

COLLEEN JANKOVICH: Thank you. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

CHRISTINA EVANS: (Exhibit 8) Good afternoon, Chairman Scheer and members of the committee. My name is Christina Evans, that's C-h-r-i-s-t-i-n-a E-v-a-n-s. My husband, Andrew, and I have two sons, ages six and eight. My husband is a plumber for Action Plumbing, Heating and Air. I am unable to work traditional hours and have been reduced to only picking up shifts on an as-needed basis at a local urgent care clinic. Our family struggles financially, only having one income. Our six-year-old son, Aiden, has severe nonverbal autism. He has disruptive and aggressive behaviors multiple times a day at school, at home, pretty much everywhere we go. Because of his aggression, finding daycare and/or a babysitter has been impossible. Aiden needs one-on-one supervision at all times. He has a paraeducator with him at school everywhere he goes. He leaves from school weekly for specialist appointments, private speech and occupational therapies, and whenever he has an aggressive outburst. He has also tried to escape his school

several times before. I'm desperate to help him and help our family. He's getting bigger, harder to handle, and now impossible to carry out of places when he has a meltdown. We are unable to attend most family gatherings and our family support system is minimal. We can't go to the grocery store as a family, church, restaurants, or birthday parties. Aiden has language capacity of a one-year-old. He has just recently started to repeat words and use one word commands for things he wants, but with the inability to understand when or why he can or cannot have something his aggressions come out. He will hit, push, bite, kick, head-butt, and claw. He hits his teachers and his paras, he hits me, my husband, and our other son. Other than autism, Aiden also has multiple other health problems, including panda syndrome, gastrointestinal issues, anemia, the list is long. Aiden is running out of time. He cannot wait any longer. He desperately needs applied behavioral analysis therapy. He needs the intensive one-on-one therapy that ABA has to offer so that he can learn to be independent, so that some day he can live a fulfilled live or even just be able to take a shower and dress himself. I've seen it help several kids within the Lincoln support group. It is absolutely amazing to see their progress. I want that for my son. I want Aiden to have a chance to thrive and reach his full potential as well. That shouldn't be too much to ask. I waited patiently for LB254 to pass. It didn't affect our family because our insurance through my husband's employer is a self-funded plan. I waited patiently for Appleseed's ruling for Medicaid to cover ABA, as Aiden receives Medicaid due to only having one income in our household. Since the ruling it has still been difficult to get Magellan to cover ABA; we are still currently waiting. We are hoping to be able to purchase a plan on the exchange that will cover ABA very soon. I remember sitting in the galley two years ago as LB254 passed unanimously through the Legislature. Never have I been more proud of this state than that moment when you all stood up for our vulnerable families. I proudly stood next to Governor Dave Heineman during the signing ceremony, so hopeful for my son's future. I'm still hopeful for my son's future. I refuse to give up on him and I refuse to give up on our state. I need this Legislature to continue to stand up for vulnerable individuals like my son. All I'm asking is that for you to give kids like Aiden an opportunity to be functional within our society. I'm asking you to give my son a chance to live independently as an adult. Please vote yes for LB706 and make Nebraska a good place for people with special needs to receive services and live independently. Thank you. [LB706]

SENATOR SCHEER: Thank you. Any questions? Senator Gloor. [LB706]

SENATOR GLOOR: Thank you, Senator Scheer. Thank you, Christina. So what's the difficulty with Magellan? [LB706]

CHRISTINA EVANS: We're on a wait list right now for services. So there's a lack in providers because of the inability to bill for it at the moment, so we're kind of just waiting for providers so that we can actually receive services, so. [LB706]

SENATOR GLOOR: Okay. But if you were able to go out on the marketplace and buy a plan, your assumption is that would open up a whole...an additional network of providers who could provide the service? [LB706]

CHRISTINA EVANS: Well, we are on the...we are on several wait lists for ABA therapy. It is my understanding that Magellan...Medicaid doesn't have the codes for Magellan to bill for it quite yet, so we're still waiting as patiently as we can. [LB706]

SENATOR GLOOR: But the private insurance piece would, you hope, give you access to other providers who would provide the coverage? No wait list as far as you know? [LB706]

CHRISTINA EVANS: Yeah. There's probably wait lists...a lot of wait lists...everywhere has probably wait lists right now because it's.... [LB706]

SENATOR GLOOR: Just because of the lack of providers? [LB706]

CHRISTINA EVANS: Right, it's so new that we need to bring more providers in. [LB706]

SENATOR GLOOR: Okay. Thank you. [LB706]

SENATOR SCHEER: Any other questions? If not, thank you very much. [LB706]

CHRISTINA EVANS: Thank you. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

KRISTI LAYMAN: (Exhibit 9) Good afternoon, sorry. [LB706]

SENATOR SCHEER: If you were here this morning, I didn't notice you. [LB706]

KRISTI LAYMAN: I wasn't. Greetings, Chairman Scheer and members of the committee. My name is Kristi Layman, it's K-r-i-s-t-i, last name is L-a-y-m-a-n. I am actually here today to talk to you as a mother, but also as a provider in the community who has worked with families that have children with autism and I feel could also benefit from ABA services. My personal story started approximately three years ago when our son, Joshua, was diagnosed at the age of two and a half with severe nonverbal autism. It's been a journey with many different providers and services, including a year of in-home ABA services. These services allowed my husband and I to

function somewhat normally as a two-person-working household. His week consisted of 30 to 35 hours of AB habilitation services in our home along with speech and OT that was home based and special needs preschool. Joshua's behaviors consisted of self harming, which was head-butting, biting himself--he would come home from school with bite marks all over his arms and his legs--unable to attend to activities for any extended amount of time, including meal times, limited social engagements, as well as unlimited life skills. He wasn't able to brush his teeth--it was actually a fight--eating with silverware, dressing himself consistently. As a family, our lives were chaotic and Joshua required one-on-one attention at all times. While having ABA therapy we saw Joshua's self-harming behaviors decrease and his ability to attend to tasks increase. Joshua began to demonstrate some independence and doing some life skills that were developmentally appropriate for his age. I remember the first time we attempted a family outing after he had started therapy and feeling a sense of relief because the outing wasn't a complete failure. It was a trip to the zoo. We were able to enjoy the time together and I have a moment engrained in my head of my husband and Josh. My husband was kneeled down with Joshua pointing at an animal and he was actually engaged in that moment and that's not something that I'll ever forget. Prior to this outing similar situations would have ended with us leaving in frustration, Joshua screaming, yelling, kicking, us dragging him basically out of where we were at and us exhausted and spent. ABA therapy helped Joshua, but it also helped us as parents. It educated us on more effective ways to communicate with him as well as techniques to incorporate into our day-to-day lives to make our days more tolerable. Joshua is now five. He has been without ABA therapy for a year and a half. We made the decision a year and a half ago to move back to Nebraska to be closer to family. We made that decision to give up those services because at the time we felt that family was a little bit more important. However, we have seen regression since we have returned to Nebraska. And that's difficult for me because I'm the one that made that decision to leave those services behind. I wonder at times where he would be if he didn't have that, but also where he would be if he still had those services available. I believe that this method of treatment for children with autism...and I catch myself frustrated as a service provider working with families because I've experienced it, I've lived it, I've seen it and they haven't and what their family could be like if they would have the availability of those services. I think Nebraska is taking a step in the right direction when they passed LB254, but it's still limiting the number of families that can access services and passing LB706 would help do this. It's an effective way to help families gain some sort of normalcy in their chaotic lives. [LB706]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you for coming up this afternoon. [LB706]

KRISTI LAYMAN: Thank you. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

CATHERINE MARTINEZ: (Exhibits 10 and 11) Good afternoon. My name is Cathy Martinez. My husband, Cesar, and I have four children. I've operated an in-home daycare for 23 years in Lincoln and I've been the president of Autism Family Network of Lincoln since 2009. [LB706]

SENATOR SCHEER: I'm sorry, could you spell your name for us first, please? [LB706]

CATHERINE MARTINEZ: Oh, I'm sorry. C-a-t-h-y M-a-r-t-i-n-e-z. [LB706]

SENATOR SCHEER: Thank you. [LB706]

CATHERINE MARTINEZ: I'm a past board member of Autism Society of Nebraska, current board member of ARC of Lincoln, and the Nebraska state advocacy chair for Autism Speaks. Today I come to you as a mother and a president of a grass-roots organization representing families affected by autism in Nebraska. Our youngest child, Jake, has severe autism. He is a sixth grader at Mickle Middle School here in Lincoln. He has received ABA services since he was three years old. ABA has taught him self-care skills, such as grooming, toileting, bathing, and dressing. ABA has desensitized him to haircuts, tooth brushing, and loud noises. These all would be considered overstimulating for an individual with severe autism. ABA has taught him a means of communication. ABA helps him with his math and reading skills. ABA has taught him social skills. Our son is still nonverbal, but he has been taught through the intense programming of ABA how to spell and how to type. In January of this year, Jake's pediatric neurologist was so impressed by how far Jake had come over the past ten years. He doesn't have to be medicated to control behavior. My nonverbal son with a standardized IQ score of 44 is toileting, communicating by typing, nonaggressive, dressing himself, and following two-part instructions. It is nothing short of miraculous that my son is doing as well as he is today. It's because he has had the opportunity to receive ABA over the past ten years. Don't deny individuals with autism the right to reach their full potential. My family went bankrupt providing this service to our child because the legislation wasn't there for us yet. But because of ABA my child will be more independent and less reliant on caregivers as an adult. He will be able to lead a semi-independent life. Most people of his severity level would require a greater level of assistance, such as nursing home care. ABA is habilitative and life changing for families affected by autism. In 2014, the Unicameral unanimously voted that ABA should be covered by insurance because of how beneficial ABA is to individuals on the autism spectrum. In 2015, a judge ruled that Medicaid will now have to cover ABA services in Nebraska. To create a definition of habilitative care, excluding ABA services would be taking one step forward and two steps back. We all agree it's essential to the livelihood and success of a person on the autism spectrum. The definition of the word habilitate, according to Merriam-Webster Dictionary is: to make fit or capable as for functioning in society. That definition is exactly what ABA does for an individual with autism. ABA teaches how to dress, groom, and toilet independently, all essential for fitting into society.

ABA teaches how to stay with a caregiver and not wander, both necessary for safety within society. ABA teaches how to read and write, both of which are essential for being capable. ABA teaches communication methods and how to control aggressive behaviors. I believe we all realize the benefit to society for those skills as well. Two years ago, this legislative body agreed unanimously that ABA was beneficial and necessary to individuals with autism in Nebraska. Why would we think any differently today? And may I ask one question? What would you do, what would your decision be if this was your child? Thank you. [LB706]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you so much. [LB706]

CATHERINE MARTINEZ: Thank you. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

MARCIA LEPINSKI: (Exhibit 12) Good afternoon. My name is Marcia, M-a-r-c-i-a, my last name is Lepinski, L-e-p-i-n-s-k-i. Good afternoon, Chairman Scheer and the committee. I am here to speak in support of LB706 and also on our experience with the habilitative benefits of ABA. We had a very, very healthy son, eight pounds, eight ounces, he had great Apgars, held his milestones and problem solvings, bright-eyed boy, imitating his older sister. People told us we were in for a run for our money, just because you can kind of see that in some of those kids, but they really had no idea what was actually coming up. Our world turned upside down when at 20 months our son developed autism. At that point, his behavior went to total isolation. He had an unshakable focus on unusual objects and if he was interrupted for any reason whatsoever had a complete tantrum. He had no eye contact. He had a revulsion to faces. If you held his face in your hands, he would squirm and squint and do everything he could not to look at you, not to look at his mother, his father, his sister who he couldn't take his eyes off of six weeks earlier. He also had no receptive language anymore. You could not...he did not respond to his name. If you wanted to go somewhere you couldn't tell him bye-bye or get your coat, you'd have to take your car keys and shake them out here like this. If you shook them too close to your face or to your body he wouldn't look at you because he didn't like to look at faces, he was afraid, something about the eye contact was just terribly offensive for him, and he also had no expressive language at that time. He had been saying two- and three-word phrases. The most memorable one for me was, no, that's sister's, because that's what happened a lot of times when he picked up something that wasn't his. And for the next two and a half years this little boy did not say a word. From a safety standpoint--this was one of the more challenging--we had to put keyed deadbolts on all of our doors that were exterior doors. I wore a lanyard around my neck and when people asked my five-year old to play, I would have to unlock the front door with the key around my neck, because he would push chairs over, flip the deadbolt, and go off on a dead run. I had to drive with one hand on his car seat release. There was two times when I did not do this and I had a

Toyota Camry at the time. The door handle is right here. He could undo his car seat at two and three years old, flip it over his head and get the door handle open when I was in an intersection. I'd leave my car doors wide open and take off after him. When I showered I had to make my five-year old sit in front of the bathroom door and have them both in the bathroom with me so I knew where he was so I could actually take a shower. My husband and I had only one thought, we had one prayer, we had one plea at that point. It was, the only thing we wanted was to try to help our son. We went through testing everywhere we could think of, LPS, UNL at Barkley, we went to Munroe-Meyer with UNMC, Iowa City. Some of the things they told us were the fact that they thought he had an IQ of 35 and he'd never be able to talk nor read. We went and saw professionals, pediatricians, speech pathologists, psychologists, psychiatrists, physical therapists, occupational therapists. We took him to programs, early childhood special ed, speech pathology, augmentative language, play therapy classes. We did it all and we did it...we were very...I mean, we did it all 100 percent. We were doing everything we could, but nothing was helping. The only change we could see was this little boy was getting bigger all the time and more frustrated by the day. The recommendations that we got at that point were unimaginable for a family. The first one was to have respite because you'd need time away from this because this little boy was obviously too unbearable to be around very long. The second was the fact that we would need marriage counseling because couples didn't last with this, and I'm glad to say, 32 years later we're still making it. And also to financially prepare for our son's future because by the time he was ten--this is what they told me when he was four--by the time he's ten you're not going to be able to handle him anymore. He's going to be too big, and have you seen the size of those feet and those hands? He's going to be a big one and you're not going to be able to handle him anymore and you're going to want to have him in a nice place. That was 1994. That was when they also told me that autism was 1 in 15,000, '94, '95; now it's 1 in 64. But none of those things had any intention of helping him. Fortunately, at that point we heard about applied behavior analysis and the documented success the program was having in helping individuals learn and acquire skills for functional daily living. The research was peer reviewed, it was replicated in different areas, there were control groups, there were longitudinal studies for 13 to 15 years at that point. The program was data-based, it was objective, highly individualized targets--that Lorri spoke about--for each individual. It was not the one-hit wonder of many of the silver bullets or the quick cures that we heard about. It was working across the board and it was helping kids. [LB706]

SENATOR SCHEER: Marcia, if I could interrupt you. [LB706]

MARCIA LEPINSKI: Oh, darn. [LB706]

SENATOR SCHEER: You're quite a ways past the five minutes so if you can maybe just summarize a little bit. I know this is very important to you, but in fairness to those behind you we do need to... [LB706]

MARCIA LEPINSKI: Okay. I'm going to summarize by saying that was then, this is now. What is he doing now? My son has his own website, he has his own corporation. He maintains a vending business and a mowing business. He has been chosen for citywide art projects, such as Star City Art across Lincoln, he has had his own First Friday art show. He participates in 3Ks, 5Ks, he's a competent swimmer, he goes to basketball games. Advanced computer skills, he does CAD drawing, and he's pursuing his GED. If he can get his GED, we can have him in drafting and that way he can do what he loves. He can draw houses, landscapes, all this type of thing and have a productive life. So in closing, when we first started ABA they asked me what I wanted. I said, can I have four words from this kid, this nonverbal child? Can I have hungry, thirsty, tired, sick? That's all I wanted, and they kind of smirked at me and now not only do I have language, I asked for hungry, now I've got a kid at 23 who will negotiate on which restaurant he wants on which night. He'll navigate us on how to get there so he takes the route that he wants. He reads and orders off the menu. He behaves totally appropriately in public, and he can figure the tip. And if that doesn't...if that's not a true meaning of habilitative care or habilitative services, where he has made it from zero to where he is now...and the joy of it is, he's not done yet. We still feel that he is having skill acquisition on a very predictable route. We talked to our... [LB706]

SENATOR SCHEER: Are we done? [LB706]

MARCIA LEPINSKI: Yeah, kind of. [LB706]

SENATOR SCHEER: I can tell you're very, very proud of your son and you should be, but we do have I think several people... [LB706]

MARCIA LEPINSKI: I know. I'm just passionate and I can't help it. [LB706]

SENATOR SCHEER: I appreciate that. I would be as well. But are there any questions from any of the committee? [LB706]

MARCIA LEPINSKI: Ask me some more so I can talk. [LB706]

SENATOR SCHEER: Well, you can come back and talk to any of us at any time. Thank you very much. [LB706]

MARCIA LEPINSKI: Okay. Thank you very much. And, again, I wholeheartedly ask for your support on this bill so other people can enjoy the benefits that my son has reaped. Thank you. [LB706]

SENATOR SCHEER: There you go. Thank you. Our next proponent. Good afternoon. [LB706]

MARC BRENNAN: (Exhibit 13) Good afternoon. My name is Marc, M-a-r-c, Brennan, B-r-e-n-n-a-n. Dear Senator Scheer and fellow members of the Nebraska Legislature, Banking, Insurance and Commerce Committee (Commerce and Insurance), I want to thank you for letting me speak today. I am here on behalf of the Nebraska Speech-Language-Hearing Association. We are pathologists, audiologists, and students across the state of Nebraska. We are experts in the treatment and diagnosis of speech-language, swallowing, cognitive, hearing, and balance disorders. On behalf of this organization we support LB706. I also want to mention that I personally support it. I am a child--an adult now--but I was born with a hearing loss and so I received habilitative services from a speech-language pathologist and have lived as a successful adult; I think so. We are making one little request. We are hoping that you would consider modifying the definition to be consistent with the federal definition that is in the Affordable Care Act. And so I've written out the modification. I can read it out so that everyone else can hear it: "For purposes of Chapter 44, habilitative services mean healthcare services and devices that help a person keep, learn, or improve skills and functioning for daily living, including applied behavior analysis. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings." I think it's vital that we continue to be able to habilitate children with disorders. Doing so would allow these children to achieve the milestones that are necessary for them to become productive members of society. Passing LB706 with this definition is consistent with the U.S. Department of Health and Human Services and the National Association of Insurance Commissioners. As you know, this bill addresses insurance plans that fall under the Affordable Care Act. If these services aren't provided children who require these services will fall behind their peers and consequently will become less productive members of society. I believe that not passing this might subject the state to costly litigation. And our understanding, although perhaps a lawyer who spoke earlier has a different opinion due to recent events, but our understanding is that because this bill merely clarifies the definition of habilitation services, our interpretation is that the state of Nebraska would not have to pay for the cost of providing these services. It's for all of those reasons that I urge you to pass LB706. Thank you. [LB706]

SENATOR SCHEER: Thank you very much. Any questions? Seeing none, thank you very much. [LB706]

MARC BRENNAN: Thank you. [LB706]

SENATOR SCHEER: Next proponent. [LB706]

MICHAEL CHITTENDEN: (Exhibit 14) Good afternoon, Senator Scheer. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

MICHAEL CHITTENDEN: My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n, I represent The Arc of Nebraska. I will try to be brief, especially to help out Marcia in her time limit. You've heard from some outstanding families today. And I say that, not to judge the other families that I'm going to reference, but the fact of the matter is, Senators, there are families out there who are so in need and in such dire straits that sometimes they consider and eventually do give up their children to the state of Nebraska because they can no longer afford to care for them or can no longer take the daily toll of caring for them when dealing with some of the issues that you've heard today. And I think you've heard some incredible stories today from these families. So autism does affect quite a few children in the state of Nebraska. And imagine being a child unable to communicate; something that we take for granted every day. Now imagine becoming so frustrated with that lack of communication that you have to lash out, that you have to break things, maybe even hurt family members. Now imagine that same family so desperate to get the services their child needs they're going to make the state of Nebraska the ward. There are options available to those families, but we need to make the change in LB706 to make that happen. ABA works. I've seen it work. I've been a service provider for 30 years. I've seen it work in children, I've seen it work in adults. I've seen it increase community opportunities for people and I've seen it effectively keep families together. Currently, the 2015 report, "Case for Inclusion," by United Cerebral Palsy ranks us as a state, 38 out of 51, including Washington, D.C., in keeping families together. That is not a number that I think any of us would be proud of to tout and I bring it up today so that we can change it. We highly encourage the passage of (LB)706. We also encourage the use of the federal definition. The Arc is available for any help in this matter and I'm open for any questions. [LB706]

SENATOR SCHEER: Thank you, Michael. Any questions? [LB706]

MICHAEL CHITTENDEN: Thank you so much, Senators. [LB706]

SENATOR SCHEER: Seeing none, thank you. Are there any other proponents? Seeing none, are there any opponents to (LB)706? Good afternoon. [LB706]

RUSSELL COLLINS: (Exhibit 15) Good afternoon, Chairperson Scheer. My name is Russell Collins, for the record that's spelled R-u-s-s-e-l-l C-o-l-l-i-n-s, I'm vice president and general counsel for Blue Cross Blue Shield of Nebraska and here today to testify in opposition to LB706. Blue Cross Blue Shield of Nebraska is a taxpaying, not-for-profit Nebraska mutual benefit corporation. Blue Cross does not have shareholders. As a mutual benefit company, Blue Cross

represents and serves the interests of the more than 700,000 policyholders and members that we serve. First, the company's position on LB706 is based on our general historical opposition to additional mandated health insurance benefits because the cost of our products increase as the scope of benefits covered by those products broadens. Second, the company's opposition to LB706 is based on the federal government's position that it would require the cost of coverage for additional services to be paid by the state if LB706 becomes law. Blue Cross's position on this bill is not based on the healthcare treatment contemplated by the legislation or autism. Blue Cross knows that medical costs continue to increase and we consistently strive in our public positions and in our internal operations to inspire the delivery of efficient, high quality, and affordable healthcare in Nebraska. I've passed out a copy of the letter from Kevin Counihan from CCIIO many of you have that explains the position of CMS as of January 16, 2016, in the letter to the Tennessee commissioner with the Tennessee Department of Insurance. And I believe the circumstances and the basis for the federal opinion and their change in their approach or ambiguity in their approach has been explained before, so I have nothing further unless there are additional questions. [LB706]

SENATOR SCHEER: Thank you. Senator Schumacher. [LB706]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony today. Do you agree with Senator Coash's assessment that the cost of LB254 was far less than guesstimated? [LB706]

RUSSELL COLLINS: I have not studied the specific cost of LB254, but I think what Senator Coash presented I have no specific questions or concerns about. [LB706]

SENATOR SCHUMACHER: Thank you. [LB706]

SENATOR SCHEER: Senator Gloor and then Senator Campbell. [LB706]

SENATOR GLOOR: Thank you, Senator Scheer. Blue Cross Blue Shield in support of LB254? [LB706]

RUSSELL COLLINS: We were neutral on LB254. [LB706]

SENATOR GLOOR: Were you neutral or opposed? [LB706]

RUSSELL COLLINS: We were neutral. [LB706]

SENATOR GLOOR: Okay. Had you had dialogue about coverage issues related to (LB)254, issues of definition that you worked on to try and come up with a compromise? [LB706]

RUSSELL COLLINS: We did. [LB706]

SENATOR GLOOR: Okay, but you were still neutral? [LB706]

RUSSELL COLLINS: In the end we were. [LB706]

SENATOR GLOOR: Okay. Thank you. [LB706]

SENATOR SCHEER: Senator Campbell. [LB706]

SENATOR CAMPBELL: Thank you, Senator Scheer. Did you provide this material or somebody else must have,...? [LB706]

RUSSELL COLLINS: Somebody else must have at the benchmark. [LB706]

SENATOR CAMPBELL: ...because it's all coded. This is the benchmark plan in the marketplace then? [LB706]

RUSSELL COLLINS: It appears to be. I would have to look this one up. [LB706]

SENATOR CAMPBELL: I'm sorry, it's Blue Cross Pride, "A Guide to Your Health Benefits." And then, yeah, it's Section 4, it must be. Okay, I just wanted to know if you'd provided that. [LB706]

RUSSELL COLLINS: We did not. [LB706]

SENATOR CAMPBELL: Okay, thank you. [LB706]

SENATOR SCHEER: Senator Schumacher. [LB706]

SENATOR SCHUMACHER: Thank you, Senator Scheer. LB254, I don't think that was its original number. I think that was something that had been rolled into it late in the session. [LB706]

RUSSELL COLLINS: It was. [LB706]

SENATOR SCHUMACHER: If I recall right, Blue Cross Blue Shield did testify against the autism portion of that. [LB706]

RUSSELL COLLINS: Right. It was LB505. Thank you. [LB706]

SENATOR SCHUMACHER: And the gist was that it was just way too expensive. It was a...it would break the bank and apparently that really didn't happen that way. [LB706]

RUSSELL COLLINS: We expressed concerns about adding mandated benefits and the cost of adding benefits at that time. [LB706]

SENATOR SCHUMACHER: Thank you. [LB706]

SENATOR SCHEER: Senator Campbell. [LB706]

SENATOR CAMPBELL: Thank you, Senator Scheer. Mr. Collins, do you have any information that described to you why the federal government changed, because we have this piece of information that says originally the federal government thought they would cover it and then changed their mind? Do you have any idea why they changed their mind? [LB706]

RUSSELL COLLINS: I wish I did, but I do not have an understanding of what led to the letter to the Tennessee department. [LB706]

SENATOR CAMPBELL: We all would like to be able to read HHS's mind at times. I just thought you might have some idea why they changed it, because going back to Senator Schumacher's point of history here, I think on the original bill there was a lot of discussion in thinking that, well, we'd wait and see if the federal government was going to put it in and cover the cost and then decided not to apparently. Okay, thank you. [LB706]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB706]

RUSSELL COLLINS: Thank you. [LB706]

SENATOR SCHEER: Good afternoon. [LB706]

RON SEDLACEK: Good afternoon, Chairman Scheer, members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, and I appear here today on behalf of the Nebraska Chamber of Commerce and Industry. It should be no surprise to those members of the committee, the longstanding members of the committee particularly, that the State Chamber has a general policy against extending further mandates upon health insurance. Certainly, there's never been a mandate that has not been well intended. Certainly, we understand the issues involved here. However, when we review the legislation we try to stick by our principles in that regard and to weigh in on the issue. And we believe that LB706 will require small businesses to buy more coverage, to purchase more insurance than required under the ACA, and would also like to remind the committee that as time goes on we continue to see, and particularly even in the small business market at this point, further migration to ERISA plans, self-funded plans. This legislation would not affect those plans. You've heard testimony from proponents of the legislation that talked about being under self-funded plans. This will not extend to those plans no matter what we do. And so just want to bring that to the attention of the committee. Again, well north of 50 percent, maybe 55 percent to 60 percent now of insurance provided in the marketplace or rather by employers are ERISA based programs. [LB706]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. [LB706]

RON SEDLACEK: Thank you, Senator. [LB706]

SENATOR SCHEER: Any other opponents to (LB)706? Anyone wishing to speak in a neutral capacity to (LB)706? Good afternoon, Director. [LB706]

BRUCE RAMGE: (Exhibit 16) Good afternoon, Senator Scheer and members of the Banking, Commerce, Insurance Committee. My name is Bruce Ramge, spelled B-r-u-c-e R-a-m-g-e, and I'm the Director of Insurance for the state of Nebraska. I appear in a neutral capacity on LB706 as the Department of Insurance has no position on the merits of the legislation. I appear solely today to discuss the significant fiscal implications of the mandate. And with your permission I will, rather than go through all of my testimony to try to paraphrase and whatnot (inaudible). [LB706]

SENATOR SCHEER: (Inaudible) It's your five minutes, Director. [LB706]

BRUCE RAMGE: Okay, all right. First of all, one thing I'd like to point out is that because LB706 applies to all of the insurance code the definition would apply to any type of policy that mentions habilitative services, even those beyond major medical plans. I don't think there are many others, perhaps some in the disability arena. And since you've already heard the pros and

cons of the legislation from testifiers, I want to keep my comments narrow to the issue of the mandates and whether or not the legislation would be considered a mandated benefit and, as a result of a provision of ACA, would require the state of Nebraska to defray any additional costs associated with expansion of the definition of habilitative services. The federal government has been a great frustration to insurance regulators across the nation when it comes to whether or not a state can define habilitative services without invoking mandated benefit cost defrayment provisions of the ACA. The Tennessee letter, which has been brought to your attention, is the latest and most definitive answer the federal government has provided on this subject. I believe it's the only thing they have placed in writing. And because of this letter the Department of Insurance believes that if LB706 passes the state of Nebraska would be responsible to defray any additional costs. If or perhaps when the federal government again changes its mind and provides new guidance I will be sure to pass that along. One thing I would like to point out, it is mentioned in the fiscal note that through a proposed rule-making statement in the proposed rule, that they've indicated that these defrayments would be applied retroactively and applied to policies not covered under the ACA. So in other words, they've indicated they would maybe go back and try to recoup expenses that were defrayed from the previous bill. So I provide this information to help the committee in its deliberations. I thank you for the opportunity to testify. I'd be happy to answer any questions the committee might have. [LB706]

SENATOR SCHEER: Thank you, Director. Any questions? [LB706]

BRUCE RAMGE: Yes. [LB706]

SENATOR SCHEER: Senator Williams. [LB706]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you, Director Ramge. You were here, I believe, and heard the testimony on the fiscal note comparing the fact that the Missouri experience and the percentages that the fiscal note could be overstated? [LB706]

BRUCE RAMGE: Yes. [LB706]

SENATOR WILLIAMS: What's your reaction to that testimony? [LB706]

BRUCE RAMGE: You know, any estimate going into the future like that is, it's always just that, an estimate. But, again, one of the things I wanted to point out is the fact that it could activate retroactive repayment of costs. And another thing I should probably point out is the estimate that's provided in the fiscal note does not anticipate any other services not mentioned in the bill. [LB706]

SENATOR WILLIAMS: Thank you. [LB706]

SENATOR SCHEER: Anyone else? Seeing none, thank you very much, Director. Oh, excuse me. Senator Campbell. [LB706]

SENATOR CAMPBELL: Director, have you had a chance to look (at) this chart? [LB706]

BRUCE RAMGE: I have not. I have not. [LB706]

SENATOR CAMPBELL: I'm assuming what you're referring to on the retroactive is anything that was not covered since...oh, thank you so much...that anything that was not covered by LB254. Is that what you're saying? [LB706]

BRUCE RAMGE: Well, that would be covered by LB254. So those plans that would have had to start providing the habilitative. [LB706]

SENATOR CAMPBELL: Right. [LB706]

BRUCE RAMGE: And I don't know what those costs are. I wish I did, but I don't have an estimate of that. [LB706]

SENATOR CAMPBELL: Okay. [LB706]

BRUCE RAMGE: Again, just to be clear, the way we came up with the number for the fiscal note was simply using the Missouri numbers and dividing through the population. It was a very simple way, but that was the best way we knew how to... [LB706]

SENATOR CAMPBELL: So any of the nongrandfathered individual and small group plans would, you think, be eligible--you called into question anyway--whether they retroactively could go back and ask for payment of those services? [LB706]

BRUCE RAMGE: Yes. Yes. [LB706]

SENATOR CAMPBELL: Since...what would be the end date? I mean, what would be the beginning date of that, the passage of the ACA? The marketplace? [LB706]

BRUCE RAMGE: I would think so. Or the passage of the mandate by Nebraska. [LB706]

SENATOR CAMPBELL: In (LB)254? [LB706]

BRUCE RAMGE: Yes. And, again, please keep in mind we are not getting good, solid, definitive answers from the federal government, so I'm only raising this as a specter of what could be a possibility. I wish we could provide more definitive answers. And believe me, we've tried, even up to yesterday. [LB706]

SENATOR CAMPBELL: Oh, okay. [LB706]

BRUCE RAMGE: We've been very diligent about asking over and over again and have not. [LB706]

SENATOR CAMPBELL: And the question has been posed to CMS, is that who? [LB706]

BRUCE RAMGE: Correct, yes. [LB706]

SENATOR CAMPBELL: Is that who you're looking for a definitive answer how to...? [LB706]

BRUCE RAMGE: Yes. [LB706]

SENATOR CAMPBELL: Okay. Thank you. [LB706]

SENATOR SCHEER: Thank you. Seeing no one else, thank you, Director. [LB706]

BRUCE RAMGE: Thank you, Senator. [LB706]

SENATOR SCHEER: Anyone else wishing to speak in a neutral capacity? Seeing none, Senator Coash to close. [LB706]

SENATOR COASH: Thank you, Chairman Scheer. Thank you to the committee for your patience in the testimony. Habilitative services is one of ten categories in the federal essential health benefit that has to be covered in each state's benchmark plan. The federal definition of habilitative service is--this is the federal definition--healthcare that helps a person keep, learn, or improve skills in functioning for daily living. Nebraska's 2017 benchmark plan specifically

excluded coverage of ABA as a service that is not habilitative, and that leaves Nebraskans vulnerable. I hope you have a better understanding of what ABA does and how it's used. People with autism speak a different language, is how I would characterize it. And what ABA does is it kind of interprets that language and it teaches a new language. And that's the reason that I bring this bill. With regard to the testimony that you heard, we only had one provider come up and oppose this bill. There are other insurance providers out there who have chosen not to come up and testify in opposition. I don't know what to read into that other than I don't think the insurance world is of one mind on this issue. Over in HHS, and as Chair of the BSDC Oversight Committee, I can tell you that we talk a lot about the cost of children with severe disabilities when they become wards of the state. The cost for a child living in BSDC per year is almost $.5 million per year. That's what it costs, somewhere around $450,000 per year per person, including children, at BSDC. What I am fearful of is a situation where, but for the access to this therapy, these children will become state wards. And when they become state wards, it becomes our responsibility and then they'll get this service because it's now Medicaid service. But they'll do it outside of their home at a much greater cost to the state. So I hope the committee will take that into consideration as well. Throughout...you know, it's my eighth year, so for what it's worth, here's the lessons that I have learned. I think the mothers that came and testified on behalf of their children...and I have just found it to be a smart course of action to do what they tell you to do and just makes it easier for everybody. I'll leave it at that. Thank you. [LB706]

SENATOR SCHEER: Thank you, Senator Coash. Senator Campbell. [LB706]

SENATOR CAMPBELL: Thank you, Senator Scheer. Senator Coash, did you want to make any comments about the retroactivity question that the department has raised? [LB706]

SENATOR COASH: You know, I probably better not, because I'm not sure how best to respond. But I think there are people who could address that and I'll make sure that we get that information to the committee. [LB706]

SENATOR CAMPBELL: Thank you. [LB706]

SENATOR SCHEER: (Exhibits 17 and 18) Thank you, Senator Coash. And I have received some correspondence in the mail or e-mail, letters of support from: Jocelyn Linares of Omaha; and Steven Bowen, the Nebraska Occupation Therapy Association. Both had sent correspondence in. So seeing no other the hearing will end for LB706. Thank you all for coming. We will now move to LB801. Senator Bolz, welcome. Whenever you'd like to...well, let's wait a second or two while we...I don't want to be disruptive for your comments, so just be patient for a second here and...I'd ask you if you had any good jokes, but...if you can't think of one quicker than that, then you just don't have a really good one, so. Okay, I think we're to the point where

we probably won't be disturbed, so Senator Bolz, you're welcome to open on (LB)801. [LB706 LB801]

SENATOR BOLZ: Good afternoon. I am Senator Bolz, that's K-a-t-e B-o-l-z, I'm pleased to bring you LB801 today. If you have made plans for your long-term care needs, you should pat yourself on the back, because only one in five baby boomers have made such plans and you're in an elite minority. They don't know necessarily how they will pay for their home-based assisted living or nursing home care as they age. Further, a new study by the assistant secretary of planning and evaluation on consumer awareness and attitudes toward long-term care found a lack of knowledge, consumer confusion, and inaction on planning for long-term care needs. At the same time, we know that long-term care can be very expensive, as much as $64,788 for a semi-private nursing facility room. And the most recent numbers I have seen indicate an 8 percent growth rate. So those costs are born by individuals, they're born by families, and they're born by our public programs. A particular concern is the recognition that individuals may need to rely on Medicaid. The biggest scenario in which an individual relies on Medicaid is when they have spent down their own personal resources. And the longer an individual is in long-term care the more likely it is that they're in need of the Medicaid program. While most people recognize the importance of planning and saving for the future, few are taking action, but we are at a moment in time when action is needed. And the Aging Nebraskans Task Force met this summer and discussed this issue at some length with the national organization LeadingAge. And I thank Senator Campbell for her service on that task force. Consultants helped us to arrive at policy strategies, including LB801 in front of you today. LB801 would direct the Department of Insurance to develop an educational initiative to inform the public and partnership with employers about the benefits of long-term care planning and long-term care insurance. Research shows that employers and entities like the Department of Insurance are trusted resources on this matter, and we can look to the state health insurance program, which is a program that helps seniors access health insurance as a model or an example of that. So the bill requires the Department of Insurance to develop and implement such an education initiative and to gather information about the effectiveness of that work. It came to my attention just earlier today that there might be concerns about the Department of Insurance having a conflict over providing information while regulating the industry at the same time. We had encouraged and indicted the Department of Insurance to participate in our Aging Task Force meetings. They did so, we met with them over the fall, and this conflict of interest issue, this is the first time that I'm hearing of it, so I haven't had time to address it in its depth. And I apologize, because I have two bills up in Appropriations and I'll need to waive closing. So I recognize that that's an issue or something that might need to be discussed in greater depth. What I'll share with you at this point in time is that other states have partnership models. Other states have models where it's not just the Department of Insurance, it's the Department of Insurance in partnership with nonprofit organizations, the area agencies on aging, the department of aging, and other stakeholder groups. So I would offer that for your consideration as we think about how to move forward with an

initiative that helps our Nebraskans understand the importance and the need for long-term care insurance, because colleagues, from a seat on the Appropriations Committee, I tell you that we must bend the cost curve on Medicaid in this state and long-term care insurance and educating our public about their options is one strategy to do so. So I'd be happy to take any final questions. [LB801]

SENATOR SCHEER: Senator Gloor. [LB801]

SENATOR GLOOR: Thank you, Senator Scheer. I know a little bit about this and I have to tell you, I'm empathetic with the Department of Insurance. Depending upon how this is handled, I can see the risk that an upset consumer will blame the Department of Insurance for marketing that they should have long-term care insurance. And for those people who pay premiums year and after year after year and never use their long-term care insurance, I can see a disgruntled consumer saying, I bought this and I've never had a chance to use it, not understanding that that's a good thing, but that seeing the premium dollars that they never used and who talked them into taking out this insurance? Who's the culprit? It's the Department of Insurance or it's the state of Nebraska. The flip side of it and the more difficult one for us with long-term care insurance is the predictive models that get thrown out of whack here where premium increases continue to go up and up as Nebraskans live longer and longer. I mean, I'm sure actuaries are pulling their hair out because of healthy Nebraskans who blow the tops off of those actuarial scales. And so, certainly when I was chair of this committee, we had plenty of complaints from people who were upset about the premium increases going up, but if the premium increases don't go up, then the insurers say, then we're out and now all those premium dollars are lost. Once again, the state of Nebraska gets blamed for driving that insurer out of business and premiums disappear. So I have some degree of unsettledness about this because I'm afraid of the position it might put the Department of Insurance in and the state in if we're not careful. [LB801]

SENATOR BOLZ: A couple of comments in response, if I may. The first is that I think some of it is the nature of the game. And any...I mean, I think you heard in the previous hearing that there are differences of opinions about what people should expect from their insurance company, what's appropriate, what we should expect from the Department of Insurance in terms of regulations. So I guess I...one response to that is that I think sometimes concerns are inevitable, because people have different points of view. The second comment would be, it's a little bit of a chicken and egg. And that is, in order to make those insurance pools more sound, we need more people to participate in those insurance pools, right? So the underlying proposal here of an education initiative I think leads us towards having programs that work better. A couple more things to add just briefly are, I think that there is a way to do this work in a responsible manner. There is a population for which long-term care insurance is best suited, particularly, modest to middle income individuals who have assets to protect. And so if we are doing this work in the best way possible, and I hope that we would, we would be targeting it towards the appropriate

audience that would use it to the best of its ability. The last comment is probably just a comment in terms of process. I'm absolutely willing to bring an amendment or to think about how the best structure for this kind of initiative would be put forth. I just...having only learned about the conflict of interest concern this morning after some meetings and I think a lot of due diligence on both sides...but having only learned about this specific concern this morning, I haven't been able to craft some alternative language yet. [LB801]

SENATOR GLOOR: Well, and I don't want to be misinterpreted here. It's certainly in the state's best interest to have people take out long-term care insurance, as per reasons you pointed out, appropriately so. But because of that, I just think we have to be really careful that since it is self serving we don't take a department that we expect to be there to protect consumers, put them in a position where they're seen as doing something other than that protective component (inaudible). [LB801]

SENATOR BOLZ: That's fair. We've drafted it in this way because we thought it would be simpler. But partnership approaches have been effective in other states, Alaska, Hawaii, and Florida are examples. [LB801]

SENATOR GLOOR: Good. Thank you. [LB801]

SENATOR SCHEER: Thank you, Senator Gloor. Senator Schumacher. [LB801]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for introducing this bill, Senator Bolz. I think you're going to generate a lot of really depressing statistics here. How do you think they're going to be used? What good is it going to do? The numbers are so much an impingement on a family budget and the experience with a lot of the folks who are 70, 80 years old who paid into nursing home or what they call nursing home care insurance and then suddenly had to drop it because they got these surprise notices a couple of years ago that said, oh, by the way, in the small print on page 6 it says we can really jack up your rates. And if we're going to remain solvent, we're going to jack up your rates, so they had to drop it because they couldn't afford it. In the bigger picture, how does this help the situation? [LB801]

SENATOR BOLZ: Not to add to your pile of depressing statistics, Senator Schumacher, but some of the research that has been done by LeadingAge, Nebraska shows that the average person who's asked questions about the cost of long-term care underestimates it by half. So people have a real lack of understanding about the cost of insurance and their options. And so one place to start is to help people start to think about the cost of long-term care insurance, long-term care, start to move towards the planning and I think that's another piece of this educational initiative. But, again, I think the heart and soul of the matter is making sure that we're finding the right

products for the right people. Long-term care insurance isn't perfect for everyone, myself as an example. You know, long-term care insurance might not fit into my budget right now, so maybe other things make sense. But for a modest- or middle-income person who's got a family firm to protect, if we can start encouraging the right populations to participate, the numbers become less depressing. [LB801]

SENATOR SCHUMACHER: Thank you. [LB801]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Senator Bolz. We understand. [LB801]

JULIE KAMINSKI: (Exhibit 1) Good afternoon, Senators. My name is Julie Kaminski, J-u-l-i-e, Kaminski, K-a-m-i-n-s-k-i, and I'm with LeadingAge Nebraska. We represent the nonprofit providers of senior housing and services across the state of Nebraska. And we support LB801 because it's a proactive approach, and I agree with what everyone has said. I think when you look at about half of older Americans are going to need some sort of help with long-term services and the support. So when I say that LTSS, that's talking about whether it's bathing, dressing, medication, nursing home, some form of help with that. And when you ask them, who's going to pay for that, they think it's Medicare, their disability insurance and the reality is, neither of those do. Currently, Medicaid funds 40 percent of our long-term services and supports. And as Senator Bolz mentioned, we as a state and a nation can't afford to let Medicaid be the payer of long-term services and support. So what this does is helps Nebraskans start thinking about planning for long-term care. And we, as Americans, do a better job of planning for our death, whether it's prepaying a funeral, having a living will, whatever it is, than we do about our living. And it may not be perfect, but I think we need to be proactive to figure out a way to have Medicaid not be paying as much of this and to figure out ways to encourage people to think about long-term care insurance and just planning in general. You know, as Senator Bolz mentioned, the Aging Nebraskans Task Force, we got some insurance providers in the room and said, okay, I'm 46 years old. I don't have long-term care insurance and I've been in this field for 16 years, but I want a product that might be something like life insurance that I'm paying that then converts to a long-term care policy. So we tried to generate some ideas with the insurance companies to get them to kind of come up with some innovative products. And so we tried to put them in the room together to create some of these solutions, so, as Senator Bolz mentioned on the back, it talks about the ASPE studies that people know that they need to prepare for long-term care and thinking about paying for that. But when you look at their objections, it's either too costly, they're not quite sure what to do, they're uninformed. So I think if we could create some credible materials, whether it's tying it to employers or different organizations, to help people really start planning ahead and thinking about planning for their living and how they're going to fund that. So we respectfully ask you to support LB801. And any questions you might have. [LB801]

SENATOR SCHEER: Thank you very much. Senator Williams. [LB801]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you, Ms. Kaminski, for being here. I struggle when we ask the state to try to legislate financial responsibility. You asked the question about, why do people plan better for their death than they do for their life? Maybe the answer is the funeral directors have done a good job marketing and talking to those people. There are huge financial needs that are out there, and I wonder where the Department of Insurance's relationship should be. If we didn't buy, all of us, property and casualty insurance and we had a tornado or whatever, we would be in deep trouble. But the Department of Insurance is not responsible for creating educational materials to tell us that we need to be financially responsible there. How is this issue different than those that I'm describing? [LB801]

JULIE KAMINSKI: I'm not sure I quite understand the question. But how is it different as opposed to... [LB801]

SENATOR WILLIAMS: If we don't do that for property casualty insurance,... [LB801]

JULIE KAMINSKI: Right. Right. [LB801]

SENATOR WILLIAMS: ...if we don't do it for funeral directors, if we don't do it the , why should we all of a sudden step up and say, now it's the state's responsibility, taxpayers' dollars, to do it in this area? [LB801]

JULIE KAMINSKI: And I think one of the challenges is, is if we don't do something proactively our Medicaid budget is going to continue to grow and we're going to be paying for this from a taxpayer perspective, because people aren't planning for it, so Medicaid is ending up having to kick in. I mean, our hope is that we can shrink what Medicaid is paying by having people...you know, Nebraskans are proud people. We like to take care of ourselves. And I think if we could educate...I mean, one of the thoughts is going through the employer so it's just like disability insurance. [LB801]

SENATOR WILLIAMS: Well, I don't see the deduction in the fiscal note that this is going to cost us less. [LB801]

JULIE KAMINSKI: I think immediately, no. But I think long-term if we can encourage personal responsibility and individuals to start taking some of their own...just thinking about how you're going to pay for long-term services and support should you need it. [LB801]

SENATOR WILLIAMS: Thank you. [LB801]

SENATOR SCHEER: Any other questions? Senator Gloor. [LB801]

SENATOR GLOOR: Thank you, Senator Scheer. Just curious, in your deliberations...I mean, I look at the long-term care insurance and the dramatic drop that happened in the early 2000s which, to my mind, interestingly matches up with a huge proliferation in assisted living facilities that I've seen in my own community and wonder if part of what we might seeing is a good thing which is, there are other options that used to be for people to go into, whether it's home-care options or assisted living options, that whereas Nebraskans used to ultimately gravitate to the few things that were available--that would be long-term care facilities and some home care. Maybe the other options has us left with a pool of people who really are sick by the time they go into nursing homes. And because of that, the overall cost for care to be provided in those nursing homes goes up and is reflected in the premiums. The other is, I wonder if people are distancing themselves from how they used to think about their need for long-term care as being an institution where their grandmother was and now think, no, I'm going to go to an assisted living facility where my aunt is. And it doesn't cost nearly as much. I mean, this is strictly conjecture on my part, but I'm wondering if as you've looked through all this, if there's felt to be a connection with that. [LB801]

JULIE KAMINSKI: Yeah, I don't know. It's a good question. I also think it goes back to Senator Schumacher's point where when we had a lot of companies start pulling out of long-term care insurance, premiums going up. I think that played into it coupled with that as well, so I think possibly both. [LB801]

SENATOR GLOOR: Okay. Thank you. [LB801]

SENATOR SCHEER: Thank you very much. Good afternoon. [LB801]

MARK INTERMILL: (Exhibit 2) Good afternoon, Senator Scheer. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP. I'm sending around a thick packet and I assure you I'm not going to read the whole thing. I did want to address a couple of...first of all offer a hopeful statistic. Our nursing home population is falling. We fell below 12,000 just in the fourth quarter of last year. That's down from 17,000 back in 1995. Our Medicaid spending on nursing facility care has grown by an average of 1 percent per year, much less than the rate of inflation or a little bit less than the rate of inflation. We have been able to do this because I think Nebraskans are taking responsibility, first of all, taking responsibility for taking care of their older relatives. We have surveyed our membership and the general population of Nebraska and estimated that one in nine Nebraskans is engaged in family caregiving for an

adult family member. We also know that Nebraskans tend to purchase long-term care insurance at a higher rate than most states; we ranked fifth in terms of the number of policies in effect per population over the age of 40. Just about 10 percent of the 40-plus population had long-term care insurance. My conversations about long-term care insurance with our members over the past few years have seemed to occur at a point in crisis, when they are seeing 80 percent year-over-year premium increases or, in the case of some retired truckers who are getting a 50 percent pension cut, trying to figure out how they're going to afford the long-term care insurance. Long-term care is expensive. The Genworth Cost of Care Survey found that nursing facility care in Nebraska is over $71,000 a year. A one-bedroom unit in assisted living, over $43,000. The median household income for a household headed by somebody over the age of 65 is just almost $37,000. So a nursing home...the cost of nursing facility care would be about 194 percent of the median income of a household headed by a person 65. So paying for long-term care is not feasible for a large segment of the population out of their current income, but the financing instruments that we have for long-term care are expensive and they can be complicated, and I think that's where this bill comes into effect. We need to have someplace where consumers can go to get objective information, even in knowing how to...the terminology that's being used, to know what the risk of long-term care is, to know what sort of options are out there, and we have a variety of options. And that's the attachment that I've included is when the task force worked this summer on long-term care financing we tried to create a document that provided a sense of the lay of the land in terms of what's available in terms of private options, in terms of public options to help finance long-term care. I also want to address the question of the Department of Insurance and the appropriateness of the department taking on this role. And the analogy that I would identify is a program that we're very fond of at AARP and that's the Senior Health Insurance Information Program or SHIIP, a program that operates within the department that provides information to Medicare beneficiaries about Medicare supplement insurance, Medicare Part D policies. It's a wonderful resource for consumers to provide them with information about what's available. That's what we're looking for here, is just a resource, a source of objective information that a consumer who is considering long-term care insurance or one of the long-term care financing options, a place where they can go to get objective information, a better understanding of what the risks are so that they can make a wise decision. And I see I've got a minute left. I'm going to give it back to you. [LB801]

SENATOR SCHEER: Such a kind person. Any questions? Senator Gloor. See, you took it anyhow. [LB801]

SENATOR GLOOR: I'm going to use 30 seconds of the minute. Thank you for the clarification of what you're thinking about, because that does leave me a lot more comfortable. The SHIIP program has been a great resource for people, so putting it in that context or giving that example certainly has helped for me in my comfort level. [LB801]

MARK INTERMILL: It's a great program. [LB801]

SENATOR SCHEER: Seeing no others, thank you very much. Any other proponents? Could you hand your pink sheet in, by chance? [LB801]

CHRISTOPHER KELLY: Sorry about that. My name is Christopher Kelly, K-e-l-l-y, and I am associate professor and graduate program chair in the Department of Gerontology at UNO. And like Mark, I want to spend my time talking some of the previous testimony and maybe putting it into further context. I had the chance to present to the Legislative Planning Committee a couple of years ago, Jerry Deichert and I from UNO, Center for Public Affairs Research. We had a very good discussion. Senator Gloor, you were there, as was Senator Campbell, about how the long-term care insurance market has changed in 30 years. I thought your points were on the money, Senator Gloor, in talking about really our generation experiencing long-term care institutions in a different way than the previous generation. We also have entirely new products and new providers, new options that simply weren't around in the 1980s and the 1990s, not in great abundance. Thinking about home-owned community-based services, both in the public and private sector, thinking about home health providers and home care providers. And to Julie Kaminski's point, I think the larger picture that I see is really how can we keep our Medicaid budget from exploding? And I think sensible measures like these to provide families, to provide providers more complete information about all the long-term care options that are available to help families perhaps avoid or delay nursing home placement, which is the most costly type of long-term care service that we can have, and when there are other options that are perhaps more appropriate. When we can make steps like the ones that we are proposing today for families to consider less expensive long-term care options, I think we are truly helping to avoid a real fiscal calamity in the year 2030 and after when the boomers begin to turn age 85. I'd be happy to answer any questions that you may have about that, but again I think this legislation is a very sensible move in the right direction. [LB801]

SENATOR SCHEER: Thank you very much. Any questions? Senator Williams, then Senator Schumacher. [LB801]

SENATOR WILLIAMS: Thank you, Senator Scheer. And thank you for being here to testify. I still go back to the fact that if I'm reading the legislation correctly, the director shall develop educational and informational materials relating to the importance of long-term care insurance. It's not other forms of vehicles that are out there. The bill has to do with long-term care insurance, and we just heard that Nebraska currently ranks fifth of all the states in the sale of long-term care insurance. How much better can we do? [LB801]

CHRISTOPHER KELLY: I think we can do better in terms of policies that cover the range of services that are truly out there today. And one of the frustrations that I heard voiced by... [LB801]

SENATOR WILLIAMS: Does this bill address the range of services or does it address long-term care insurance? [LB801]

CHRISTOPHER KELLY: In terms of providing consumers more information about what a long-term care insurance policy can purchase, so that they can avoid costly services like nursing home care that they may not need or may not need yet, I think this is a very positive step in the right direction. I think that Julie's testimony I think addressed this. I think that the consumer often making these choices in the worse possible situation, you know, with a family member suffering from Alzheimer's disease, needs to have information that is as thorough and as far reaching as possible. And the current information doesn't allow that. We wouldn't have had, in my opinion two years ago, a very frank discussion about the shortcomings of long-term care insurance in Nebraska if the policy, as you said, was one that didn't need to be improved. I think long-term care insurance across the country is coming under heat in legislatures across the country for this very reason, the fact that the model that was started in the 1980s no longer is practical for the long-term care reality of 2016. The model needs to change. Because Nebraska has the fifth best model, I guess I would be more reassured if I were confident the long-term care insurance model across the country was a solid one, and I'm not confident in that. [LB801]

SENATOR WILLIAMS: That's enough. Thank you. [LB801]

SENATOR SCHEER: Okay. Senator Schumacher. [LB801]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you for your testimony. I guess part of the difficulty I have with it and the depression I have with this is the great bulk of the population, certainly probably half of the upper quintile that are not in that half of the upper quintile can't buy it if they wanted to. They have no resources after they pay for their mortgage and they pay for the kids' education and the daily living expenses to make what amounts to--even at age 45--a substantial insurance payment. They will end up at 65 years old having maybe paid off a moderate...a $150,000 house and lucky if they haven't refinanced that for the kids' education. And so no matter how much we educate those people, we are talking about a financial impossibility. They may very well lose that house as part of necessarily qualifying for Medicaid, should they get to that point. So the people that we would realistically be targeting are folks that own successful farms and businesses who probably know and are probably in a position to make a calculated risk as to whether or not they're going to have enough without paying for insurance, which in the end may do what they see that the people a little bit older them have happened and

then all of a sudden the insurance company saying, sorry, if you want to keep this policy, we're going to jack up the premiums. Who's our target audience here that has capacity to respond to the education? [LB801]

CHRISTOPHER KELLY: I agree, Senator. And I agree with Senator Bolz's earlier statement that this...the long-term care insurance is not for everybody. How I would respond to the question that you raise is, for the market that exists--and it does exist--for the individual or family that is successful, we are still looking down the barrel of long-term care costs in our country that average around $100,000 a year. Over the course of a disease like Alzheimer's that can take ten years or more to run its course, we can see a middle- to upper-class family impoverished by long-term care costs. And long-term care insurance is a way that we can avoid that having to happen. And so what we can do to strengthen that market, what we can do to make the product more transparent to its potential consumer, I think is in all of our best interests because as Julie Kaminski mentioned, if we don't address all the ways that nursing home costs can accelerate, we are just going to explode our Medicaid budget. [LB801]

SENATOR SCHUMACHER: But if I own a few million dollars in farmland or a successful business and I'm in a position of earning income that can sustain the premiums, I'm in that upper half of the upper quintile, then I should be responsible for knowing that myself. And if I don't have that insurance, I'm taking a knowing, willful gamble that somehow I'm going to avoid the problem and my estate will be depleted. The people that are going to break that Medicaid budget are the people who couldn't buy this stuff if they wanted to. [LB801]

CHRISTOPHER KELLY: I guess I...we may not come to an agreement on this. I think that, again, the fine-print problem that we're seeing, people buying policies in their 30s and having to use them in their 60s and 70s. And who among us can be reasonably prepared for having Alzheimer's disease happen in our families to say that buyer beware. It was your responsibility to know every colon, every dash in your long-term care insurance policy, I think is a little...is not as big hearted as I think we can be, to be perfectly honest. [LB801]

SENATOR SCHUMACHER: Thank you. [LB801]

SENATOR SCHEER: Seeing no other questions, thank you very much. Any other proponents for (LB)801? Anyone wishing to speak in opposition to (LB)801? Welcome back, Mr. Director. [LB801]

BRUCE RAMGE: (Exhibit 3) Thank you. Chairman Scheer and members of the Banking, Commerce and Insurance Committee, my name is Bruce Ramge, spelled B-r-u-c-e R-a-m-g-e, and I'm the Director of Insurance for the state of Nebraska. I'm here today to testify in opposition

to LB801. First, I would like to express my appreciation to Senator Bolz for meeting with me prior to session. She graciously shared with me a copy of her proposed legislation. We discussed the potential benefits to the long-term care industry and the state budget as it relates to Medicaid. If younger individuals purchased long-term care insurance, LB801 has laudable goals. No technical issues exist within LB801 and I believe the Department of Insurance, if it received the appropriation and employees asked for, could successfully implement the legislation as I understand it. The goals in drafting of LB801 are not the issues I have with this legislation. Instead, I'm concerned about the Department of Insurance as the regulator of long-term care insurance in the state developing education and information material promoting a product. The department already produces brochures on long-term care. However, these brochures answer questions about the product and do not promote, talk about the product's importance, or target certain populations trying to induce individuals or businesses to buy the product. From the perspective of the financial regulator and with the benefit of hindsight, it is clear that long-term care insurance was underpriced by insurers when the product was first created and issued. This, among several other market factors including the significant increases in the cost of care, has led to a number of consequences. First, large premium increases have been common in long-term care insurance not only in Nebraska, but nationwide. I'm sure you have heard from constituents on this issue. Second, a number of insurers have stopped selling long-term care insurance or are looking to leave the long-term care market. Third, it has led to insurer failures, including the failure of Penn Treaty, one of the largest insurance company failures in history. All these consequences involve insurance regulators. Premium increases are approved to help companies stay solvent. The sale of long-term care insurance blocks are approved by insurance regulators and state regulators and guaranty associations are involved in picking up the pieces of company failures. I bring this to the committee's attention so that you could understand the conflict a financial regulator feels related to promoting a product that has a troubled fiscal history. Luckily, it is not all doom and gloom related to long-term care insurance. A number of healthy companies remain in the market and the National Association of Insurance Commissioners or NAIC is taking a long, hard look at fixing the issues that exist in the long-term care insurance market. In fact, the NAIC has organized a long-term care innovation group to examine the future of financing long-term care, given the significant impact of long-term care costs that they have on the budgets through Medicaid and the impact long-term care costs have on the market as a whole. The NAIC's work, of which Nebraska is an important and active participant, in this area will lead hopefully to the sustainability of this important insurance market. But it will take time, probably years for the NAIC and the industry to complete its work. Until such time, I would be opposed to the Department of Insurance running an educational program promoting long-term care insurance. For these reasons, I opposed LB801. Thank you for the opportunity to testify. And I will answer any questions the committee might have. [LB801]

SENATOR SCHEER: Thank you, Director. Any questions? Seeing none, thank you. Oh, I'm sorry. Senator Gloor. [LB801]

SENATOR GLOOR: Thank you, Chairman Scheer. You heard the testimony from AARP about what they're looking for. Does that make you feel any more comfortable that you're not being put in a position as a promoter, but can continue in a role as a disseminator of information and options? [LB801]

BRUCE RAMGE: Sure. First of all, I want to point out that whatever the committee decides, the department will do its very best to fulfill whatever duties that you want to provide with this regard. The long-term care issue I think is a little different than what was talked about in terms of the SHIIP program. The Senior Health Insurance Information Program is basically a federally funded grant program that goes out and obtains volunteers to work with individuals to educate them about Medicare, their options under Medicare, how a Medicare supplement works, how Medicare Advantage works, and they also help people to enroll in the drug coverage, Medicare Part D. Medicare, it's complicated, but yet within the industry it's very standardized. So a Medicare supplement from company A is going to be very similar to a Medicare supplement from company B. And it hasn't experienced the turmoil that a long-term care product has. [LB801]

SENATOR GLOOR: I guess turmoil is in the eye of the beholder. [LB801]

BRUCE RAMGE: Yes. In recent years, anyway. [LB801]

SENATOR GLOOR: Yeah, that's true. [LB801]

BRUCE RAMGE: Yeah. [LB801]

SENATOR GLOOR: Okay, just wondered. [LB801]

BRUCE RAMGE: Yes. And the other thing I would point out is that some of these education materials are provided and disseminated through the National Association of Insurance Commissioners. And so there are some good programs available through there. They have a program called Insure U that help people understand insurance needs at various junctures in their lifetime. And I would highly recommend that to individuals who are wanting to learn more about insurance. [LB801]

SENATOR GLOOR: Thank you. [LB801]

BRUCE RAMGE: You're welcome. [LB801]

SENATOR SCHEER: Seeing no other questions, thank you, Director. [LB801]

BRUCE RAMGE: Thank you, Senator. [LB801]

SENATOR SCHEER: Any other opposed to (LB)801? Anyone in a neutral capacity to (LB)801? Seeing no one, and we have waived closing, so that concludes the hearing on LB801. We will now move to LB1060. Welcome to your committee. [LB801 LB1060]

SENATOR FOX: All right. Good afternoon, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. I'm Nicole Fox, N-i-c-o-l-e F-o-x, State Senator for Legislative District 7. I introduced LB1060 on behalf of the Nebraska Pharmacists Association. It is my hope today to highlight issues that Nebraska community pharmacists are facing in their pharmacies each day because of the business practice of pharmacy benefit managers or PBMs. A PBM is an administrator of prescription drug programs. PBMs are responsible for developing and maintaining formularies and other clinical management programs, processing prescription drug claims for insurance companies or corporations, and negotiating contracts with pharmacies and pharmaceutical manufacturers. Other responsibilities of PBMs include performing drug utilization reviews, managing clinical programs targeted to specific disease states, and operating pharmacies, including mail order and specialty pharmacies. The largest and most commonly known PBMs are CVS Caremark, Express Scripts, Prime Therapeutics, OptumRX, and Catamaran. LB1060 establishes a process and procedure for the Nebraska Department of Insurance to regulate PBMs. The bill will require PBMs operating in Nebraska to receive a certificate of authority from the Department of Insurance. The department has contacted my office with concerns about some of the provisions in LB1060 and I am happy to work with them to resolve those concerns. LB1060 adds requirements to state law regarding fair audit provisions of pharmacies by PBMs, transparent pricing methodologies on calculation of the reimbursement for the drugs being dispensed, as well as transparency in fees being taken from pharmacists. The bill puts in place provider provisions so that any pharmacy that wants to participate in a plan may do so and that patients aren't punished for getting their prescriptions filled at a local pharmacy instead of a mail order or a specialty pharmacy. LB1060 adds requirements for transparency with the covered entities for which they manage the pharmacy benefit. Most companies do not know of all of the hidden fees they are paying. The basis of any fair business relationship is the ability to negotiate contract agreements. Unfortunately, community pharmacists are unable to negotiate terms instead of having to deal with take-it-or-leave-it agreements that offer the choice for pharmacists either to lose money or lose patients. Community pharmacies and pharmacists are valuable members of the healthcare team, especially in our rural communities. LB1060 is an effort to level the playing field for our small businesses so they can continue to care for their patients. As a registered dietician specializing in the nutrition therapy of cancer patients, I have an understanding of the importance of pharmaceutical care to treat cancer and to manage the treatment side effects. I have seen firsthand the problems patients have faced because of drug

prices and the denial of payment by insurers. I understand this is a complicated subject and it is my intention for LB1060 to serve as a beginning of a conversation that can address some of these issues. And those who are coming up after me, they will discuss some of these issues. At this time, I'm not planning to ask the committee to Exec on this bill, but I will introduce an interim hearing on this matter. Thank you. [LB1060]

SENATOR SCHEER: Thank you, Senator Fox. Are you suggesting an interim hearing or an interim study? [LB1060]

SENATOR FOX: Well, a study and... [LB1060]

SENATOR SCHEER: More probably a study than a hearing. Okay. Just trying to clarify so that everybody is on board with that, so those that would have testimony for long periods of time, it would appear that wouldn't be necessary at this point in time as we move forward. So any questions for Senator Fox? Just a heads up. Seeing no questions, I'm assuming you're going to wait around. [LB1060]

SENATOR FOX: Yeah. [LB1060]

SENATOR SCHEER: Okay. First proponent, please. Good afternoon. [LB1060]

DAVID KOHLL: (Exhibit 1) Good afternoon, Chairman Scheer, Senators. My name is David Kohll, I'm a pharmacist. [LB1060]

SENATOR SCHEER: Could you spell your name for us? [LB1060]

DAVID KOHLL: It's K-o-h-l-l. [LB1060]

SENATOR SCHEER: Thank you. [LB1060]

DAVID KOHLL: And I'm a pharmacist, I own eight pharmacies in Omaha, one in Lincoln, and one in Iowa. And I'm here to testify, of course, in favor of the Pharmacy Benefit Fairness and Transparency Act. This bill will improve patient care and save money across the board. Here's one reason: Currently, any pharmacy does not have the choice to be a part of a PBM network. This bill will give Nebraska pharmacies a choice to sign up for a PBM network if the pharmacy accepts the terms offered by the PBM. Without this choice, patient care is negatively impacted. Here's just one example: At the beginning of the year one of our long-time patients contacted his

long-time Kohll's pharmacist. He had received a letter from his PBM stating that he must switch pharmacies because Kohll's was not in his network. The patient signed up for his insurance plan and in signing up assumed Kohll's was in the network. The patient called the Kohll's pharmacist and the pharmacist verified with the PBM that Kohll's was not in the network. Kohll's was never notified that it was not going to be in the network until the patient brought in the letter. The patient then contacted the insurance company to complain Kohll's was not in the network. The insurance said Kohll's could not be added. The patient indicated they would switch away from this plan the following year. Patient care is suffering because the patient-pharmacist trust relationship built over the years is being compromised by PBM policies. PBM policies discourage discussing how the patient's drugs work, adverse effects, and allergies. In addition, Kohll's and some other independently owned pharmacies in Nebraska provide extra patient care to help some of their patients remember to take their medications, using multidose packaging, which I brought some examples of that. One of the most common reasons people end up in the hospital is they don't take their meds properly. Compliance packaging has proven to decrease hospital readmission. Decreasing hospital readmission saves millions of dollars. Why am I bringing this up? Because a PBM will eliminate a pharmacy in their network, even if that pharmacy provides this exceptional patient care. The second reason this is an excellent bill that will save money and improve patient care is, it will require the PBMs to not force a patient to get specialty drugs from the PBM's own specialty pharmacy network. Specialty pharmacy drugs are loosely defined as any drug over $600. As a pharmacist, you really don't know how each PBM will decide which drug is a specialty one and which one is not. PBMs that require mail ordering specialty drugs through their pharmacy is very poor patient care. And here's some reasons why: It inhibits compliance to be sure the meds are being taken or administered; it creates hundreds of thousands of dollars in waste from drugs that are automatically mailed out by these specialty pharmacies when the patient hasn't been taking the meds as prescribed, so there's plenty left, but they just automatically mail it out again; the patient decided they were going to stop taking the medication, but the specialty pharmacy just mails it out again; the patient moved and the drug is mailed to the wrong address. Normally they're refrigerated drugs and so the medication is ruined. One recent example of poor patient care and PBMs increasing health costs was a patient starting therapy for alcoholism. An effective drug for this treatment is Vivitrol. This drug removes alcohol craving for 28 days. The psychiatrist requested my pharmacy to dispense and administer the drug; it's an injectable. When we processed the drug the PBM said, it must be filled at their specialty pharmacy. We told the PBM, that won't work since Kohll's must administer it, too. The PBM said they would handle it. A couple days later we were surprised. The drug showed up at my pharmacy, sent by the PBM specialty pharmacy. Well, by that time, the patient changed his mind on treating their addiction and the drug was wasted. Pharmaceutical companies that make these specialty drugs said they would prefer Kohll's or other local pharmacies dispense their drugs. The PBMs won't let their drugs be on the PBMs formulary unless the drug is only dispensed through the PBM specialty drugs. This PBM bill will help eliminate barriers PBMs have created that negatively impact patient care. In addition, the bill will help decrease

healthcare costs. Pharmacists and healthcare professionals are always striving to improve patient care, and we want to do this operating on all cylinders. Thank you for allowing me to testify. Do you have any questions? [LB1060]

SENATOR SCHEER: Thank you, Mr. Kohll. Any questions? Just out of curiosity, what's the shelf life for the Reese's Pieces? [LB1060]

DAVID KOHLL: Just eat them now. [LB1060]

SENATOR SCHEER: Thank you very much for coming down this afternoon. [LB1060]

DAVID KOHLL: You bet. [LB1060]

SENATOR SCHEER: Welcome. [LB1060]

RICK CLABAUGH: (Exhibit 2) Thank you, Senator Scheer and the rest of the committee. I am Rick Clabaugh, R-i-c-k C-l-a-b-a-u-g-h, and I'm testifying for LB1060 also. I want to thank Senator Fox for introducing this bill. We really do appreciate this. I'm testifying for the Nebraska Pharmacy Association. I've been a community pharmacist for 40 years; I know, I graduated when I was ten years old. But I've been an owner now in Beatrice for 36 years. My son is in the process of taking over the pharmacy and, as you can imagine, he faces many challenges with reimbursement that Senator Gloor could I'm sure testify also, being a former hospital administrator. [LB1060]

SENATOR GLOOR: Recovering. [LB1060]

RICK CLABAUGH: Recovering from that, yeah. LB1060 is far overdue in Nebraska. I am sure Joni has handed out a list of other states that have passed similar legislation and this list is long, so we're not reinventing the wheel here. We have a long list of acronyms today for you: PBMs, MAC, PSAO, and DIRs, to name a few. I'm going to briefly speak on DIRs, which are direct, indirect remuneration or clawbacks and other takebacks. This started with Medicare D prescription plans, which are federal. We don't have anything to do with that in Nebraska. But it is now becoming more prevalent in the commercial plans. The problem with DIR is that the pharmacist does not know the true reimbursement for three to four weeks past the prescription fill date. So you're filling the prescription and have no idea what you're actually going to be paid for that prescription at the time of filling it. The hidden fees are determined by audit performance rates, statin adherence, ACE, ARB adherence rate, formulary compliance, generic dispensing rate fees, and preferred networks, just to name a few. I gave you an example of just a sample--

and this turns out to be a Medicare D plan, but it will signify what's happening in the commercial plans--but on the right-hand upper corner there is the net profit on a prescription, which would be the total paid--up there to the right--total paid minus the drug cost and then minus the DIR, the $6.25 you see there. To the right then, is what's left for the pharmacy. So if you look down to the bottom figure there, there's like ten different prescriptions. And you'll see the net profit of minus $2.03. Kind of crazy, isn't it. I hand wrote in there the national average dollar amount per prescription for us to break even, just to cover expenses. So you can see we're a little ways from breaking even on these prescriptions. If I would have known at the time with filling this, some of these--probably all but one--I probably would have refused to fill because I couldn't make enough money to even...it would be below my acquisition cost. So the pharmacy needs to know the final reimbursement at the point of sale when the prescription is actually filled. I urge all of you to reach out to your community pharmacies to understand this important legislation. This is truly make or break for independent pharmacy. Those of you that are from some of the smaller towns, like Gothenburg, Norfolk, Columbus, Nebraska City, I'm sure you understand the importance of your local pharmacies. I hope you join me in supporting LB1060. Does anybody have any questions at all? [LB1060]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. [LB1060]

RICK CLABAUGH: You bet. [LB1060]

SENATOR SCHEER: The next proponent. Welcome. Good afternoon. [LB1060]

MARK PATEFIELD: Good afternoon. My name is Mark Patefield, M-a-r-k P-a-t-e-f-i-e-l-d, and I am a pharmacist testifying on behalf of NPA in favor of LB1060. I'd also like to thank Senator Fox for introducing this bill. With rising drug and insurance costs, requiring transparency and fairness from the PBM industry is desperately needed. As a pharmacist, I deal with PBMs frequently and so I see that the requirements of this bill are important to pharmacy, but as an employer and as an insurance consumer this is even more important. Two parts of the bill I want to share some of my experiences on are audits and maximum allowable cost pricing and other pricing methodologies. The first item is addressed in section 20 of the bill on audits. Having gone through a few audits, the stated reason for them was to verify that we were in compliance with the requirements of the contracts with the PBM. In actuality, the audits appeared to me to be purely predatory with the goal of taking back the highest dollar amounts possible. I reviewed three of these audits in preparation for today, which consisted of about 100 prescriptions. Although the volume of brand name medicines dispensed in retail pharmacy is only about 20 percent nationally, 98 percent of the prescriptions audited were for high-cost brand drugs. The two generics that were audited were also high-cost medications. I don't know if these results were shared with the plan sponsors, but I do know that these are not random samplings, but

attempts to take back money by the PBM in the quickest way possible. Of the tens of thousands of claims that could have been audited, it also happened that one of the highest dollar prescriptions was audited by two separate PBMs, as a patient changed insurance companies at the beginning of the year. As a pharmacy, I understand that we're required to provide some transparency to the PBMs to make sure that we're billing correctly, but I also believe that this should be required of them as well, as specified elsewhere in the bill, so that the payers they work for can be sure that they are, in turn, billing the payer accurately and fairly. The second item is on pricing methodology and is the area of greatest need for transparency. MAC pricing stands for maximum allowable cost, which is one of the ways that reimbursement to pharmacies is calculated. And I use it as an example, but this applies to all methodology such as AWP, average wholesale price, or AMP, which is average manufacturer price, or whatever new method comes out next. As for MAC, each drug is assigned a MAC price and this price is what the PBM pays the pharmacy for dispensing the drug. The first problem lies in how often this MAC pricing is updated. Over the last few years there have been many supply issues causing large increases in the prices of certain generic drugs. One example was an antibiotic which increased over 1,000 percent overnight. The PBMs we were billing took several months before they were reimbursing pharmacies at this new, correct cost. That is why the requirement in section 16 to update within seven days is so needed, so that pharmacies can be fairly reimbursed for the cost of the medications they dispense. Finding out where and how those prices were calculated and updated is a constant struggle. One claim last January was being MACed at $800 below my cost. And though I contacted several suppliers unsuccessfully to try and purchase the drug cheaper and I made inquiries to the PBM, no update was made by the time the patient needed the med again 30 days later. The second problem with pricing lies in the PBM's use of several different MAC lists for each drug and pocketing this spread. So for the same antibiotic I used above, the PBM can be paying the pharmacy one MAC while at the same time using a different, higher MAC price to bill the payer or using a MAC to reimburse the pharmacy and using another methodology, such as AWP, to bill the payer. This results in higher cost to the payer and ultimately higher insurance cost to the insured. Transparency would be beneficial for the payers to be able to compare what they are being billed for medications versus what is actually being paid to the pharmacy. In using these spreads and other number manipulations the PBMs can make it appear that they are saving the payer money when, in actuality, that is not the case. These deceptive practices are what are used to induce plans to use mail order pharmacies owned by the PBM and take away patient choices in where they purchase medications, such as a large employer in a town near where my pharmacy is located. They are required to use CVS Caremark, so they can either use the mail order or drive through my pharmacy in Wayne to Norfolk and get them at CVS and I am not allowed to be in that plan. As long as there's not a requirement for transparency, PBMs will argue that they're saving payers money when, in actuality, they are manipulating the prices on both ends used to make those claims. So I'm sure it will be argued by the opposition that I'm just looking out for my own interests as a pharmacist. But the real beneficiaries of this bill will be the insured and the payers for that insurance. By requiring transparency from PBMs, payers and the

insured will be able to see the true cost of medications and how much of the current costs they're paying are due to intermediary PBMs. So I thank you for the opportunity to testify today. And if you have any questions for me... [LB1060]

SENATOR SCHEER: Thank you very much. Any questions? Seeing none, appreciate your coming down this afternoon. Any other proponents? Seeing none, opponents for LB1060. [LB1060]

MICHAEL HARROLD: Good afternoon, Chairman and committee members. My name is Michael Harrold, I'm with Express Scripts, pharmacy benefit manager. The name is spelled M-i-c-h-a-e-l, last name, H-a-r-r-o-l-d. Understanding that this is going to be something that will be a study or an interim, I just want to note that a number of the issues that have been mentioned are issues that we've been able to have conversations with pharmacists and agree on legislation in a number of states on. For example, the MAC pricing that was mentioned is something that we have done and we support the transparency, the opportunities to know what the lists are going to be, the opportunity to be able to have an appeal process. There's been a lot of, I think, developments around that issue of transparency and fairness. And I think there's a number of issues on audits as well that we can do...that we can work together and try to find some common ground over the interim. There will be some issues that we will also continue to disagree on, I'm sure, but we can look forward to those to be vetted. But, you know, we do represent clients, we represent plan sponsors, we represent employers. In the case of Express Scripts, we're the pharmacy benefit manager for the Department of Defense and it's our job to try to get the most cost-effective programs in place for ways typically a discretionary benefit and to do it in a manner that improves health outcomes at the most cost-affordable manner. So we look forward to having future conversations about that and talking about the tools that we use and the value that they bring to our plan sponsors and our clients. [LB1060]

SENATOR SCHEER: Thank you very much. Any questions? Appreciate your willingness... [LB1060]

MICHAEL HARROLD: Thank you. [LB1060]

SENATOR SCHEER: ...everyone's willingness to sit around the table. Next opponent for (LB)1060. Good afternoon and welcome. [LB1060]

ABIGAIL STODDARD: Good afternoon. Good afternoon. My name is Abigail Stoddard, A-b-i-g-a-i-l S-t-o-d-d-a-r-d, I'm a pharmacist at Prime Therapeutics, which is a pharmacy benefit manager much like Express Scripts. And I'll just echo what Michael said. We do appreciate the opportunity to talk about these issues further, especially issues like maximum allowable cost and

audit. I just want to make sure that the committee is aware, in spite of the testimony you heard earlier, I don't...I want to caution that I don't know if anything in this bill will directly improve care for your patients in Nebraska. None of our policies as a pharmacy benefit manager discourage patient care. In fact, that's--as a pharmacist that works at a PBM--that's our primary purpose. All of our clinical decisions are made in concert with other pharmacists, with doctors from our plans, and from our networks with our patients in mind. So while certain provisions in this bill may improve a bottom line for a small, independent pharmacy, your overall patient care for members in your state is likely going to stay the same, and premiums and the bottom line for those patients will increase. We have particular concerns about some of the sections and comments we heard, specifically regarding our networks in sections 11 and 16. We'll continue to work on those in the interim study. But those networks are in place for a reason, they're in place in the Medicare population for over 90 percent of the Med D plans. So if what the supporters are saying is true, is those networks are harming patient care left and right, I would just point to your Medicare population and the satisfaction they're having with their networks. And they continue to choose...upwards of 90 percent of them have plans with preferred networks in place. So that being said, we look forward to the opportunity to discuss further. I'm available for questions. [LB1060]

SENATOR SCHEER: Thank you. Any questions, comments? Seeing none, thank you so much. Next opponent. [LB1060]

ERIK WOEHRMANN: Good afternoon. [LB1060]

SENATOR SCHEER: Good afternoon. [LB1060]

ERIK WOEHRMANN: I'll keep my remarks brief and echo pretty much what my peers from Prime and Express Script said before me. My name is Erik Woehrmann, E-r-i-k, last name, W-o-e-h-r-m-a-n-n, I'm with CVS Health. I'm just here briefly in opposition to the bill as it was drafted. I'm very glad that we are going to have the opportunity to work on this through the interim. I think that...my thanks to Senator Fox for bringing this up. I think we've got a lot to talk about. As part of the pharmacy community in Nebraska, we do have over 380 employees, including 70 pharmacists. We have...CVS Health is a compilation of different components. We have the retail component that most people are familiar with; we have the MinuteClinics, which are the nurse-practitioner-staffed, retail-based clinics, in which Lincoln and Omaha are new markets to us; and we also are in the long-term care pharmacy space; the home infusion space. The part that everybody is familiar with is the retail space and we have about 19 stores in Nebraska right now; it's a growing market for us. And once the target acquisition, that you may or may not be familiar with is completed, we will almost double to about 30 pharmacies in the state. As I said, I look forward to working in the interim on this. I'll just make a point very

briefly that the independent pharmacies are business partners, my company treats them as such, and with the respect that they deserve. For the first time--not for the first time--but in the last five years we now have more independent pharmacies in our network in Nebraska than we have at any time before. In fact, we have more independent pharmacies in our network in Nebraska than we do chain pharmacies. So the topics that we are needing to address in LB1060 I think are important points. We've reached agreement in several states on these issues. I would tell you that there are things my company believes that the independent pharmacies are entitled to, like fair audits, fair reimbursement, the right to an appeal, to have that appeal answered in a timely manner. So with that, I will stop. If you have any questions, I'd give you three minutes of your day back. [LB1060]

SENATOR SCHEER: Thank you. Any questions? Senator Williams. [LB1060]

SENATOR WILLIAMS: Thank you, Senator Scheer. And not a question as much as a comment, because I think you might be the last testifier before we could be closing on this. I applaud Senator Fox for bringing this and for all of the testifiers agreeing to be willing to sit down. And my request is, that you sit down in earnest on this and compromise. And the definition of that is, neither side may be satisfied at the end of the day. But the alternative is to come back here and expect us to negotiate your settlement. And I don't see a pharmacist sitting here or a PBM manager and, please, find your common ground, make that work so that we arrive at the best result for our state. [LB1060]

ERIK WOEHRMANN: Understood, sir. [LB1060]

SENATOR SCHEER: Senator Gloor. [LB1060]

SENATOR GLOOR: Well, that got me off my complacency. And this is also a bit of a comment. But there is a question I'll pose for you in this, because I'm guessing you bring some experience with other states and how this same issue has been wrestled with there. As a previous testifier mentioned, I used to run hospitals. And one of the things I don't miss are phone calls that I would get from either employers or individual consumers that would say, so I've made changes to a new health plan and you need to sign up with this health plan. And I'd say, did you check to see if we were in the network? And the answer is, well, when I checked I was told all we had to do was get signed up and then they'd approach you. And you'd sign up once you knew there were patients there. I mean, the providers really are at--whether it's a pharmacist or a hospital or a physician's practice--there is a challenge here in that most consumers still assume that they're going to have an incredibly broad network, and whether it's pharmaceuticals or whether it's acute care, that's not the real world we're moving in. The senators here will chuckle at the fact I'd say, this reminds me of a discussion we had about hog farming last week. And it's because there's a

degree of vertical integration that's going on in industries and we are...it is a predicament for us to sort through business operations and some of what's happening with markets that hurts businesses that are legitimate, active businesses that serve an appropriate role. A previous testifier who said, we always have the patients' best interest in mind. Well, yeah, I get that. Everybody has the patients' best interest in mind. There's nobody I've run into in my career who would say, we really didn't have the patients' best interest in mind, it was all about the bottom line. Okay. That is never going to come up. But during these hearings, I don't think it's going to be completely reconciled. I don't know how you deal with transparency in a manner that's acceptable to the pharmacist, to the PBM, and to the patient. And of those, the most difficult is patients who expect we're going to take care of it for them. You know, if the pharmacist needs transparency, fine. If the PBM needs transparency to control costs, fine. The patient doesn't care about transparency because they don't understand it in the first place. And I guess I'm looking for a response from you about other states and whether there's actually been success in trying to sit down and work towards, not a complete reconciliation of these issues, but some degree of accommodation that seems to move us forward rather than just meld to some of the animosity that's out there. [LB1060]

ERIK WOEHRMANN: Absolutely. In the area of the country that I manage, Senator--which includes 18 states plus the District of Columbia--we've had a number of issues or subsets of issues that are addressed in the bill that come up and we have been able to reach compromise on them in many of the states. I think nationally, we're approaching close to half the states in which there's been some kind of resolution on MAC, on audit. Those are really the two biggest ones that we've had to deal with across the country. [LB1060]

SENATOR GLOOR: Yes. [LB1060]

ERIK WOEHRMANN: And the animosity I think that you addressed starts to recede when the conversation actually take place. We've come a long way as a PBM industry and I think as an independent pharmacy issue when it comes to having these discussions. The very first MAC bill in the country passed in Kentucky three years ago, and that was kind of a fly-by-night operation, for lack of a better way of putting it. Nobody really understood how best to come together on those things, and as it's marched across the states, we've been able to really get to the point where we can have the meaningful discussion that we need to with our partners and the independent community. [LB1060]

SENATOR GLOOR: So I'm guessing you know some of the other testifiers that are here representing PBMs. [LB1060]

ERIK WOEHRMANN: I had never met Abigail in person until today, but I did know the others. [LB1060]

SENATOR GLOOR: But...okay. So there are going to be some people representing the PBMs who bring this experience to the table of what's happened in other states and things that can be put forward that might provide some degree of compromise. [LB1060]

ERIK WOEHRMANN: Absolutely. Absolutely. [LB1060]

SENATOR GLOOR: Okay. The reason I bring it up is, it's appropriate and I'd certainly urge that we have some degree of interim study to look at this. But if it isn't going to result in some sort of compromise because there is none, we ought to talk about it now. [LB1060]

ERIK WOEHRMANN: There is room for compromise. [LB1060]

SENATOR GLOOR: Okay. [LB1060]

SENATOR SCHEER: Thank you, Senator Gloor. Seeing no others, thank you very much. [LB1060]

ERIK WOEHRMANN: Thank you. [LB1060]

SENATOR SCHEER: Any other opponents? Good afternoon. [LB1060]

JEFF HUETHER: Good afternoon. Chairperson Scheer and members of the committee, my name is Jeff Huether, J-e-f-f H-u-e-t-h-e-r, I'm director of pharmacy of Blue Cross Blue Shield Nebraska, here today in opposition of LB1060. The bill covers a wide range of subjects. I'm here in the interest of our members and the affordability of healthcare. Knowing that a lot of what I was going to say has actually already been said, I'll close it off right now and give you four minutes back. And I'll entertain any questions. [LB1060]

SENATOR SCHEER: You gave probably the most excellent presentation this afternoon. [LB1060]

JEFF HUETHER: I appreciate it. [LB1060]

SENATOR SCHEER: And I applaud you. And I'm not taking any more time up of yours just to thank you. And I see no questions, so your time is up. [LB1060]

JEFF HUETHER: Thank you. [LB1060]

SENATOR SCHEER: Any others in opposition? Any of those in a neutral position? Welcome back, Director. [LB1060]

BRUCE RAMGE: (Exhibit 3) Hello. Thank you. Chairman Scheer and members of the Banking, Commerce and Insurance Committee, my name is Bruce Ramge, spelled B-r-u-c-e R-a-m-g-e, and I'm the Director of Insurance for the state of Nebraska. I'm here today to testify neutrally on LB1060. I will also cut this very short. The important information I would like to bring to you today is that the National Association of Insurance Commissioners or NAIC is also interested in this area. They've initiated a review of the current pharmacy benefit model and they have already accepted 25 comment letters. These are open, transparent, and available for public viewing. And I'd be happy to provide any of you or Senator Fox with a link to that material. And we will certainly be happy to keep you informed of the progress as we discuss this through the year. [LB1060]

SENATOR SCHEER: Any questions for the director? Seeing none, thank you, Director. [LB1060]

BRUCE RAMGE: Thank you. [LB1060]

SENATOR SCHEER: (Exhibits 4-8) Are there any other speaking in a neutral position? Seeing none, I do want to read into the record, we have some letters of support from the National Community of Pharmacists Association; Chris Watts from Kearney, Nebraska; David Randolph from Hemingford; The Nebraska Board of Pharmacy; and Dr. Connie Bolte in York, Nebraska. And before I bring Senator Fox back for her closing I, too, would like to thank both David from the pharmacists and Jody (sic: Joni) for your quick ability to look at the situation and decide that bringing the minds together and voicing the concerns out and working on a compromise is a better solution, especially in a short period of time than let's try to use a longer period of time to reach consensus, as well as the pharmacy and insurance industry sitting down as well. I think better products are made when everyone sits down. I've done that a couple of times and it's right when people sort of walk away and everyone thinks the other one got the best of them. Probably everybody got about the right amount that they should have. And having said that, that can work. And the point would be, everything I think is absolutely correct, you will not agree on everything. This is a very large bill. There are lot of items and there's probably very contentious items. But if there's 40 items and we can agree on 10 or 15 or even half of them, certainly that

gets us a lot farther down the road than agreeing on none of them and having a piece of paper sit and be stalled and not go anywhere. So I do thank all of you for your ability to make the decision to move forward in an interim study and try to work on legislation that can be passed next year. So, again, thank you very much. And Senator Fox to close. [LB1060]

SENATOR FOX: All right. Well, I've decided I've got to be a little warm and fuzzy since I'm also a member of the HHS Committee and used to some of these hearings. But I just wanted to kind of close by saying, when I was appointed to fill the legislative seat for District 7 one of my goals was to try and do what I could to improve healthcare and to help reduce healthcare costs. And when Joni came to me with the idea for this bill, this light bulb went off in my head. In my role and in my other world, in my other job, I'm an instructor for pharmacy students as well as medical students and I'm preceptor. And I talk a lot about reality versus textbook. And I know we have a lot of different heads in here, we have the business minds, but I always say I have kind of what I call the real world experience. And so when she came to me with this idea, a lot of terms were coming in my head like: consumer choice; right to shop; that patient-pharmacist relationship; transparency, of course; issues with polypharmacy that I see every day; issues with medication compliance that I see every day. In the hospital setting that I work in we worry a lot about admissions and readmissions and penalties due to that, and a lot of this is actually due to issues with pharmaceuticals. As Senator Gloor said, we're not going to come to 100 percent agreement on this issue, but at least if we can bring people to the table and try and negotiate for what's in the best interest of the consumer or the patient, I think that's really important. So I thank you, Senator Scheer, for facilitating this hearing. I thank Joni and the pharmacists for their input. And I also thank the PBMs for their willingness to come to the table and do what's right for the patient. So, that is all. [LB1060]

SENATOR SCHEER: Closing questions? If not, the hearing on LB1060 is closed. And thank you all for attending today. [LB1060]