[LB80 LB315]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 12, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB80 and LB315. Senators present: Sara Howard, Vice Chairperson; Roy Baker; Tanya Cook; Sue Crawford; Mark Kolterman; and Merv Riepe. Senators absent: Kathy Campbell, Chairperson.

SENATOR HOWARD: Good afternoon and welcome to the Health and Human Services Committee meeting. I am Senator Howard. I Vice Chair the Committee. Senator Campbell is out today. We always start with introductions, so we will start with my right.

SENATOR KOLTERMAN: I'm Mark Kolterman from the 24th District, Seward, York, and Polk County. Welcome.

SENATOR BAKER: Senator Roy Baker, District 30.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45 which is eastern Sarpy County, Bellevue, and Offutt.

JOSELYN LUEDTKE: Joselyn Luedtke, committee counsel.

SENATOR COOK: Senator Tanya Cook from District 13 in Omaha and Douglas County.

SENATOR RIEPE: Senator Merv Riepe with District 12 which is Omaha, Millard, and Ralston.

BRENNEN MILLER: I'm Brennen Miller. I'm committee clerk.

SENATOR HOWARD: So we do have a few rules for the committee today. We ask that if you have a cell phone that you turn it off. And the...although handouts are not required, testifiers who do have handouts should have 15 copies. As a rule, we will not make copies for you. If you'll be testifying, we ask that you sign in using the florescent orange forms that are at each of the doors. And you sign in on the orange sheet only if you are going to testify and an orange sheet is required each time you testify today. Your form must be given to the committee clerk, Brennen, before you begin presenting your testimony because he uses it for his recordkeeping. Give the clerk or pages your handouts, if any, along with our testifier sheet at the beginning of your testimony. We do use the light system in this committee. You're allotted five minutes. You get

four minutes on the green light, one minute with an amber light, and then when it hits red I'll probably start waving at you to slow down and stop. We do need you to spell your name. Spell both your first and last name clearly. This is not for the clerk, who has your orange sheet, but rather for the transcribers so they'll know how to spell your name. We have one page with us today. We have Jay from Dalton, Nebraska. He's at the University of Nebraska at Lincoln and he's studying ag economics. With that, if I have not forgotten anything...no? Okay. Solid start. Then we would open the hearing on LB80. Senator Gloor, you are welcome to open.

SENATOR GLOOR: Thank you, Senator Howard. My name is Mike Gloor, G-l-o-o-r. It's a pleasure to be back in the hearing room of Health and Human Services. I had to resist the urge to head to my normal seat, (laughter) the one I was in for about six years. LB80, if you'll bear with me--and blame Senator Riepe for this--I was glad to carry this bill. I'm sure you'll drill down with questions, and if somebody tries to bridge it into an inappropriate area, you'll cap the discussion. So that's my dental vocabulary for today. (Laughter) LB80 is a rewrite of the statutory definitions and training requirements surrounding dental anesthesia. It also rewrites the permit process to correlate with the new definitions. The American Dental Association recommended this change, I believe, seven years ago. The Nebraska Board of Dentistry applied to the Nebraska Department of Health and Human Services for this change through a change in scope or, as we commonly refer to it, the 407 process. Let me talk a little bit about the 407 process. And I am recreating here a little bit of my dialog on the microphone last week when we were talking about the Nurse Practitioner Act. As you know--or for new members will quickly discover--scope of practice issues can be very frustrating partially because, as committee members, we're usually not the experts in this area of practice. The process was created many years ago to be used by professionals and review professionals on their respective boards and the department in order to give the committee their informed view on scope of practice requests including safety issues. There are three levels of review: first, an in-depth review by a technical committee that is a subcommittee of the Board of Health; a review by the Board of Health itself of that information; and a review by the medical director of the Department of Health and Human Services, currently Dr. Acierno. In 2012, I was able to pass a bill that enhanced the technical committee's ability to research and explore aspects of these requests and to take a more perspective look at the safety issue. Frankly, I'm very comfortable with the 407 process as it currently exists and it's a great improvement over the way it was. I have no doubt perhaps one of you will be asked to tweak it even further and that would certainly be understandable, but this bill has gone through the 407 process and I have been asked to carry it and was pleased to do so. Back to the specifics of the bill: Currently, dentists have to be licensed as a dentist first of all to obtain a permit to use nitrous oxide or general anesthesia. With this bill, general anesthesia is redefined as deep sedation. In addition, two more levels of sedation are defined: moderate sedation and minimal sedation. Each level of sedation is defined by the type and amount of drug used and the expected physiological response in the patient. Each level of sedation then would require a separate permit through the Department of Health and Human Services. No longer will

a permit for nitrous oxide be necessary, but nitrous oxide remains one of the items on the list of instances to be reported if there are problems with its application. Because of this...because this is a safety issue and fatalities have been reported in other states, the Board of Dentistry, Board of Health, and the director of the department acknowledge the benefits of making the changes requested in LB80 that I just described. The effective date is 2016. It's 2016 to give enough time not only for rules and regs to be created but for the dentists to obtain the additional education and training needed to meet the new requirements if that's going to be necessary for them and to be eligible for the new permits. This bill will provide greater assurance that...to us, the public, that dentists receive sufficient education and training to administer sedation and it provides a much greater level of safety for individual Nebraskans receiving sedation for dental procedures. The Nebraska Board of Dentistry will be in charge of determining what training and education courses meet requirements and will be approved for use by Nebraska dentists. There's one remaining issue that I want to address. The 407 report from the director of the department...medical director of the department contained one area of concern, and it had to do with the training of persons who assist the dentist in monitoring patients. Some of the persons who may be assisting are currently licensed as dental hygienists. Dental assistants, however, are not currently licensed. They are regulated. I believe they have a certification. They are in the process of going through their own 407 application so that they would, in fact, be required to be licensed in the state. Until they are, we have no way to require education and training of dental assistants for sedation monitoring activities. Though understand, this doesn't change at all under my bill. In other words, we're not removing any additional oversight as relates to dental assistants. It's that there will be some degree, hopefully when the 407 process goes through, that spells out better what role they should play in that. With LB80 in place, we can be prepared to integrate those educational requirements to assist with sedation into their licensure. To me, this isn't a chicken or egg scenario with the assistants. I think the bill should go ahead and pass because of the safety issues involved with the dentists, the practitioner whose dental license is on the line to oversee both the assistants and the hygienists. And timing is, I think, the more important issue. Let's get that in place and let the other components of this fall into place behind. Dr. Chuck Bauer, a dentist leading the charge from the Board of Dentistry is going to follow me with testimony. He can speak to some of the more technical aspects. I'm sure he'll stay clear of puns and that in and of itself would be a relief to the committee. (Laughter) I am happy to answer any questions. I will stay around. I'll decide whether to close or not. But if I do leave, it's only because things in the Revenue Committee have heated up and I feel I need to be back there in the Chair. So...but at this point in time, I would plan to close. Thank you. [LB80]

SENATOR HOWARD: Thank you. Senator Riepe. [LB80]

SENATOR RIEPE: Senator Gloor, from...as one hospital administrator to another one, my question would be this: Is there any special equipment like resuscitation carts or anything that needs to be built in as we go along? And are there any specific facility requirements? I know

sometimes that changes in anesthetics and things like that can raise the risk enough to cause concern. [LB80]

SENATOR GLOOR: Great questions. I believe, rather than take a stab at answering those, I think you'll like the response you'll get: I'm going to let the dentists themselves speak to that, Senator. [LB80]

SENATOR RIEPE: Okay. I thought a hospital administrator knew everything. [LB80]

SENATOR GLOOR: We just have to write the check to pay for them and that's it. (Laughter) [LB80]

SENATOR HOWARD: Are there any other questions for Senator Gloor? Seeing none, thank you. [LB80]

SENATOR GLOOR: Thank you. [LB80]

SENATOR HOWARD: We'll open up the hearing for proponents. [LB80]

CHARLES BAUER: (Exhibit 1) Thanks for passing the buck there. My name is Chuck Bauer, C-h-a-r-l-e-s B-a-u-e-r. Thank you for having me. I represent the Board of Dentistry. What I'm passing out right now...I've prepared a chart to help place the levels of sedation to one another. When you're reading this bill, it's very difficult to kind of figure out, well, where do all of these different levels of sedation actually...where do they fit against one another? Currently in Nebraska, there are three levels of analgesia sedation. These levels were set in 1986. They are the inhalation analgesia or the nitrous oxide, the parenteral sedation, and then the general anesthesia. I'm going to just briefly describe each one. General...or inhalation anesthesia: Basically, nitrous oxide is used by a nasal mask. It's going to give you a feeling of euphoria. There are quite a few dentists that use this, probably about one-third of the dentists use this in the United...in the state of Nebraska. Parenteral sedation is an IV line that's going to be put into your arm. Usually there is a drug that's going to put you into a sleepy state or a sleep state. Then you go to general anesthesia which is going to make you unconscious. It's very easy to go along. We talk about this sedation continuum. And you can see that it's very easy to go from one level to the other to the other and it's one...it's up to the general dentist or...and the oral surgeon to make sure that he has you in the proper...or he or she has you in he proper level of sedation. You can go through and below and read the different types of ways that we use to monitor the sedation level anywhere from verbal commands to shaking the patient to completely unconscious. Basically, the guts of this bill, and I'm going to go down to the bottom line right now, is to eliminate

the...well, let's talk about inhalation analgesia. The board recommends that the permit to administer nitrous oxide be eliminated. The original statute was created nearly 30 years ago in 1986 when inhalation analgesia was not taught in all the dental colleges. Today it's taught as a basic curriculum in 100 percent of the U.S. dental colleges and the hygiene programs. The Board of Dentistry feels the permit is outdated and serves no value to protect the public. There are currently 584 inhalation analgesia permits in Nebraska out of a total of about 1,500 dentists. The minimal sedation permit: This is the most important section of the LB80. The Board of Dentistry proposes a new permit be created for minimal sedation. The ADA guidelines were used as a blueprint for what would eventually become LB80. The American Dental Association guidelines has great input from the American Association of Anesthesiologists. LB80 uses the definitions and protocol from the ADA guidelines almost word for word. Currently there are no guidelines, statutes, rules, regulations that govern Nebraska in the use and delivery of minimal sedation techniques. It's a big hole. The Board of Dentistry has no idea who practices minimal sedation, what their training is, the drugs or doses they're using, the adequacy of their facilities, records for patients' medications...the list just goes on and on. The main job of the Board of Dentistry is to protect the public. We talk about this frequently. The Board of Dentistry feels it is in the best interests of the Nebraska public and also the dentists that minimal sedation permit be created. Moderate sedation: The purpose of this change is the definition from parenteral sedation to reflect more what the national expected moderate sedation is. The former describes the routed method, IV, okay, whereas we want to go moderate sedation, that more describes the level of sedation. There are currently 43 parenteral sedation permits in Nebraska. Deep sedation: This is a new term that comes from the general anesthesia...that comes very close to the general anesthesia. Once again, deep sedation defines the level of sedation. The Board of Dentistry recommends the level of sedation be included along with the existing general anesthesia permit. The postdoctoral education is the same for both sedation techniques. Usually this is achieved in oral surgery postgraduate residency, and requires one year of anesthesiology training during that period. There are currently 49 general anesthesia permits in Nebraska. In review, LB80 is a bill for dentists and dentists only. LB80 is a bill to update our statutes, rules, and regulations to mirror the recommendations of the American Dental Association. LB80 is a bill to create a new minimal sedation permit and discard the old. Thank you very much. Are there questions at all? [LB80]

SENATOR HOWARD: Thank you, Dr. Bauer. Are there questions for Dr. Bauer? Seeing none, thank you for your testimony today. [LB80]

CHARLES BAUER: Thank you. Senator Cook, you're studying that very hard. [LB80]

SENATOR COOK: Yes, I am. [LB80]

CHARLES BAUER: Did you...Senator Riepe, you had a question about facilities and... [LB80]

SENATOR RIEPE: Well, I did have one. I thought that you'd probably...if you felt that those were significant that you would maybe bring those up. [LB80]

CHARLES BAUER: Okay. That's answered then? [LB80]

SENATOR RIEPE: I think so. [LB80]

CHARLES BAUER: Okay. Thank you. [LB80]

SENATOR RIEPE: Thank you. [LB80]

SENATOR HOWARD: Good afternoon. [LB80]

HOLLY PORTWOOD: (Exhibit 2) Hi. My name is Holly Portwood, H-o-l-l-y P-o-r-t-w-o-o-d. I'm a practicing dentist in Hastings and Grand Island, and I'm here representing the Nebraska Society of Pediatric Dentistry by testifying in support of LB80. The purpose of LB80 is to update the dental sedation clauses of the Dental (sic) Practice Act which have not been revised since 1986. This bill is ultimately a patient safety bill which reflects the current guidelines that are followed by the American Academy of Pediatric Dentistry, the American Academy of Pediatrics, and the American Dental Association. Within this bill, the levels of sedation being minimal, moderate, and deep are better defined. These definitions are now considered standard across the nation among most dental boards. Furthermore, the educational requirements to administer each level of sedation as well as the equipment and facility specifications are clearly stated. The three levels of sedation that a dental professional will be administering are required to have separate permits and are issued based on a general application process. These permit requirements in this bill are thorough so as to uphold a high level of standard of care which will benefit not only the patient, but the dentist and staff in minimizing the risk of emergencies and feeling adequately prepared to handle those emergencies in the event that they occur. Let me give you a scenario of a child in our office that would benefit from sedation. The child is four years old and this is their first dental visit. The child is very apprehensive throughout the visit and, with some coaxing, my staff and I are able to get the child in the dental chair and to have their teeth cleaned. We were able to get x-rays, and upon my examination, the child does not have any cavities on the x-rays, but visibly I can see a cavity on their back tooth. I know from my years in private practice that this child would probably not sit well for me to do treatment without them having a traumatic experience. So sedating them may be a possibility to make the visit more pleasurable. Therefore, I will go through the necessary protocols preoperatively, during the

sedation--such as recording their vital signs and having the minimal number of staffing and recording those vital signs at regular intervals--and postoperatively to ensure that I am taking the proper precautions to...for that child's safety during the treatment. The pediatric dentists in our state recognize that this bill will require us to create more safeguards for our patients by requiring proper education, emergency equipment, and permits. Thank you for your time and please vote in favor of LB80. [LB80]

SENATOR HOWARD: Thank you. Are there questions for Dr. Portwood? I have one. You just mentioned the minimal level of staffing. What does that mean? [LB80]

HOLLY PORTWOOD: There will be a required number of staffing present to record the vital signs and to be in the room when you're administering the sedation. [LB80]

SENATOR HOWARD: And who are... [LB80]

HOLLY PORTWOOD: So for each permit level there will be a designated number of staff. [LB80]

SENATOR HOWARD: And what type of staff are those? [LB80]

HOLLY PORTWOOD: Well, I...it's not...I think that's something the bill is working...to specify what the staff will be and their level of requirements as far as educational purposes to be in the room. [LB80]

SENATOR HOWARD: And then what...who do you usually have in the room? [LB80]

HOLLY PORTWOOD: We have dental assistants that are certified in CPR, in BLS. And we have assistants in the room that are there to monitor their vital signs and do the recordings as well...an assistant there to assist me during the procedure. [LB80]

SENATOR HOWARD: Okay. So you just use assistants not hygienists for that? [LB80]

HOLLY PORTWOOD: Correct. [LB80]

SENATOR HOWARD: Okay. All right. Any other questions for Dr. Portwood? Seeing none, thank you for your testimony today. [LB80]

HOLLY PORTWOOD: Okay. Thanks. [LB80]

SENATOR HOWARD: Good afternoon. [LB80]

SCOTT MORRISON: Good afternoon, Chairman. My name is Scott Morrison, S-c-o-t-t M-o-r-r-i-s-o-n. I'm the current president of the Nebraska Dental Association. I'm a periodontist who practices in Omaha, Nebraska. I'm one of those 33 parenteral sedation permit persons and I've been doing parenteral sedation for 25 years in this state. I'm...today I'm representing the Nebraska Dental Association in full support of LB80. I'm going to be bold and be brief here, but it's congruent with the ADA's sedation guidelines. It is a public safety concern. And LB80 aids to just strengthen that concern. If there are questions, I'd be happy to answer any of those because I think there may be some concerns. If Senator Riepe had some questions about facilities, I can answer that. There are current requirements in facilities now under the guidelines or in the statutes. Those have also been tidied up a little bit in that they're very consistent with what the ADA has. [LB80]

SENATOR HOWARD: Thank you, Dr. Morrison. Are there questions? Senator Riepe. [LB80]

SENATOR RIEPE: I have a quick question. Why now? [LB80]

SCOTT MORRISON: I think the question would be, why not seven years ago... (Laughter) [LB80]

SENATOR RIEPE: Okay. [LB80]

SCOTT MORRISON: ...because the ADA guidelines have been...and I was a part of that process to rewrite those. Our current statutes are archaic in that it's based on the route of delivery and not the level of sedation, so that's going to be important in regards to public safety to monitor that. [LB80]

SENATOR RIEPE: Okay. Thank you. [LB80]

SENATOR HOWARD: Senator Cook. [LB80]

SENATOR COOK: Thank you, Senator Howard. Based on this proposal, are we renaming or recategorizing the use of inhalation analgesia or just eliminating any permit for the use of that by anyone? [LB80]

SCOTT MORRISON: Well, it says nitrous oxide is consider inhalation analgesia. [LB80]

SENATOR COOK: Yes. [LB80]

SCOTT MORRISON: So that definition hasn't changed. We are, though, eliminating the permit that existed in the past, yes. [LB80]

SENATOR COOK: And then...so you don't need that. Does that fall now under the created new permit for minimal sedation, or you just can go and get some and take it home or... [LB80]

SCOTT MORRISON: That excludes that from...well, it's regulated a little bit more than that... [LB80]

SENATOR COOK: Okay. [LB80]

SCOTT MORRISON: ...as far as you have to have a dental license to procure that. [LB80]

SENATOR COOK: All right. [LB80]

SCOTT MORRISON: There's the delivery systems that go along with that that are...have fail-safe devices associated with them. [LB80]

SENATOR COOK: So it would be regulated under the proposed new permit for minimal sedation proposed in LB80? [LB80]

SCOTT MORRISON: No, that separates that. [LB80]

SENATOR COOK: How is it regulated then? If...it says that it would eliminate the permit for inhalation analgesia, that's what I'm...that's my question. [LB80]

SCOTT MORRISON: Right. And I think the safety of the utilization of nitrous oxide is one that there is...there would be no regulation from the state level. [LB80]

SENATOR COOK: All right. Thank you. That was kind of three questions. [LB80]

SENATOR HOWARD: Thank you. Senator Crawford. [LB80]

SENATOR CRAWFORD: Thank you. Thank you, Senator. So basically, if I understand correctly, the regulation for using the inhalation is that you have gone through dental training. [LB80]

SCOTT MORRISON: Correct. [LB80]

SENATOR CRAWFORD: And no additional training is required because now all of those dental schools cover that, so having a dental degree, having your dental credentials, means you'd be trained in that. Is that correct? [LB80]

SCOTT MORRISON: That's correct, yes. [LB80]

SENATOR CRAWFORD: Okay. [LB80]

SENATOR HOWARD: Senator Riepe. [LB80]

SENATOR RIEPE: I have a quick question. The insurance carriers, are they pretty observant, if you will, if I may use that term, to monitor, because they have...they're covering the insurance. Do they provide some oversight to make sure that you don't get some outlier that maybe doesn't practice according to the standards, or... [LB80]

SCOTT MORRISON: Are you talking about liability insurance? [LB80]

SENATOR RIEPE: Yes. [LB80]

SCOTT MORRISON: Yeah, your... [LB80]

SENATOR RIEPE: Some...okay. [LB80]

SCOTT MORRISON: ...liability insurance as a professional? Is that what... [LB80]

SENATOR RIEPE: Yes, for each one that...under their policy that they're carrying, they have a vested interest in making sure that they don't have to pay off. [LB80]

SCOTT MORRISON: Absolutely. I think that's more reflected in what your credentials are that you have to submit to them to retain liability insurance from whatever company you're at. But it also reflects in the increase in your premiums that you have. [LB80]

SENATOR RIEPE: There would be... [LB80]

SCOTT MORRISON: So they don't come back and actively...they don't inspect my office. They don't, you know, question, go back and look at cases and that type of thing. But the state does. [LB80]

SENATOR RIEPE: Okay. [LB80]

SCOTT MORRISON: The state will come into my facility and inspect my facility in order to get a permit such as moderate sedation. [LB80]

SENATOR RIEPE: Okay. I was just curious who was doing the oversight. It's probably better that the state is doing than relying strictly on your professional organization which for...to some people would be viewed as a conflict of interest. [LB80]

SCOTT MORRISON: Correct. [LB80]

SENATOR RIEPE: Okay. Thank you very much. Thanks for being here. [LB80]

SENATOR HOWARD: Any other questions for Dr. Morrison? Seeing none, thank you for your testimony today. [LB80]

SCOTT MORRISON: Thank you, Chairman. Thank you, Senators. [LB80]

SENATOR HOWARD: Anyone else wishing to testify as a proponent of LB80? Seeing none, anyone wishing to testify in opposition? Good afternoon. [LB80]

DEB SCHARDT: (Exhibit 3) Hello. Senator Howard, committee members, my name is Deb Schardt, S-c-h-a-r-d-t. I've been a dental hygienist for 25 years, worked in private practice, public health dental hygienist at Public Health Solutions District Health Department, adjunct clinical faculty at Central Community College in Hastings, Nebraska Dental Hygiene Association past president, and currently chair of the Nebraska Dental Hygiene Association legislative committee. I am representing the Nebraska Dental Hygienists' Association, and we are in opposition of

LB80 as it currently reads. The NDHA recognizes that this is needed legislation and strongly supports the changes recommended for the duties and responsibilities of dentists. However, the bill includes clinical patient monitoring done by untrained and unlicensed dental office employees when the dentist is not present with the patient. This is a definite safety concern for the public. Dr. Joseph Acierno, Chief Medical Officer, in his review faulted this proposal for not spelling out qualifications for dental assistants who would have this responsibility. Dr. Acierno noted that the proposal did not discuss what education and training was necessary to bring assistive personnel up to an appropriate safety standard regarding dental anesthesia and that this too needs to be a component of any attempt to improve the safety of dental anesthesia in Nebraska. When a patient is having sedation in a dental office, it should be law for anyone monitoring a patient to be educated and tested for competency relative to the monitoring process and have the training to provide lifesaving measures if problems arise when the dentist is not in the room. The dental assistant does not and is not required to have this training and they are not currently regulated. As a matter of fact, a dental assistant in the state of Nebraska is not required to have any formal education whatsoever. A dental assistant is not licensed and the Board of Dentistry has no authority to discipline dental assistants for substandard care. Also of importance is that dental offices are only inspected with the initial installation of equipment. There is no ongoing assurance that safety measures are adequate and being adhered to. We believe the public deserves assurance that properly trained individuals as well as properly working equipment and standard of care protocol are followed in every dental office that utilizes sedation. As important as LB80 is, there is nothing compelling it to be done on a crash basis. There is a second 407 proposal, actually two of them, being reviewed jointly, that will respond finally and comprehensively to the issue of who should do what to whom in dental clinics. And if the sponsors of this bill and/or the committee is not willing to make it responsible and complete then we should simply wait until the 2016 session and deal with dental anesthesia at that time. We repeat: Enactment of LB80 is not an emergency. And without attendance to this very major shortcoming, the NDHA will have no choice but to oppose it for the safety and well-being of the public. [LB80]

SENATOR HOWARD: Thank you, Ms. Schardt. Are there questions? Seeing none, thank you for your testimony today. [LB80]

DEB SCHARDT: Okay. Thank you. [LB80]

SENATOR HOWARD: Other opponents for LB80? Seeing none, is there anyone wishing to testify in the neutral capacity? Seeing none, Senator Gloor, would you like to close? [LB80]

SENATOR GLOOR: Thank you, Senator Howard and committee members. Just a few very brief comments: When I was considering this bill, I took it to--and it won't surprise the committee I

have friends who practice anesthesia--and took it to them to ask their opinion and they were somewhat surprised that this wasn't already in place. And that certainly gave me the assurance that this was an important safety issue. The argument that we should wait another year is still to me predicated on the...here's how I see it: If we had issues that we thought would improve the practice of medicine for physicians, but there was something that was going on that involved LPNs, would we wait to make those changes in the practice of medicine for physicians based upon concerns of RNs about LPNs? I mean, I'm not sure how far away we want to get. And understand, the concerns about trained assistants, as Dr. Portwood described to you, they're already practicing under those parameters right now. What the state is looking at is better defining some degree of licensure about those assistants. So nothing in this bill changes that relationship. That's underway, but I see no reason to wait to make what are appropriate changes that involve the dentists themselves who are the ones whose license is on the line and the ones who are providing the anesthesia. The dentists brought us the bill. It went through the 407 process. All these issues were reviewed by the technical committee, by the Board of Health. They were comfortable moving forward. I think all the pieces are really in place to move forward with this now and would encourage you to do so. Thank you. [LB80]

SENATOR HOWARD: Thank you, Senator Gloor. Are there any questions? Senator Crawford. [LB80]

SENATOR CRAWFORD: Thank you, Senator Gloor. I just wanted to just come back to the equipment question. I'd noticed the bill talks about maintaining a properly equipped facility. So maybe just, if you would follow up with the proponents... [LB80]

SENATOR GLOOR: Sure. [LB80]

SENATOR CRAWFORD: ...on what that means and... [LB80]

SENATOR GLOOR: Sure. [LB80]

SENATOR CRAWFORD: ...what kinds of inspections there are and let us know, I'd appreciate that. [LB80]

SENATOR GLOOR: Absolutely. I would be glad to. [LB80]

SENATOR CRAWFORD: Thank you. [LB80]

SENATOR HOWARD: All right. Anything else for Senator Gloor? Seeing none, thank you. [LB80]

SENATOR GLOOR: Thank you. [LB80]

SENATOR HOWARD: It was nice to see you again. [LB80]

SENATOR GLOOR: Nice to be back again for short periods of time. (Laughter) [LB80]

SENATOR HOWARD: Short periods of time. Brennen, are there items for the record for LB80? [LB80]

BRENNEN MILLER: (Exhibits 4, 5, 6) Yes, Senator, a letter from state of Nebraska Board of Dentistry, Department of Health and Human Services Division of Public Health, and a letter from the Nebraska State Board of Health. Thank you. [LB80]

SENATOR HOWARD: Thank you, Brennen. With that, we will close the hearing on LB80 and I will turn it over to my colleague, Senator Cook. [LB80]

SENATOR COOK: Welcome, Senator Howard. [LB315]

SENATOR HOWARD: Thank you, Senator Cook. [LB315]

SENATOR COOK: You may begin your opening on LB315 when you're ready. [LB315]

SENATOR HOWARD: (Exhibit 1) To begin, I promise to be less emotional today than I was yesterday. (Laughter) Bonus. Good afternoon, Senator Cook and members of the committee. My name is Sara Howard, S-a-r-a H-o-w-a-r-d, and I represent District 9 in Omaha. Today I'm pleased to bring you LB315. This bill helps Nebraska's Medicaid providers and gives the state tools to comply with federal law regarding Medicaid Recovery Audits as set forth in federal law. LB315 is a bill that deals with RAC audits--which I'm certain none of you have ever heard of--or audits performed by Recovery Audit Contractors. As background, when the Affordable Care Act was passed, there was a provision in the act that required states to pass laws setting up RAC audits to review and audit Medicaid programs to find and recover improper payments. As a result of the federal requirement, Nebraska passed RAC audits in 2011. Our request for proposals was issued in 2012. And a contract was awarded to Health Management Systems in December of 2012. Under federal law, there's a separate RAC program for the Medicare program that's been in

place for some time and has been the subject of much debate because of the difficulty of working with the RAC auditors. Many of the rules and regulations that the feds put into place are as a result of the changes made to the Medicare RAC audits. To be clear, LB315 deals only with Medicaid RAC audits. And let me first explain what a RAC audit is not. It is not an attempt to find fraud or abuse in the Medicaid system. Fraud is handled elsewhere in the Medicaid system. Instead, Medicaid RAC audits are to determine improper payments in the system. These audits are by federal law contingent fee in nature and allow the auditor to find improper billings and recover any overpayment, but they often also identify underpayments. As there were difficulties with Medicare RAC audits, we have seen difficulties with our Medicaid RAC audits here in Nebraska. LB315 is an attempt to try to address some of the problems that have arisen as a result of the audits. This legislation is based on a law passed in Louisiana, so the good news is that our new director of the Department of Health and Human Services will know quite a lot about these. There are similar bills that have been introduced in at least two other states this year. So there is a problem here that needs to be addressed. You'll hear from several individuals behind me about some of the challenges with RAC audits that were experienced this past year. But first I'd like to talk a little bit about how the system works. A provider will find out that he or she is being audited when a letter arrives that announces that the provider has been audited for the provision of a particular Medicaid service and that she now owes a reimbursement to the state for overbilling for this particular service. Or another option is that the auditor will send a letter that says, I'll be there tomorrow and I'll review all of your documentation for a particular service for the past three years. The provider can appeal the decision, although very little information is given to them about the appeal process. But before you can appeal, the provider has to pay the money claimed to be overpaid. Then the appeal starts, and months may go by before a decision is ultimately rendered. In the meantime, the burden is on the provider to prove that the billing was appropriate, and that takes hours of time and manpower to pull records and determine background information to prove that services were given and appropriately billed. Everyone agrees that we shouldn't overbill and that we shouldn't bill inappropriately. Even CMS was concerned about the treatment that RAC auditors might give to Medicaid providers. CMS stated: We agree that Medicaid providers deserve to receive respectful treatment from CMS and we understand concerns regarding the burden of additional audits on providers. This section goes on to state that the state should coordinate other reviews to reduce the potential of overburdening Medicaid providers. As a result, LB315 sets forth in state statute what federal law allows or requires. And there's a long list, but I'd like you to bear with me. All audits have to take place within three years. The audit has to be concluded within 90 days of the receipt of requested information to give closure within a reasonable time. The bill allows the ability to pay for services or products provided if the service was required but not billed correctly. The bill requires the RAC auditor to utilize the assistance of providers from the practice areas being audited so that problems are addressed up front. This is actually really helpful. So if somebody is performing a dental RAC audit, for example--and you'll hear about some of them--it's important to have a dentist helping you with that RAC audit so they understand all of the services that can

be provided. The bill requires written notice of the reason for an adverse determination that includes an explanation of why there was such a determination and the procedures for reimbursement and appeal. The bill requires a minimum of 10 days notice for on-site audits to give the provider time to pull the files necessary for the audit. It clarifies that capitated Medicaid managed care or services providers provided with prior authorization as allowed by federal law are excluded from RAC audits. The bill allows the provider to pay for overpayment only after all appeals have been concluded unless fraud is suspected and a fraud investigation has been initiated. The bill requires notice to the provider of underpayments. The bill limits the amount of records that can be audited at one time. And the bill sets forth metrics for the RAC auditor to make public. It requires training and educational programs by the RAC auditor for Medicaid providers and it allows providers to submit records electronically, which is a lot. It also establishes an appeals process. Medicaid providers in certain specialties are becoming harder and harder to find. Many providers will tell you that Medicaid reimbursement barely covers the cost of the service and the increased paperwork and bureaucracy make it difficult to comply with the program. And now, RAC auditors are coming to providers and treating them like criminals and assuming that they're guilty. Some may ask, if these guidelines are already in the federal authority, why is it necessary to put these in state statute? And the reason is that it appears that we may not be following federal statutes and we need to set out clearly what the rules are to protect our providers and allow them to be able to serve the state as much-needed Medicaid providers without putting any undo hardship on them. Medicaid providers deserve our support and our help in navigating the maze of requirements we set up. And LB315 helps our Medicaid providers by ensuring that these RAC audits are fair and follow federal law. I understand that the department has some concerns regarding the fiscal note for LB315, so I've prepared an amendment that I would like to distribute to you if Jay would help me with that. Thank you. The audit removes two sections of the bill that we believe would bring the fiscal note down to as close to zero as possible. First, we've removed the language that allows procedures that have been used for five years or longer to be exempt from audit due to the department's concerns about state funds being required to cover those procedures not covered or not meeting medical necessity since the federal match would also be reimbursed to the federal government. Next, we have also removed the section about paying the provider for the cost of reproducing records. However, we did replace it with language that is in the federal law that allows records to be submitted via CD, DVD, or facsimile at the provider's request. This will eliminate the fiscal concerns regarding document reproduction because there's no new requirement under the bill. Thank you for your consideration of this matter. I would urge the committee to advance this bill to General File, and I would be happy to try to answer any questions. [LB315]

SENATOR COOK: Okay. Thanks. Thank you, Senator Howard. [LB315]

SENATOR RIEPE: Senator Baker has a question. [LB315]

SENATOR COOK: Yeah, I can see his hand. Thank you, Senator Riepe. Senator Baker, do you have a question for Senator Howard? Do you have one too? [LB315]

SENATOR BAKER: Thank you, Madam Chair. Senator Howard, educate me a little bit. People who conduct the audits, are they...do they do this on a percentage basis of what they find? [LB315]

SENATOR HOWARD: Yes. This is a contingent fee basis, so... [LB315]

SENATOR BAKER: So, is there an incentive to find things? [LB315]

SENATOR HOWARD: Absolutely. And I... [LB315]

SENATOR BAKER: And this is going to help that? [LB315]

SENATOR HOWARD: Yes. So this really clarifies and sets out the guidelines around what RAC audit contractors can do in our state. [LB315]

SENATOR BAKER: So under this bill, what is the maximum length of time that process and appeals could draw out? [LB315]

SENATOR HOWARD: You know, I might actually have a provider who is behind me answer that for you, because they helped with the appeals process, making sure that it was provider friendly. [LB315]

SENATOR BAKER: Thank you. [LB315]

SENATOR HOWARD: Thank you, Senator Baker. [LB315]

SENATOR COOK: Okay. Senator Riepe and then Senator Kolterman. [LB315]

SENATOR RIEPE: Thank you, Senator Cook. On the contingency fine basis, it sounds to me like OSHA part two which has been highly criticized in terms of finding maybe needless errors that is beneficial to them. Is this considered an unfunded mandate? I mean, the federal government doesn't fund this in any way and yet they benefit from it. Or is it on a percentage basis, or... [LB315]

SENATOR HOWARD: You know, I would have to get back to you in closing on that. [LB315]

SENATOR RIEPE: Okay, because that brought me to the fiscal note when I looked at that and I said, is this another form of expanded Medicaid? I mean, because it is...anything that's identified with the Affordable Care Act appears to me to be expanded Medicaid. [LB315]

SENATOR HOWARD: Thank you, Senator Riepe, for allowing me to clarify that. Expanded Medicaid is...it focuses on eligibility. And this is focused on how we monitor the payments to providers for services and eligibility categories that are already covered. [LB315]

SENATOR RIEPE: Okay. May I ask one more, Senator? [LB315]

SENATOR COOK: Oh, sure. [LB315]

SENATOR RIEPE: Thank you. Do we have a model state that we would look to that says who does this, who does it well? [LB315]

SENATOR HOWARD: You know, this bill is based off the Louisiana law and so far so good. [LB315]

SENATOR RIEPE: Oh, you said that. I apologize. Yes. Thank you. [LB315]

SENATOR HOWARD: Thank you, Senator Riepe. [LB315]

SENATOR COOK: Okay. Senator Kolterman. [LB315]

SENATOR KOLTERMAN: Thank you, Senator Cook. Senator Howard, before we got to this state that we're at where we now require RAC audits, have we always had RAC audits... [LB315]

SENATOR HOWARD: You know, I don't know. That's a good question. [LB315]

SENATOR KOLTERMAN: ...because I sense... [LB315]

SENATOR HOWARD: We have Medicare. [LB315]

SENATOR KOLTERMAN: ...that this was drafted as a result of healthcare reform? Is it...would that be an accurate statement? [LB315]

SENATOR HOWARD: Well, we had Medicare RAC audits, but the Affordable Care Act allowed for Medicaid RAC audits. [LB315]

SENATOR KOLTERMAN: Okay. Then my question would be, if we authorized RAC audits, are they mandated by the federal government? [LB315]

SENATOR HOWARD: I believe they are a requirement for our program, yes. [LB315]

SENATOR KOLTERMAN: For our Medicaid program... [LB315]

SENATOR HOWARD: Yes. [LB315]

SENATOR KOLTERMAN: ...because I was thinking it'd be easier just to repeal the whole thing and not do them. (Laughter) [LB315]

SENATOR HOWARD: Just to not do them? Okay. Well, that is good feedback for our members of Congress. [LB315]

SENATOR KOLTERMAN: Well, they've already heard from me. (Laughter) [LB315]

SENATOR HOWARD: Well, thank you, Senator Kolterman. [LB315]

SENATOR KOLTERMAN: Yes. You're welcome. [LB315]

SENATOR COOK: Any more questions from the committee? Seeing none, thank you, Senator Howard. [LB315]

SENATOR HOWARD: Thank you, Senator Cook. [LB315]

SENATOR COOK: The first proponent, please come forward. State your name and spell it out. [LB315]

DAVID O'DOHERTY: (Exhibits 2, 3) Good afternoon. Senator Cook, members of the committee, my name is David O'Doherty, O-'-D-o-h-e-r-t-y. I'm the executive director of the Nebraska Dental Association which represents 75 percent of the dentists in the state. In April of 2014, HMS and HHS sent out the RAC audit letters to over 300 providers. The next day I got quite a few calls asking me, what was this all about and why were they being audited? When I received the letters that they received, I started doing the research. And the audit focused mostly or solely on "prophys," cleanings. So I opened up our regulations and saw what the regulations stated. And the front page of this handout shows how the regulations are worded. And our providers were calling HMS and finding out, why was I being told to pay this back? I was following the regulations. And they were told, no, you violated the six-month rule. And they said, well, that's not what our regulations say. So we went on with that. I contacted Senator Campbell the next day because of the volume of calls I was receiving and told her this was going to be a pretty big problem, because we had some pretty upset Medicaid providers. She...her office began working with us and we set up a meeting with the Program Integrity staff three weeks later. We met with Program Integrity and we tried to explain to them the history of these Medicaid regulations. In 1998, Dick Raymond, chief medical officer, met with the Nebraska Dental Association and tried to find out ways they could get more patients seen--Medicaid patients seen--by the dentist community. Back in that time, they used to have a fixed sixth-month time limit on "prophys." They removed that six-month fixed time and put the language that you see there now: covered by the frequency of the dentist. They did that for a variety of reasons. They acknowledged that Medicaid patients have a lot more issues getting to the dentist, and they didn't want that to prevent a preventative visit, because they knew prevention was key to stopping any more serious health issues going down the road. And so the Medicaid community had been operating under--the dental community had been operating under that ever since until this audit came. When we told this to Program Integrity staff, their response was, we don't care about convenience of the patient. Well, it was just clear from that meeting they didn't care about the wording of their own regulation either. So we've kept...we've informed our dentists on how to appeal this. They've appealed it. It went quiet for probably seven months. And now the next wave of letters has come out and said they're still denied. And they're still using the same six-month fix time. Senator...in the packet, Senator Campbell wrote a letter to Kerry Winterer explaining her frustration with the audit. Kerry Winterer replied back, and his first paragraph faults me for not educating the Medicaid providers about the RAC audits. I ran an article in the NDA newsletter, the March/April newsletter, which came out about the same time as these letters. I received one e-mail from the RAC contractor telling me about a webinar that he would like distributed, but I never received the webinar. That was the extent of the...of my interaction with HMS and HHS about educating the providers. That final sheet just shows what the providers are receiving on their audits. The highlighted language just shows that they are still not recognizing the regulation wording that we have for Medicaid "prophys." That's the brief history. It's pretty frustrating. It's still going on today. And you're going to hear a lot more frustration behind me, but I'd be happy to answer any questions. [LB315]

SENATOR COOK: Any questions for Mr. O'Doherty? Senator Baker and then Senator Crawford. [LB315]

SENATOR BAKER: Thank you, Madam Chair. My question to Senator Howard was, how long can this process stretch out? [LB315]

DAVID O'DOHERTY: The way it stands now, it could stretch out for years, because they sat on those appeals for seven months before they responded. [LB315]

SENATOR BAKER: Thank you. [LB315]

SENATOR COOK: Thank you. Senator Crawford. [LB315]

SENATOR CRAWFORD: I don't really have a question as much as just a comment. I'm sorry that you're having to go through all this fight for this and I appreciate your persistence. [LB315]

DAVID O'DOHERTY: It's difficult. It's...when providers call and say they keep trying, they keep trying, it's hard to tell them to stick in there. [LB315]

SENATOR CRAWFORD: Right. And I appreciate the providers who are serving our Medicaid patients. Thank you. [LB315]

SENATOR COOK: Okay. Thank you. [LB315]

DAVID O'DOHERTY: Thank you. [LB315]

SENATOR COOK: Any more? Thank you very much. Next testifier, please. [LB315]

JESSICA MEESKE: Ready? [LB315]

SENATOR COOK: Yes, begin in...whenever you're ready. [LB315]

JESSICA MEESKE: (Exhibits 4, 5, 6, 7) Okay. Thanks. I just have my stopwatch so I'm on time. [LB315]

SENATOR COOK: Okay. [LB315]

JESSICA MEESKE: Good afternoon. My name is Jessica Meeske, spelled J-e-s-s-i-c-a M-e-e-s-k-e. And I'm a pediatric dentist. I practice in Hastings and Grand Island. And I chair the NDA's Medicaid committee. I'm testifying in support of the bill. From a national perspective, tooth decay remains the most common chronic childhood disease in our country. And the bulk of this disease resides primarily in our lowest-income children, those on Medicaid. Therefore, the federal government has made a big push for dentists to see these children earlier in life and more frequently as a way to prevent dental disease and save money. Now, what kind of money are we talking about saving? If I can prevent tooth decay in a 2-year-old or a 3-year-old, I can keep them out of the hospital operating room. If I have to take a child to the hospital operating room, that may cost $4,000 to $5,000 on average per child, so you can see it gets very expensive if you can't prevent disease. As a pediatric dentist that's been in business for nearly 40 years, our practice is about 60 percent Medicaid. And I can tell you, we follow the Medicaid manual to the best of our knowledge having frequent communication with the program including if there's any discrepancies. And while we do get small-scale audits, five to ten charts, which we respond to to make sure things are being done right, we've never had the mass RAC audit, in our case, 1,022 patient charts that we were asked to pay back money on dental cleanings. So you can imagine our surprise when we received this. And apparently 300 dentists felt the same as they received this same letter. The first time I ever even heard of a RAC audit is when I got this letter from the state. I never had any education about it, and two weeks after the fact, I got a provider bulletin from the state telling me what a RAC audit was. Apparently, with these RAC auditors, the state hires them and they can data mine all the claims until they find something to try to get you to pay it back. And I guarantee their software is far more sophisticated than yours, MMIS. Also required is the auditor must give us a certain amount of time to respond to the audits. I had 45 days. It's taken over seven months and I'm still getting bits and pieces of my audit. For us, the audit became a total nightmare. We had to pull hygienists from seeing patients. We had to cancel patients. We had to move appointments out for months in order to respond to this audit, because we had to send in documentation on every one of these patients. Most of these kids were just high-needs patients that needed to be seen more frequently, 5 percent of all the cleanings I did, a very small amount in terms of the big picture. But this is the kind of kid that we were asked to pay back a cleaning fee. Family drives from McCook, Nebraska, and mom puts in her calendar one day earlier than what the dental visit was. It happens. They drive 2.5 hours and now I have a choice. Do I see these kids or do I send them back 2.5 hours? The kids have missed school. The parents have missed work. They've spent money on gas. It's not feasible to ask them to come back. You're going to take care of those kids when they show up if they happen to come a few days earlier. Furthermore, while we had six weeks to respond, the RAC contractor took seven months. Our appeals have been very inconsistent coming in bits and pieces. You know, the Medicaid program, it's a partnership. And it's a partnership between the state and the patients and the providers and the federal government. And when a piece of it doesn't work, typically all the stakeholders get together and we discuss how to make it better. Maybe that's Nebraska nice. But it's tended to work in the past with the Dental Association and the state. But there's always this

balance between access to care, quality, and cost. And unfortunately, we're going to lose a lot of dentists to becoming Medicaid providers because of this. Just so you know, we already had an access to care problem. Only half of the kids in our state last year received any preventive dental visit. There were better ways, if you wanted to cut costs, that we could have gone about doing this. Medicaid Integrity broke several federal rules in how they conducted this audit. Providers, we're not against audits. We understand the need for audits. We just need them to be fair and to know what's going on. The legislation, that modeled after the state of Louisiana, will help assure that these audits are more fair and conducted in a much more transparent approach. Thanks. [LB315]

SENATOR COOK: Thank you for your testimony. Any questions from the committee? Senator Crawford. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. And thank you for being here and for your work. Could you just tell us a bit about what a special-needs patient or a patient that needs these cleanings more frequently...what are the conditions that would require that? [LB315]

JESSICA MEESKE: Sure. So a good example might be a child that has leukemia. And because a child that has leukemia, their immune system doesn't work like yours and mine, they're more susceptible to getting infection particularly in the mouth. So we may need to see that child more frequently because their body can't fight off infection. So unlike in other billing codes where you would ask for preauthorization, get permission from the state, we're allowed to document in the chart why we needed to do this. So I can tell you in my audit, all the cases where there was a medically or behaviorally necessary reason, we did a really good job of documenting that. It took tons of man hours to pull all that information. But the ones that weren't documented were these families that maybe came on the wrong day. Maybe my staff said, it's okay to come on a no-school day, because I'm really glad, Mom, that you don't want to pull your kid out of school. I'm a school board member. I applaud my staff when they tell a parent, good for you for trying to schedule your kid on a no-school day. If it's a few weeks earlier than their six-month visit, this isn't a problem with any other commercial payer. It's just a problem, apparently, with Medicaid. And if they'd explained the rule first to us that it was that strict, we could have followed it. They've been paying it like this for my 17 years in practice. I didn't...none of us knew that that's how strict they wanted the rule to be followed. Thanks for the questions. [LB315]

SENATOR CRAWFORD: Thank you. [LB315]

SENATOR COOK: Thank you. Senator Kolterman, you have a question? [LB315]

SENATOR KOLTERMAN: Thank you, Senator Cook. Ms. Meeske, thank you for coming. I know you've come from Hastings, took another day off as have a lot of the other dentists. I have a request: Don't quit treating Medicaid patients. Let us work this out. It's not fair you're continually being asked to do more for less. I understand that. Keep up the good work and again, thank you for coming. [LB315]

JESSICA MEESKE: Thank you. [LB315]

SENATOR COOK: Anything else for the testifier? Thank you very much. [LB315]

JESSICA MEESKE: Thank you, Senator Cook. [LB315]

TRAVIS ANTHOLZ: Thank you for allowing me to be here today. My name is Travis Antholz, T-r-a-v-i-s; last name is A-n-t-h-o-l-z. I am a general dentist here in Lincoln, Nebraska. This is my first time testifying at a legislative committee subhearing, so if I have to stop and take a few deep breaths, bear with me. I am here to...I'm a member of the NDA. I'm also the immediate past president of the Academy of General Dentistry. The Academy of General Dentistry is the second largest organized dental group in the state of Nebraska. We represent 50 percent of general dentists in the state of Nebraska. The purpose of my testimony is to take you through a much smaller scale than what Dr. Meeske went through. And still you'll see there was equal frustration and time spent on how this worked out for us. On April 16, 2015, we received an audit for 59 claims. I was taken aback. We had always followed the letter to a T from what the Nebraska Medicaid Manual Letter 42-2011 straight from the HHS Web site says. I called the HMS number on there. I got a person on the phone. I inquired why these audits were being conducted, what we had done wrong. I felt like I was being guilty of something that I didn't know what I'd done wrong. They explained to me the six-month rule. I read them the word verbatim from our health and...or from our Medicaid manual, and the comment from the phone on the person of HMS in Las Vegas, Nevada, was, well, I didn't know that. That's not how most states do it. I then proceeded...calls to Mr. O'Doherty. Throughout my organization, we put together the audit part...or put together the appeal. Part of the appeal that we had to put together for HMS was they wanted...they gave us the patient's name, the date of birth. They wanted us to list the dates of the recalls and then they wanted to list down to the day the age of the patient at the date of the recalls. They already had the date of birth. They already had the date of the recalls. But my staff had to calculate to the day how old these patients were. We sent in all of our appeals. We heard immediately. We got a few pieces of certified mail back on a few patients. We had 59. She had 1,000. We had 59. I received three pieces of certified mail--all three for the same patient--three separate pieces of certified mail saying that she was okay. She was a 94-year-old quadriplegic that we had a written authorization in the document to see since 1992 on a four-month basis. Then I heard nothing. Seven months later on January 22, 2015, I got a letter stating all claims

have been dismissed. Everything was good. Our appeals were accepted. Four days later on January 26, 2015, I got another one with 14 claims. I immediately called HMS. I asked why these claims were on there. They said, you're in a group practice. It must have been, one was your partner's, these are yours. I said, no, the first one and this one are all three of ours. She said, I will check with my supervisor and get back to you. I asked if I could speak to the supervisor. That was not permitted. She was a very nice lady. I will say that. She was very nice to work with, but she didn't have answers to any of my questions. She then called me back a few days later. She said this time it was because it was different patients. I said, all 14 of these were from our original audit that were dismissed on January 22. She said, they're different dates. I looked back and I said, they're exactly the same dates that I've already supplied data for. Some of these were siblings. Two of the siblings had been dismissed, and one of the siblings they denied the appeal. I asked them what I do at this point. She said, you need to resubmit the data. I said, you already have the data. My office has spent on 59 claims over 40 hours in my office of people gathering this data and getting it. Again, I don't want problems in the system, but we followed the rules that were put there to go through it. So then I get back on the phone. I get the person...between Friday and this morning, we have exchanged phone calls 11 times. I still have no answers. I asked for a reason why these 14 claims were being audited again, same patients, same dates, already submitted the data. She said I need to put it on there. I asked, can you go through each case one by one and tell me why each one is being denied? She said, I can't do that. You just need to submit the data. So now we're in the process of resubmitting the same data for the same 14 to go back through the same process and I have 30 days. They had seven months to get back to me. I have 30 days to redo the same thing that I already did before. I said, can't you use the existing data you have? They said no. Approximately 10 percent of my patient base is Medicaid. I do it because it's the right thing to do. Medicaid is not a profitable business in dentistry. It's something I advocate very strongly to my colleagues to do. I can tell you as the immediate past president of the Academy of General Dentistry, in the last week I have received three phone calls of AGD dentists who are no longer taking new Medicaid patients because of the frustration of dealing with this. I have many more stories I could share, but I've got a yellow light on. So if you guys have any questions, I would be happy to answer them to the best of my abilities on what this is like to go through on a daily basis. [LB315]

SENATOR COOK: Okay. Thank you, Doctor. Senator Riepe. [LB315]

SENATOR RIEPE: What percentage of your...of the current problems do you think the new legislation will resolve? [LB315]

TRAVIS ANTHOLZ: Well, it would solve a seven-month gap in there. It would solve reauditing the same patients over and over again. And most importantly, it would have them understand our state regulations that we follow. We didn't break the rules. I mean, I think the part that was frustrating for me where I became angry at times, quite honestly, was I followed the rules to a T

in the Nebraska Medicaid Manual 42-2011. I have to look down because I can't remember those numbers. An example, case in point, the adult patient that I believe is on the handout that Mr. O'Doherty gave you guys, but it says for a patient 21 and older, all it says on the manual is covered one time per year. In Nebraska, NRS 49-801(25), it says a year to mean a year unless otherwise noted. One of my audits is on a patient I saw on June 20 in 2012 and I saw on June 11 in 2013. It's seven days earlier but it's a different calendar year. We didn't specify to the exact 12 month and a day because it was never told to us that we had to. According to the rules and regulations, we're on a different calendar year. We're not seeing these patients in December and turning around and seeing them again in January to try to abuse the system. It was a year. It was 7 days short of 12 months. They audited that. That one was audited the first time. Again, I got the letter saying it was approved. It was audited the second time and they basically are saying, no, what we really meant to say was we denied your appeal the first time. So that's a classic case. And I'm hoping, based off of the time limit, following the regulations that are there or putting forth the regulations so that we now know from here going forward if that's what we have to follow, I'm okay with it. Blue Cross Blue Shield, for example, requires six months and a day between cleanings unless otherwise noted with prior authorization. Medicaid doesn't require prior authorization. We know that in a Blue Cross Blue Shield patient, so if they call up in my office--sorry, I'm waving my hands; I'm nervous (laughter)--if they call up and they ask to move their appointment up a week, my office knows to tell them we can, but you need to understand that your insurance will deny the claim. If it's more convenient and that doesn't matter, we're okay with that, but you need to know that. We had no idea that this was happening with Medicaid. And my number value is...pales in comparison to them. Mine is $281. I'm taking a half-day off of work here out of principle, not the $281 that I'm being audited. [LB315]

SENATOR RIEPE: Okay. Do you feel it's more...or any implication that it's not a, maybe a mistake or interpretation but that it's...they imply that it's fraud? Did they come on that heavy during the audit? [LB315]

TRAVIS ANTHOLZ: I'll be careful how I word this. [LB315]

SENATOR RIEPE: There aren't any lawyers in here. (Laughter) [LB315]

SENATOR KOLTERMAN: Oh, yeah, there are. (Laughter) [LB315]

TRAVIS ANTHOLZ: Initially my comeback on this was, I don't want fraud in the system any more than anyone else does. This is not finding fraud. This is looking for a technicality to trip someone up on. The problem is, their technicality was wrong according to the rules we were given to follow. And that's what we have followed is the rules. Part of the also frustration is, I was guilty until proven innocent. It was...the onus was on me to put forth the evidence to show

that I was innocent, which I did. And their opinion still decided, no, you weren't, even though they have the data that I was using to follow it. And that's what frustrated me. And when I asked for a written explanation as to why these 14 that had been approved and are now being reaudited again, they don't have to give it to me. I can't say, I'm not going to pay you and not give you my information for the appeals or I would be fined and taken to court. But they don't have to give me the information as to why...they said they would. But that was on Monday and it's Thursday morning and we've had about 7 phone calls since then. I still don't have it. And I informed them that I was going be here today and I would like to have that information first, and I still don't have it. So, yes, I felt like I was being accused of committing fraud and being guilty on something that I was not. But I realize that a RAC audit doesn't deal with fraud. A RAC audit deals with overpayment and I was educated on that per se, so I don't know that that is pursuant to the bill, LB315, as much as it was just quite honestly, at the risk of sounding soft or whatever, I had my feelings hurt. I felt like I was being told I did something wrong when I did it right. [LB315]

SENATOR RIEPE: Who do you fear more, them or the IRS? (Laughter) [LB315]

TRAVIS ANTHOLZ: I like to think I follow all the rules for both. (Laughter) So as Dr. Meeske said in the past, audits are a part of the process. I welcome them in my door. I don't shut the door and chase them away and try to hide something. We're an open book. And I told the person from HMS on the phone back in the April 16 audit...I actually said this. I said, feel free to come down to my office and go through any chart I have and show me where I did it wrong according to our rules. That obviously didn't happen and that would be a huge inconvenience, but I would do that. I have nothing to hide. I'm not breaking a rule based off the rules that I was given. And I think that's what frustrated me. That's what made me angry. It made me hurt. It made me mad. It made me go back and dig up all the details of this and try to solve it, as I'm being told I did something wrong when I followed the rules that I was given to follow taking care of a population base that--it's a whole another set of circumstances--but I'm basically seeing for free. My reimbursement rate essentially equals what my cost is to provide those services. I'm doing it because it's the right thing to do. I'm not doing it because I'm making tons of money seeing Medicaid patients. Sorry, I went a little bit farther. (Laughter) [LB315]

SENATOR RIEPE: No, that's great. [LB315]

TRAVIS ANTHOLZ: I tend to talk a lot when I get nervous. I'm used to one on one, not one on eight. [LB315]

SENATOR RIEPE: No, no, I appreciate the fact you're engaged, and thank you. Thank you. [LB315]

SENATOR COOK: Okay. Any more questions from the committee? Thank you, Doctor, for your time. [LB315]

TRAVIS ANTHOLZ: Thank you for your time. I appreciate you taking the time to hear us. [LB315]

ANDREA SKOLKIN: (Exhibit 8) Good afternoon, Senator Cook. Members of the committee, my name is Andrea Skolkin, A-n-d-r-e-a S-k-o-l-k-i-n. And I am the chair of the Health Center Association of Nebraska and testifying on behalf of the association today for LB315. I am also the CEO of OneWorld Community Health Centers in Omaha. I want to thank Senator Howard for introducing this timely and important bill which will provide clarity and guidance for providers and the state of Nebraska in the provision of RAC audits. Nebraska's seven community health centers provide comprehensive primary care and preventive care, medical, dental, behavioral health, pharmacy, and numerous supports. We are safety net providers and healthcare homes whose mission is to provide cost-effective, quality healthcare to the underserved. Together last year, Nebraska's health centers cared for over 65,000 individuals, 64 percent of them living at or below 100 percent of poverty and over half of them without insurance. Our patients are the working poor in your communities. And today on behalf of Nebraska's health centers, I want to share the experience that we had at OneWorld with the dental RAC audit. I could say, ditto of what I've heard. But I'm going to proceed and tell you a little of our story. As background, OneWorld cared for over 7,000 dental patients last year. That's children and adults. And they received care through almost 16,000 dental visits. In April 2014, we received our Medicaid RAC audit for dental cleanings for adults and children, and the audit covered the year 2011 and '12. Be assured, like the others that you've heard, our passion is in providing high-quality care and we want to and do our best to be compliant with all the rules, regulations, and standards of practice. We received our notice on April 21 with a response due in 30 days. We took the time. Unfortunately, we had 396 claims that were in question, and that came at the expense of patient care as you've heard so that we had to review every single claim. Everyone was given an extension, but since we had taken the time, we submitted our appeal on May 12. We did not receive any communication and I would say not until nine months later which was this week. In review of the claims, we found that a majority came from patients who had been seen in other offices for their cleaning and had been seen very close to the one year or the six month mark, which is the Medicaid guideline. The catch was, if they were seen in our clinic one day, five days, or just barely on the edge, they were subject and pulled out for this audit. What became apparent to us is that we didn't understand that we need to wait for the children until the seventh month so as to avoid the audit. And as a community provider, we thought we were doing our job well by verifying Medicaid eligibility online. And we didn't recognize that we also had to verify the last date of service for the cleanings for new patients to the clinic, which is not available online and only through calls to Medicaid. And our experience with Medicaid is that we on the back end can only address five claims at a time. The wait on the phone can be ten

minutes, it can be an hour, or you get a busy signal. Of additional concern to us in the RAC audit was the format of the data that was shared with us. It was an unusable spreadsheet in a format with no rhyme or reason of order or listing for the claims, which required us to create our own new spreadsheet in order to record data. I'd like to conclude by sharing the result of dealing with this process. In the end this week, we gave up because of the cost of the health center in staff time to go through this frustrating and time-consuming process. Needless to say, we're very concerned for going forward and the regulations and how they are interpreted. We will do our best to comply. Unfortunately, it only adds to the time that we have to take with each new patient. And, therefore, the wait list of dental patients to get into our community health center or others will have to wait. It's no wonder due to the situation we've heard many dentists no longer willing to accept Medicaid. And our Nebraska health centers are unable to accommodate all the requests for services. We need all the dentists in Nebraska to help share in the care for patients who need it. We can't do it alone. We ask that you advance LB315 to help us serve our patients and communities better by getting clarity around these regulations. Thank you, and I'm happy to answer questions. [LB315]

SENATOR COOK: Thank you, Ms. Skolkin. Are there questions from the committee? Seeing none, thank you very much for your testimony. Next testifier, please. [LB315]

RONALD WISEMAN: (Exhibit 9) Good afternoon. My name is Ronald Wiseman. That's R-o-n-a-l-d, last name Wiseman, W-i-s-e-m-a-n. And I'm the office manager for West Maple Dental Specialists in Omaha, Nebraska. And I work for Dr. Lourdes Secola. And I'd like to just summarize a little bit about the letter I sent you rather than read it word for word. It's too time consuming. I'd like to...we see...we're a pediatric dentist office. And we see 85 percent Medicaid, probably one of the highest Medicaid percentages in the state. And we see...most of...a lot of the children we see are immigrants from Hispanic, Mexico, African countries, Middle East, and Asian. We just saw one recently just the other day, I remember, a little girl from...the old country, Burma. It used to be called Burma. And they couldn't speak in English and they had to bring an interpreter in. And so that's the kind of people we see, and it's very...I love working there. And we got cited for 2,500 incidents of violations of the rules on cleanings of children's teeth. 2,500. 2,500. The assessment bill was $55,000. We...just the...I don't want to repeat myself but we did what other people did. We tried to...we had 30 days to reply to it and finally they said we had more time. So we had Maria Duran, who works for me. She spent seven months completing the audit. Originally they said we can use the template for the data. We started doing templates, and about halfway through the audit they said, no, you can't do templates anymore. We want the actual copies of the medical records. So we went through and started copying the medical records. And then about two months later, they said the medical records were too voluminous, they didn't have time to read them all. So they said, go back to the template again...so, total, total nightmare. And the...finally on January 21 of this year, just last month, they said that's the last day we could complete the records. So we got all the records done by January 21, 2015. We still

do not know any idea of how many are open right now. They haven't given us...you know, they abated some of them. But I have no idea whether assessment is going to be $10 or $20,000. We have no idea yet. The...we have a consultant and we have some mentors we work with. And they recommended that we progressively reduce our Medicaid load. In summary, we consider this Medicaid audit inappropriate and short of harassment. It creates distrust and damage to those who are actually helping the children covered in this program. This type of audit discourages Nebraska dentists to accept and treat Medicaid patients for which there is already a shortage. Now we have to spend many hours of our time to defend our position and incur very significant costs such as retrieving records, copying cost, employee cost to include overtime when thousands of documents regarding these claims are requested. That concludes my points. [LB315]

SENATOR COOK: Thank you very much, Mr. Wiseman, for taking time today. Senator Crawford, with a question. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. I'm afraid I know the answer to this question, but I want to ask it for the record. [LB315]

RONALD WISEMAN: Okay. [LB315]

SENATOR CRAWFORD: Are you allowed to submit any of the costs for copying, office time, etcetera from the audit...submit that for any kind of reimbursement? [LB315]

RONALD WISEMAN: No, not that I'm aware of. [LB315]

SENATOR CRAWFORD: I was afraid of that. All right. Thank you. [LB315]

SENATOR COOK: Senator Riepe. [LB315]

SENATOR RIEPE: Thank you, Senator Cook. My question would be this, is are incorporated as a not-for-profit organization or does it just kind of work out that way? (Laughter) [LB315]

RONALD WISEMAN: No, we're profit...there's still profit in Medicaid, but it's a very...you know, and actually, would you rather collect $30 per patient per visit or would you rather collect $100? I mean, that's a no-brainer right there. [LB315]

SENATOR RIEPE: It just seems to me if you're 85 percent Medicaid, you would almost be better off use state employees with benefits. (Laughter) [LB315]

RONALD WISEMAN: Dr. Secola feels an obligation to see Medicaid patients, and she loves it. And I've been working there ten years and I love it too. And I know I wouldn't switch jobs for anything right now. [LB315]

SENATOR COOK: Yes, I know her. She's a very community-oriented person. Please, offer her my regards. Any other questions from the committee? [LB315]

RONALD WISEMAN: Thank you very much. [LB315]

SENATOR COOK: Thank you. Next testifier, please. [LB315]

TRAVIS KOBZA: (Exhibit 10) Good afternoon. My name is Travis Kobza. That's T-r-a-v-i-s K-o-b-z-a. And I have to admit I'm a little bit nervous. This is the first time I've done this. So I'd like to give a little bit of background. I'm a dentist in southeast Nebraska. I have two dental practices, one in Pawnee City and one in Falls City. Richardson County is listed as a federal dental shortage area. My purpose here today is to give my support for LB315. Just briefly, when I was in dental school, my family and I--I have five children; I had three and four while I was in dental school--we were...we participated in Medicaid. That's what gave us our health benefits. And for that I'm very grateful and very appreciative. And I feel it my responsibility to give back by being a Medicaid provider. I'm going to read a little bit of this so I don't leave any of it out, so forgive me. As a provider, we download a handbook as our main source of information for Medicaid dos and don'ts. It's where we look for questions on frequency, documentation, what procedures need permission before they can be performed. And the institution of the RAC audit, I believe, conflicts with what's in that handbook and it needs some clarification. And I think that's where LB315 can help. The audit was performed in April 2014 and returned to me stating that I owed the state $587--which is very small compared to what you've just heard-- for improper payment on "prophys," the same as have been mentioned. Going to the frequency, the handbook does not define six months. When I...you know, I had a very pleasant exchange with HMS, but when I dealt with DHHS it was less than pleasant. It was more like arrogance. When I called Lincoln and asked somebody overseeing the audit to define six months, the answer I received was, six months means six months, which is not exactly helpful. And I guess some of this stuff is redundant. So it feels like a bill or a fine when I feel like I've done my job where it clearly states in the book what can and can't be done. I would think it would be interesting, because I think the RAC audit also is supposed to show underpayment, and nobody has received a notice of underpayment. And, you know, nothing gets submitted that we've written off or done for free or what have you, because Medicaid didn't cover it and that individual had a need for it.

You know, I understand that we're subject to audits and I encourage that. You know, and like some of the doctors had mentioned before, our office is an open book. You know, we really try and--I know it's kind of cliche--but we want to be transparent. We want to feel good about what we do. We want to feel honest. And I don't think we were educated in what was going on with the RAC audit. It just felt like a penalty for participating in the program and not...I don't know if anybody has ever done anything on a computer, taken a quiz or something like that, but if you don't enter in the exact answer, it's wrong, even if you entered in the right answer. So I think that that's kind of the impression that I get. You know, it would have been easier to educate us a little bit about the hard-and-fast six-month rule instead of just saying, oh, by the way, you owe $587. This is more like a fine. You know, it seemed more like data mining to come up with something that's a little bit grey that they could maybe meet their quota, is kind of the way I feel. I feel like it's very adversarial. And it's kind of us against DHHS which isn't the purpose. You know, there's too many people. These people are more than just names on a spreadsheet. You know, I feel like we're in the trenches seeing these patients and they deserve to be seen and they deserve excellent care. So thank you for listening to my testimony. [LB315]

SENATOR COOK: Thank you very much for your testimony. Questions from the committee? Senator Crawford. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. And thank you, Dr. Kobza, for being here and for serving our patients. I really appreciate it. I'm going to ask the question about underpayment since you mentioned it, because the bill talks about recognizing or paying back for underpayment. Can you give us an example of what that would look like? [LB315]

TRAVIS KOBZA: Well, I would...that's a good question. I've never received one. (Laughter) And obviously if...sometimes if we don't get a payment on something, we resubmit--sometimes multiple times--before it's finally paid. So if there is an underpayment that we're not aware of, that they're aware of, we're not aware of it. I mean, we don't know what we don't know. [LB315]

SENATOR CRAWFORD: So it would be something that was submitted and didn't get paid or... [LB315]

TRAVIS KOBZA: Right, right, or something like that. Yeah. [LB315]

SENATOR CRAWFORD: Okay. Thank you. [LB315]

SENATOR COOK: Senator Riepe. [LB315]

SENATOR RIEPE: Thank you. I was just curious. What's your percentage of Medicaid patients? [LB315]

TRAVIS KOBZA: It's between 10 and 20 percent. [LB315]

SENATOR RIEPE: Is that pretty typical for Falls City or are you the... [LB315]

TRAVIS KOBZA: That's... [LB315]

SENATOR RIEPE: I'm not sure how many dentists there are there. [LB315]

TRAVIS KOBZA: That's a good question. I don't know the hard, fast statistics. I do know that in the two counties, Pawnee and Richardson County, I'm one of two dentists that are under the age of 60. [LB315]

SENATOR RIEPE: Okay. Have you kept your practice at this 10 or 15 percent? [LB315]

TRAVIS KOBZA: I have not. You know, I will say though that if nothing changes that I will no longer participate with the Medicaid program. I feel very strongly about that. I don't want to do that, but you know... [LB315]

SENATOR COOK: Thank you. And I also appreciate your sharing that you and your family took advantage of the Medicaid program. Too often we hear stories that people want to sort of live off of public assistance, and you're clearly an example of someone who used it when he needed it for his family and has now gone on to give back and support himself and his family and his community. So thank you. [LB315]

TRAVIS KOBZA: Thank you for that. [LB315]

SENATOR COOK: Next testifier, please. [LB315]

ANN FROHMAN: Good afternoon, Senator Cook and members of the committee. My name is Ann Frohman. For the record, that's spelled A-n-n F-r-o-h-m-a-n. I'm here to testify in support of LB315 on behalf of the Nebraska Medical Association. We were asked to take a look at this bill initially when it was introduced to weigh in in terms of what the physician community members would think of it. And in doing so, I looked at it from the perspective of an individual who has spent 20 years on the government financial audit side and was rather surprised in reading the bill

because it had so many items I would have expected to have found in a bill introduced back in the mid-1980s predating the Administrative Procedures Act full of due process protections, recognizing there's a balance and an interest in taxpayer-spent funds. But on the other side of that the items that are contained in this bill are simply modest protections in my view: you know, bringing closure to an audit, having a written findings--of course that is what you would expect--and having an appeals process. So as I looked through this and discussed with our members, while we do not have the story to tell per se on such a broad, mass scale, the physicians do support their fellow providers and think that this is a good bill to advance out of committee. And sitting here listening to this, I recently had both a root canal and a tooth pulled, and I don't think I would want to trade places with the dentist to be outside that chair, given what I've heard today in testimony (laughter), because it sounds like they went through quite a painful process. [LB315]

SENATOR COOK: Thank you, Ms. Frohman. Are there questions from the committee? Thank you for your testimony. Next testifier, please. [LB315]

ROBERT J. HALLSTROM: (Exhibit 11) Senator Cook, 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 a registered lobbyist for the Nebraska Pharmacists Association in support of LB315. I am submitting testimony from Joni Cover, the executive vice president of the NPA in support of the bill. Joni hasn't provided me with any specific stories like the dentists have told you today, but in her testimony she indicates pharmacists have experienced years of less-than-pleasant audit practices. We'd like to commend Senator Howard for bringing the bill which we believe strikes a nice balance between the need for state protection with the need for transparency and fairness for providers who are encountering--if not more appropriately enduring--the audit process that we have in place. As I sat here today, I couldn't help but think of paraphrasing the line from William Holden in the movie Network: I'm as mad as heck and I can't take it anymore, and screaming it from the windows. And I think the providers have provided a compelling reason for the need for this legislation and we'd encourage the committee to move it forward. Ms. Cover had also noted some questions regarding the fiscal impact, but I think Senator Howard has proposed some amendments that hopefully will address that in a positive fashion. And I'd be happy to address any questions that the committee might have. [LB315]

SENATOR COOK: Thank you, Mr. Hallstrom. Are there questions from the committee? Seeing none, thank you for your testimony. [LB315]

ROBERT J. HALLSTROM: Thank you. [LB315]

SENATOR COOK: Next testifier, please. [LB315]

CHUCK CONE: (Exhibit 12) Good afternoon. My name is Chuck Cone, C-h-u-c-k C-o-n-e, like an ice cream cone. Thank you, Senator Cook, for letting me have the honor to speak in front of you guys. This is actually my second time doing this, so I'm more seasoned than some of the other ones there, still nervous, but more seasoned. (Laughter) I'm the health director of the Loup Basin Public Health Department in central Nebraska. My district covers nine counties, and the health department is located in Burwell. Today I am here to testify on behalf of the local health directors in Nebraska. And we strongly support the need for this Medicaid recovery audit contract to be accurate and follow an established process. I'm going to go a little bit off the script, however. I'm quite pleased that I have so many dentists here today. That's really made me feel good that they're bringing up their concerns. One of the health department directors from West Central District Health Department in North Platte has had a similar story about going through their RAC audit. And she's just concerned and alarmed as well. I hear these dentists talk about going through some of these audits and how discouraging it is and time consuming. And I listen to them. And I'm thinking, they really are putting up with a lot more than they really bargained for going through these audits. Dr. Kobza from Pawnee City, I believe, said earlier in his testimony that if this continues, he's giving up taking Medicaid payments and going elsewhere. As a director of the health department in Burwell, we started up a dental program where we look at...and we go to all the schools in our health department district, elementary schools and preschools, and we do a screening process. I send hygienists there. I pay them for this and we've had a program where we will...and Dr. Meeske is very well aware of this program that we're doing. She thinks it's an excellent program. Or at least she's always indicated that to me. We work with our dentists locally. And we talk to them. And we work with these kids. And we track the number of kids that have had immediate referrals where they need to go see a dentist right away. And we do the follow-ups with the school nurses to make sure that these kids do. And we've tracked the number of immediate referrals and the number of kids that we do and we're doing more and more kids all the time. We've changed our procedures to better allow us to see more kids. We try to see them all. A lot of times, the only time that they ever have anybody...when I was a kid growing up, nobody ever looked in my mouth. I had a bar of soap stuck in it a number of times. (Laughter) But the only time anybody ever looked in my mouth was when I had a toothache and it was so bad I couldn't sleep. You know, not for one night, but if you're going to have to go two nights before you go see the dentist, because nobody has ever died of a toothache. And we didn't...there was no such thing as preventive health. My siblings, they went though the same thing. My friends, we were all in the same boat. But now we've got...we can do so much better. And there's preventative services that we're doing. And we've...I've got this program and there's lots of other health department districts that have started these programs and we're doing this. And we're looking in these kids' mouths, and we're identifying these problems at an early stage. And a lot of these kids are Medicaid recipients. And that shouldn't be coming as any surprise. And there's nothing the matter with that. But when I hear Dr. Kobza say, if this continues, I'm going to quit seeing these kids, we've got a problem. And you know what? I look at it from a little bit different angle, because the dentists can survive

that, but what about...it's called the law of unintended consequences. What about these kids? What's going to happen to them? They're the real losers here. And I hate to see people...the dentists, we encourage them to continue on, because this is their last chance. A lot of times, we've got to identify these problems and let these kids have a chance to see a dentist. And we work with the dentists very diligently. And they've been so good to work with. Not all of them take Medicaid kids, but a number of them do. And we really appreciate that fact. And we've got to do everything. And this legislation is going to...is paramount to making sure that we meet that bridge to continue to allow these kids to see a dentist. And so with that, we encourage you to support this bill. Thank you very much. Is there questions? [LB315]

SENATOR COOK: Thank you, Mr. Cone. Senator Riepe. [LB315]

SENATOR RIEPE: I have one that's a little bit off the legislation, but you have nine counties. Do they all use fluoride? Is that the common application in your nine counties? [LB315]

CHUCK CONE: When I first started at the health department 13 years ago, none of the towns in my nine-county area fluoridate the water. However, I don't remember the name of the bill, but I also became the mayor of the fine city of Burwell. And Burwell did start fluoridating the water I think in 2010. So we've been doing it for about four years now. And I'm tracking the results of how many immediate referrals that we have in our grade school and preschools and our Head Start. It's amazing that we're showing these same huge results how well this fluoridation is working on our children. Well, the only way we can measure it is by the number of immediate referrals. And we keep getting less and less immediate referrals. I'm not going to attribute all that to the fluoridation of water, but I'll attribute some of it. And the other part is, when we have an immediate referral and we get these kids to the dentists, the last thing the dentist does before he lets those kids out of there, he or she, is they schedule these kids to come back and see them in six months or seven months or however long it needs to be. And now all of the sudden, the dentists are also starting to find some of these problems, as it should be. And so we're finding these kids dental homes. And so we're really proud of it. But, yes, as far as your fluoridation question goes, Burwell is the only town in my nine-county area that does that. [LB315]

SENATOR RIEPE: The only one that does it? [LB315]

CHUCK CONE: Fluoridates the water to one part per million, those levels. But I'm very proud to say that we do it. And I can also say that...very proud to show you the results of that anytime anybody would want to look at it. [LB315]

SENATOR RIEPE: Thank you. [LB315]

SENATOR COOK: Thank you. Senator Baker. [LB315]

SENATOR BAKER: Just a comment: Mr. Cone, you know, my experience as a youngster...much like yours. In addition it must have been before any pain abatement measures were invented. (Laughter) [LB315]

CHUCK CONE: Yeah, to this day, when I go see the dentist for my biannual cleaning, they used to take my blood pressure. And they've stopped doing that now, because it goes through the roof. (Laughter) Ten minutes after I get out of there it's back to normal. But even when they clean my teeth (imitates sound of machine) I don't like that. I haven't liked it and I never will like it. But we can do better. And we need to get those kids in there and identify these problems a long time before it comes time to drill and fill or extract. We can do better. We need to. And it's doctors like...dentists like Dr. Meeske and the ones that have been here today testifying that...the health department has really come to appreciate them a lot. And I think they like us. [LB315]

SENATOR COOK: Okay. Any other questions for Mr. Cone? Seeing none, thank you very much for your time, your testimony. [LB315]

CHUCK CONE: Thank you. [LB315]

SENATOR COOK: Next testifier, please. [LB315]

ERIC HODGES: Good afternoon. My name is Eric, E-r-i-c, Hodges, H-o-d-g-e-s. I am a private practitioner pediatric dentist in Omaha, Nebraska. I'm a board certified pediatric dentist. I've been president of the Nebraska Dental Association, the Nebraska Society of Pediatric Dentistry, the North Central Society of Pediatric Dentistry, and a variety of other leadership positions that organize dentistry. The one thing I do want to talk about is unrecovered money. Someone was asking about money that will be paid back. Interestingly enough, there's probably very little of that, because most of the people that you heard today probably aren't charging for things that they could, because they care about the kids. That's the number one thing in all these situations. We want these children to get the kind of care that they deserve. My practice started in the early '50s, the people that I took over, and public assistance was always part of our practice no matter what. And I started in 1993 and I've been doing that for nearly 30 years. The other thing I want to talk about is a...information that I was sent when I got my reply from the RAC audits. It's called the provider education of Nebraska dentists. And I found it interesting that after I had gone to them, gave them all the information, appealed the $1,500 assessment, that they would send me a one-page informational thing to educate me and when they were probably supposed to do that significantly long ago, probably in 2011 when this bill was passed before the House and Senate. The other thing it talks about is, how do I determine Medicaid eligibility? And I can call

this number and there's an automated service. And how do I determine if services were provided by another dentist in the covered time frame? Well, I must call and...somebody on my staff must call another number. And as Andrea talked about, the wait can be long. And often they don't have the answer to the questions that we are submitting. The other issue is there's a clean claim payment time in the state of Nebraska. That's 30 days. So if I present...saw a patient on June 1, and Johnny went to another dentist on June 25, and we both provided the same service for them, we wouldn't know, but the second dentist would be under a RAC audit issue and have that go against him or her in that same situation. There is no real-time assessment of determining if services were provided within the time schedule that we've been given or the idea of Medicaid eligibility. It can change from day to day. And that's a frustrating thing. It's very time consuming and very costly for all dental offices. If it was all on a computer system, that would be great. That way we could do it on our own time and things like that. But when we have to call and wait, it's a very...I left my office today at 1:00 and they were calling insurance companies and Medicaid verifying eligibility. That's a tremendous burden put on practitioners who are obviously committed to the system but not getting reimbursement levels that are appropriate for the care that we're giving. Thank you very much for my time. The one thing I want to do is, we want to work with the Nebraska Legislature to make this work. I think that's the number one thing all the people that have talked about today have reiterated. And I want to make sure that we understand that. And that's our goal, because these are our patients. They're our people in the state of Nebraska. And that's what we're here to serve for. [LB315]

SENATOR COOK: Okay. Thank you very much, Dr. Hodges. Questions from the committee? Senator Crawford, then Senator Riepe. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. Thank you, Dr. Hodges. How does the process compare for private insurers in terms of a patient seeing some other dentist and then coming to you. Is there a check on days or some process in the private sector? [LB315]

ERIC HODGES: There is...that's an interesting question, very good question. The difference is, if a private pay or an insurance patient comes to my office and I do a prophylaxis and treatment and things like that and then someone else does the same process, let's say two months later, it doesn't fall within the guidelines and so that other dentist...then he can charge that patient personally from their, you know, information. Medicaid does not allow that for us to do that. We cannot charge that payment to them. That is part of the federal guidelines that we cannot do that. And that's part of signing up for the Medicaid system, and that's one of the disadvantages of the system that we're working with. We may not be able to get reimbursed for something. That 30-day possible time limbo, so to speak, is there and we can't. We follow the same guidelines as Ameritas does. It's twice a year. That's a state employee's follow-up. And that's what we generally do with these patients. [LB315]

SENATOR CRAWFORD: Thank you. [LB315]

SENATOR COOK: Thank you, Senator Crawford. Senator Riepe. [LB315]

SENATOR RIEPE: I'd ask you the same question I asked before, what percentage of your practice is Medicaid? [LB315]

ERIC HODGES: It's about 20 percent. [LB315]

SENATOR RIEPE: Twenty percent. Okay. Thank you very much. [LB315]

SENATOR COOK: Thank you. Senator Kolterman. [LB315]

SENATOR KOLTERMAN: You hit a hot button. When you were talking about the time frame, if somebody goes into the schools and does one of these situations whereby they're doing...I don't know if they do fluoride treatments and sealants in the schools... [LB315]

ERIC HODGES: They could do all of it. [LB315]

SENATOR KOLTERMAN: If that patient or that student comes to you two months later, is that...does that affect how you can bill Medicaid? [LB315]

ERIC HODGES: According to the RAC audit, yes. If you look at our Medicaid manual, no. And that's why the Medicaid manual is put together that way. If we, as a practitioner, feel that that treatment needs to be done for that patient, that's what the most important thing is. Interestingly enough, we have guidelines in the American Academy of Pediatric Dentistry. When we look at how...six months is not a golden time limit or whatever. It is based on what we see in the patient: their social situation, their ability to cooperate, their ability of their family to help them provide that care, ability to drive 2.5 hours possibly. Those things all fall into how we will treat them and when we will. [LB315]

SENATOR KOLTERMAN: Well, in a follow-up question, is there any way that you might not even know that that took place in the school? And so then you bill and all of the sudden you're not paid anything? [LB315]

ERIC HODGES: Absolutely, because of that time limit. The other thing is, many of these school programs and stuff will do it in a bundle. You know, they'll do the whole school, let's say, in a

week period, and then they'll go bill it. So maybe that adds another week or two weeks to that time limit and causes more problems with it. And that's why the manual is designed like it is, to give that flexibility. And that's the joy of it. And that's what makes practicing dentistry really fun with these kids, because we can provide the kinds of things that they need, and the state does not interfere with it except in this situation. [LB315]

SENATOR KOLTERMAN: Thank you very much, Doctor. [LB315]

SENATOR COOK: Thank you, Doctor. Senator Riepe. [LB315]

SENATOR RIEPE: Thank you. We appreciate your traveling and all of you that have come in. And while I have you here, I want to ask this question, is it sounds to me like the proposed legislation provides them with, like a...what I call the OSHA standard, the OSHA incentive. What makes us think that the...a new system is going to be any better, more friendly, than the existing system in terms of the adversarial relationship that sounds like it currently exists? [LB315]

ERIC HODGES: The key for me is, I don't think this has to be an adversarial situation. You know, some of the things that should have happened is we should have been educated. There should be transparency. There should be working with the dental teams that are working with these. They have my address. They have my phone number. There was no excuse for that not to happen. And so we can...I think we can make it happen. I've been in all these different groups that I listed. And all we want to do is know what the rules are and help you get the rules that are going to treat the patients in the most proper manner that we know how that my board certification and my license allows me to do in my training. [LB315]

SENATOR RIEPE: My only concern is with the incentive to the RAC folks, that they might be pretty aggressive. [LB315]

ERIC HODGES: And when you read the information that the RAC audits are supposed to have complied with when doing these types of things, that is some of the concern in that paper. And it's the Centers for Medicaid and Medicaid Services, Medicaid program Recovery Audit Contractors. It's a...and I will get this information to you in 15 to allow you to review that, too. I mean, it's very eye-opening, so to speak, from that perspective. But that was a concern but not one that I think they wanted to address. I understand what you believe, and I believe that, too, but...can't win everything. (Laughter) [LB315]

SENATOR COOK: That's true. [LB315]

SENATOR RIEPE: Just once in a while, huh? [LB315]

ERIC HODGES: Yeah. [LB315]

SENATOR COOK: Thank you. Any more questions from the committee for Dr. Hodges? Seeing none, thank you very much, sir, for your time and your testimony. [LB315]

ERIC HODGES: Thank you very much for the opportunity. [LB315]

SENATOR COOK: Next testifier, please. [LB315]

BRUCE RIEKER: (Exhibit 13) Good afternoon, Senator Cook, members of the committee. My name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r. I'm vice president of advocacy for the Nebraska Hospital Association here on behalf of the Hospital Association testifying in support of LB315. Mostly--well, I wouldn't say mostly, but--one is a friend of the dentists and say that, please don't chase the dentists out of the market. You know, we see this in many areas. It's in my written testimony in the second and third paragraph. Basically, we believe in accountability and responsibility, but there has to be a balance. And if we drive Medicaid providers out of the market--and it's been said very eloquently by many of the previous testifiers--that eventually there won't be enough providers to take care of those patients. They will inevitably, many of them, develop chronic conditions. And inevitably, we will see them in our hospital emergency rooms. Some of that is already occurring where...and I can't blame the dentists for not providing the care, because they're...they have to...they've not not-for-profit. They have to make a living. But there are areas where our hospitals have not only hired dentists, but we've hired oral surgeons too, because we have growing concerns in our emergency rooms. Obviously that it is at a much greater cost than the preventive dentistry that we're talking about once every six months. Couple things that we, the hospitals...we have a great deal of experience in audits. There are several different audit programs that the state has for Medicaid and I'd be happy to give you a spreadsheet. I have it here, but from our experience--and we've been working with the proponents of this bill--is to try and make it better that...through some of our experiences both at the state level as well as the federal level. And one of the things that is already in the bill that speaks very well of what Senator Howard and the proponents have been working on is the fact that these recovery audit contractors...there's a provision in this bill that says that they will not be paid until all informal and formal appeals are resolved except for in the case where there's a good faith or...yeah, a good-faith judgment that there's fraud. The reason being that is so important is because at the federal level definitely with Medicare when you have contingency fee agreements like this, and the auditors basically get to eat what they kill, and they get to keep it even if they killed the wrong thing. And we've had a terrible experience at the federal level where...and there's such a backlog of adjudicating these cases that there's all sorts of lawsuits associated with

that. But those who took the money, the auditors, they still have the money. But in many cases they're being overturned 70 or 80 percent of the time. So some of the things that we want to do--and we've talked to the proponents about this and we would like to work with the committee in developing a committee amendment--would be to do such things as limit more so the aggregate number of files that could be audited at any one time. There are provisions in here already. However, the nuance that we see from recovery audit contractors is that we could have an audit for one specific procedure and an audit for another procedure and an audit for another procedure and pretty soon you span the whole globe of one's practice. Or in that matter, for a hospital you could be talking about thousands of records. And you've already heard about the burden that goes with that. So one of the things that we have been discussing is how to put an aggregate cap on the number of files or records that a RAC auditor could have at any one time. A couple other things that are very...that we think are very important is that you, the Legislature, require accountability on the part of the recovery audit contractors. And I wanted to go down on my soapbox of this is one of the...several of your questions demonstrate the importance of you continuing to support the funding for an MMIS system. But that's for another hearing and another bill. In this one, we would hope that the committee would entertain an amendment--and we've talked about this with the proponents--that the recovery audit contractors have to report how many files or how many audits they did and what the resolution of each one of those was. If they have a 20 percent success rate of all the files that they audit, were they validated 20 percent of the time? Were they valid 80 percent of the time? These are things that I think that we think the Legislature should expect from the recovery audit contractors and there be a much greater deal of accountability. And with that, I'll close my comments. [LB315]

SENATOR COOK: Okay. Thank you, Mr. Rieker. Any questions? Senator Riepe. [LB315]

SENATOR RIEPE: Mr. Rieker, I do have a question. In your opinion, is this more of an administrative culture issue within DHHS or is it...so it requires maybe new administration policy with the incoming new director or does it dictate legislation? [LB315]

BRUCE RIEKER: I don't want to sound that I have a cop-out, but I'm going to say it's both. We are optimistic with the new faces in the Governor's office, the new leadership as well as at HHS, that there will be a new environment that we will be able to work with in a much better way than we have been able to for nearly a decade. But there also needs to be parameters. And, you know, it's ironic, as I approached testifying, to be testifying in support of an audit. (Laughter) But to put the parameters on it, such things as...you know, and I didn't go to all the specifics, but another thing that we have requested and discussed with the proponents of the bill--and we're a proponent too--is that there are technical things that...instead of allowing the audit to go back to the time of payment...or, excuse me, to calculate...they could audit clear back to the time...you know, two years or three years back to the time of payment. The effective date of when an audit should be able to be done by the state or a recovery audit contractor should go to the date of

service, because otherwise recovery audit contractors can cast a bigger net. So we do seriously contend that there is a legislative fix. There has to be legislative parameters, otherwise the net can be huge. The dentists are experiencing this now. We've experienced it at both the state and the federal level for quite some time, so it's a combination thereof. But we are cautiously optimistic that we will have a better working relationship with the new agency director. [LB315]

SENATOR COOK: Okay. Senator Riepe. [LB315]

SENATOR RIEPE: So, are we to interpret that you're asking for an auditor for the auditor? (Laughter) [LB315]

BRUCE RIEKER: We're asking for the Legislature to make sure that the agencies are...accountability for the money you give them. [LB315]

SENATOR RIEPE: Fair enough. All right, then. [LB315]

SENATOR COOK: Thank you very much. Any other questions from the committee? Thank you for your testimony. [LB315]

BRUCE RIEKER: You're welcome. Thank you. [LB315]

SENATOR COOK: Next testifier, please. [LB315]

NICK FAUSTMAN: (Exhibit 14) Good afternoon. I'm Nick Faustman, N-i-c-k F-a-u-s-t-m-a-n. I'm with the Nebraska Healthcare Association, which is the parent association to a family of entities including the state's largest association for nursing facilities, the Nebraska Nursing Facility Association, or NNFA, and the state's only association dedicated specifically to assisted living facilities, the Nebraska Assisted Living Association, or NALA. Both NNFA and NALA represent nonproprietary, proprietary, and governmental long-term care facilities. NNFA and NALA both support LB315. The Centers for Medicare and Medicaid Services allow states some flexibility in the implementation of the Medicare...or I'm sorry, the Medicaid Recovery Audit Program. LB315 establishes an outline for this audit that clarifies and enhances the program. The overall intent of LB315 appears to fit nicely with the efforts harnessed by the LR22 and the LR422 process in promoting transparency and accountability in financing healthcare. And rather than being too repetitive, because you're heard a wealth of great testimony this afternoon, I just want to say that we happen to think that this bill is fantastic. There are a lot of provisions in it that are fair, sensible, and reasonable. And although nursing facilities in the state of Nebraska have not undergone RAC audits, there are--as Mr. Rieker before me stated--there are at least half

a dozen other Medicaid-related audits that healthcare providers which...undergo. And as some of the most regulated businesses in the state or the nation, this does, unfortunately, add to the cost of running the facility and thus the cost of care. But perhaps the best part, I think, about this proposal is that it is, of course, permissible under federal law. And so we would urge the committee to advance LB315 to General File. [LB315]

SENATOR COOK: Thank you very much, Mr. Faustman. Are there questions from the committee? Seeing none, thank you very much for your time. [LB315]

NICK FAUSTMAN: Thank you. [LB315]

SENATOR COOK: Any additional testifiers in support of LB315? Seeing none, any testifiers in opposition to LB315? Please begin. State your name and spell it. [LB315]

JEANNE LARSEN: (Exhibit 15) Good afternoon...and Senator Campbell is not here...and members of the Health and Human Services Committee. My name is Jeanne Larsen, J-e-a-n-n-e L-a-r-s-e-n, deputy director for Claims and Program Integrity within the Medicaid and Long-Term Division of the Department of Health and Human Services. I'm here to testify in opposition to LB315. I'm sorry to have to appear in opposition today. We try to be neutral, but there are too many areas that would put us out of federal compliance which, as you know, puts federal dollars at risk. I'm fine with working with our vendors and providers. However, we have to stay in compliance with federal law in maintaining program integrity. You have my full testimony and handout with our issues, but in the respect of time, I'll abbreviate them. Medicaid pays for services that are medically necessary and covered by Medicaid. Our first concern is the introduction of the term reasonably necessary. Reasonably necessary is not a standard of care that is reimbursable at the state and federal levels and the use of this term could set a precedent with unintended consequences to the Medicaid program. In addition, activities aimed at providing reimbursement for improperly billed but reasonably necessary services is outside of the scope of the contract and would represent a conflict of interest. Medicaid regulations state, "Payment for a service does not indicate compliance with NMAP policy. Monitoring may be accomplished by post-payment review to verify that NMAP policy has been followed. A refund will be requested if post-payment review finds that NMAP payment has been made for claims or services not in compliance with NMAP policy." Thus, allowing reimbursement for a procedure, service, item, etcetera, billed erroneously for any length of time is contrary to state and federal regulations as well as the principles of good program integrity. Medical documentation and records: A documentation request by the Medicaid Division or one of its agents is not an adverse action, so in keeping with state and federal regulations, it is not an appealable action. State and federal regulations require that service records be retained as are necessary to fully disclose the extent of the of the services provided to support and document all claims for a minimum period

of six years and to allow federal, state, or local offices responsible for program administration or audit to review service records. The bill provides that should the department or the hearing officer find that the contractor's determination was unreasonable or frivolous, the contractor shall reimburse the provider for provider costs associated with appeal. The responsibility of the department contractor and the hearing office is to make determinations based on Medicaid rules and regulations. Introducing an ambiguous terms of unreasonable and frivolous and maintaining any level of consistency in their application would be difficult at best. I am happy to work with Senator Campbell...Senator Howard on this bill and happy to answer any questions you may have. [LB315]

SENATOR COOK: Thank you, Ms. Larsen. Are there questions from the committee? Senator Riepe. [LB315]

SENATOR RIEPE: Thank you, Senator Cook. This is kind of a technical...but I'm...you're the deputy director of the division within the Department of HHS... [LB315]

JEANNE LARSEN: For the Claims area and Program Integrity. [LB315]

SENATOR RIEPE: I'm curious then why...the document that you've shared with us, it's not on official letterhead. Is that...is there a reason it's not on the DHHS letterhead? [LB315]

JEANNE LARSEN: No reason. [LB315]

SENATOR RIEPE: Okay. I was just curious whether you were testifying through DHHS or independent of that. [LB315]

JEANNE LARSEN: Yes. No, in my opening I have Medicaid and Long-Term Care Division of DHHS. [LB315]

SENATOR RIEPE: Yeah, I saw that, and I thought, maybe ask the question. I was just...much of what we've received has been on DHS (sic) formal letterhead to make it official. Thank you. [LB315]

SENATOR COOK: Thank you, Senator. Senator Baker. [LB315]

SENATOR BAKER: Ms. Larsen, you have heard as I have for the last 45 minutes or so all the frustration from particularly the providers of dental service to Medicaid patients. If we are not to do LB315, what is your solution to solve the problem that's been identified? [LB315]

JEANNE LARSEN: I will tell you that we've only done one RAC audit this year, and it was for dental claims. What we learned through the process...we have already corrected the situation. [LB315]

SENATOR BAKER: I'm not understanding, I guess. Everybody come up here and said they've had a RAC audit. Where did that come from? [LB315]

JEANNE LARSEN: Okay, the RAC is a requirement of the Affordable Care Act. [LB315]

SENATOR BAKER: But only one had a RAC audit? You know, is that... [LB315]

JEANNE LARSEN: Correct, because I would not give permission to proceed with another audit until we had the lessons learned from this corrected. [LB315]

SENATOR COOK: Did you have a question...another question, Senator Baker? Senator Crawford. [LB315]

SENATOR CRAWFORD: So I guess I still don't understand what you mean. You say you only had one RAC audit, so all of the thousands of files that were requested, what do you mean you only had one RAC audit? [LB315]

JEANNE LARSEN: I'm sorry. There...I'm sorry. I'm sorry. There are different scenarios that can be audited. We have only done one scenario so far, and that is the dental. [LB315]

SENATOR CRAWFORD: So, when you say one RAC audit, you mean you have only audited cleanings or whatever the appropriate dental name is? [LB315]

JEANNE LARSEN: Right, right. [LB315]

SENATOR CRAWFORD: This one service has been audited but it's thousands of audits of that one service. [LB315]

JEANNE LARSEN: It's thousands of claims within the one audit. [LB315]

SENATOR CRAWFORD: Yes. [LB315]

SENATOR COOK: So just for fun, what are the other...this bill is about dental RAC audits. What are the other areas that might be eligible for a RAC audit to your knowledge? [LB315]

JEANNE LARSEN: To my knowledge, we introduced a different type of audit with...that we are utilizing the RAC contractor for and that is coordination of benefits with pharmacy claims. [LB315]

SENATOR COOK: Okay. So prescriptions, in the common parlance, would be another example. [LB315]

JEANNE LARSEN: Correct. [LB315]

SENATOR COOK: Any other examples? [LB315]

JEANNE LARSEN: It can be inappropriate use of DRG. There are DRG rates for specific... [LB315]

SENATOR COOK: Um-hum. And I still need to have the acronym spelled out after six years on the...what does DRG stand for, please? [LB315]

JEANNE LARSEN: I'm sorry. Of course now I'm going to freeze on what it means. [LB315]

SENATOR RIEPE: Diagnostic Related Groups. [LB315]

SENATOR COOK: Describe it. [LB315]

JEANNE LARSEN: Yes. Thank you. [LB315]

SENATOR COOK: Diagnostic Related Groups. What are Diagnostic Related Groups? [LB315]

JEANNE LARSEN: It's a rate level for a certain medical condition. So if, for example, you billed with a certain DRG code and it was too high thereby allowing higher reimbursement, a audit may show that you should have billed a lower diagnostic or DRG code that should have been at a lesser payment. [LB315]

SENATOR COOK: Okay. Thank you. Senator Crawford. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. So you said you started the audit on one procedure. And you say you've learned lessons from that that you have corrected. Could you tell us what some of those lessons were and what you have corrected? [LB315]

JEANNE LARSEN: Sure. One example is that we did communicate with the Nebraska Dental Association in a phone call--our contractor did--about the audit that was coming up. He followed up with an e-mail that gave the information, registration information, for two different webinars to be hosted by HMS on the dental RAC. Unfortunately it wasn't forwarded. So we have come up with different ideas on how to communicate directly to the providers and to provide an advance copy of the RAC letter notifying that a RAC audit will be done. The reason that we opted during this last one to send it with the initial notification of the claims was because we didn't want to spread those two letters out and put them in a state of fear as if it was an IRS letter. [LB315]

SENATOR CRAWFORD: So you would have, though, the addresses of all your regular providers...could have sent a letter to your regular providers to let them know what was happening or when the webinars were directly? [LB315]

JEANNE LARSEN: Well, generally you're going to go through the provider associations first. [LB315]

SENATOR CRAWFORD: And which provider associations did you contact? [LB315]

JEANNE LARSEN: Because it was a dental, we contacted Nebraska Dental Association. [LB315]

SENATOR CRAWFORD: Okay. But there would be, like, Pediatric Dental Association, others, but you just contacted the one. Correct? [LB315]

JEANNE LARSEN: Correct, to my knowledge. [LB315]

SENATOR CRAWFORD: Can I have another question? [LB315]

SENATOR COOK: Absolutely. Another question. [LB315]

SENATOR CRAWFORD: So the letter also...I mean the testimony emphasizes Medicaid pays for services that are medically necessary. Now, what we've heard in the testimony is that we in Nebraska have tried to be very attentive in our regulations to provide flexibility for special needs patients and so...and to provide for the option that it might not be exactly six months to the day. So would it be...is it correct to say that in Nebraska, that is medically necessary, because that's what we have in our Medicaid book and that's what we've decided in Nebraska medically necessary means? [LB315]

JEANNE LARSEN: I would like to explain to you what we shared with the Nebraska Dental Association which they then passed on to the dental providers through us. And that was, this particular audit is a policy-based compliance audit, which means that the dental necessity for providing prophylaxis services more frequently than the regulatory standard is not in question. Rather, the focus of the audit is to ensure that the client's dental chart contains adequate documentation of the dental necessity for the higher frequencies of services. [LB315]

SENATOR COOK: Are those your questions? [LB315]

SENATOR CRAWFORD: Okay, so... [LB315]

JEANNE LARSEN: So we were not questioning the dentists' ability to decide the frequency. We were doing a compliance audit of dental charting. [LB315]

SENATOR CRAWFORD: So whether or not their chart indicated why they were providing a service at that time? Is that what you mean? Is that what the audit was about? [LB315]

JEANNE LARSEN: Can you repeat that? [LB315]

SENATOR CRAWFORD: So you said it's about whether or not the charts were... [LB315]

JEANNE LARSEN: Right. [LB315]

SENATOR CRAWFORD: ...up-to-date or the charts were adequate to document... [LB315]

JEANNE LARSEN: Dental necessity. [LB315]

SENATOR CRAWFORD: ...dental necessity. [LB315]

JEANNE LARSEN: Correct. [LB315]

SENATOR CRAWFORD: Okay. And so in that case...so somebody has...they did their charts correctly, but that shows up in the audit and they have to, you know, provide 200 cases to show that they documented that correctly, does the auditor receive any compensation if all 200 of those cases were actually done correctly and once they went through all of the cost to provide copies of those statements, they were all correct in the first place? [LB315]

JEANNE LARSEN: Does the contractor receive...? [LB315]

SENATOR CRAWFORD: Right. [LB315]

JEANNE LARSEN: No. The contingency is based on recovery. [LB315]

SENATOR CRAWFORD: Okay. Are there any provisions for documentation costs particularly when an audit is done and everything was correct, there were no problems, so all the time and effort that was spent on putting those 200 cases together when they were all perfectly correct in the first place? [LB315]

JEANNE LARSEN: You're asking me to estimate the cost for a provider? [LB315]

SENATOR CRAWFORD: No, I'm saying, are there any provisions in state or federal law that allow compensation for time spent preparing for documenting something when it's audited when it was correct in the first place? [LB315]

JEANNE LARSEN: No. No. That would be correct. [LB315]

SENATOR CRAWFORD: Not to your knowledge, that there's no ability to pay for documentation costs in an audit procedure? [LB315]

JEANNE LARSEN: Correct. [LB315]

SENATOR COOK: Thank you. Did you have any other questions? [LB315]

SENATOR RIEPE: No, thank you. [LB315]

SENATOR COOK: I have two questions. From testimony today from representatives and members of the Nebraska Dental Association, approximately 80 percent of the dental practitioners are members of that. And you've offered testimony to say that you've provided information to that organization. My question to you is, are there people providing Medicaid...potentially providing Medicaid services that just don't happen to be members of the Nebraska Dental Association? [LB315]

JEANNE LARSEN: I can't answer that. You're asking me the percentage of dentists that belong to the NDA? [LB315]

SENATOR COOK: No, not the percentage. [LB315]

JEANNE LARSEN: Oh. [LB315]

SENATOR COOK: My arithmetic says yes. I was going to offer you a opportunity to agree with me, but you don't want to right now. My other question... [LB315]

JEANNE LARSEN: No, I didn't understand the question. [LB315]

SENATOR COOK: The question is this, and this comes out of my experience in the Legislature when we've had some conversations about...so many of my colleagues are members of the bar. And some of them don't feel as though they should have to be in that in order to practice. In this state, you still do. In order to be a dentist, whatever kind of dentist, whether you take Medicaid or not in the state of Nebraska, the law in Nebraska does not say you shall be a member of the Nebraska Dental Association. [LB315]

JEANNE LARSEN: That's correct. [LB315]

SENATOR COOK: What you've described to me is in your communication about the guidelines, it went to that association and then the question that emerged in my head, which I said out loud to you, was, only...we've heard testimony that only 80 percent of the practicing dentists in the state are members, and you sent the information to that organization for their distribution. Are...could it be that the remaining 20 percent could be offering services which would greatly benefit from knowledge about how to comply with the federal law in order to receive their proper reimbursement. So that was the question. I think I know the answer. [LB315]

JEANNE LARSEN: But we do have other avenues. For example, back in I think it was December of 2013, our Web page went up for the RAC for Nebraska Medicaid. [LB315]

SENATOR COOK: Okay. [LB315]

JEANNE LARSEN: So we do have avenues, but it relies on providers signing up for alerts from our Web site. [LB315]

SENATOR COOK: Okay. So it's not just...I could go on here: Web site, RAC. I would be a dental provider in the state, member of Nebraska Dental Association or not, and I would have to register to access that information through the Department of Health and Human Services, correct? [LB315]

JEANNE LARSEN: You would subscribe to the Web page. [LB315]

SENATOR COOK: Subscribe to that Web page for that information. Thank you. Senator Crawford. [LB315]

SENATOR CRAWFORD: Thank you, Senator Cook. Are we allowed by federal law to use a probabilistic model or to audit a small number of records from different providers as opposed to casting a net and pulling them all in? Are we allowed to do that? [LB315]

JEANNE LARSEN: Yes. [LB315]

SENATOR CRAWFORD: Were discussions had with RAC contractors about restrictions on the number that should be pulled from any practice or ...? [LB315]

JEANNE LARSEN: That has been part of our corrective action. [LB315]

SENATOR CRAWFORD: That's part of your corrective action now? [LB315]

JEANNE LARSEN: Um-hum. [LB315]

SENATOR CRAWFORD: And do you have a particular cap you're using? [LB315]

JEANNE LARSEN: Although CMS allows the states to determine the amount of records. [LB315]

SENATOR CRAWFORD: CMS allows the states do that. And what has been your policy then in terms of how broad of a net you are telling RAC contractors to cast now? [LB315]

JEANNE LARSEN: As I said, I put a nix on for future audits until this one was complete. [LB315]

SENATOR CRAWFORD: Okay. So are you in the process of establishing new policies and procedures for the RAC contractors now? [LB315]

JEANNE LARSEN: Yes. [LB315]

SENATOR CRAWFORD: Okay, great. And have you talked with Senator Howard about that new policy, what that looks like yet? [LB315]

JEANNE LARSEN: No. [LB315]

SENATOR CRAWFORD: Are you willing to do so? [LB315]

JEANNE LARSEN: Yes, absolutely. [LB315]

SENATOR CRAWFORD: Okay. Well, in the whole I think our committee would really appreciate the chance to learn about that and talk to you about that. [LB315]

JEANNE LARSEN: Yes. I do appreciate the spirit of the bill. There's just some things that we...because the...a few nuances that we can't agree to it. [LB315]

SENATOR CRAWFORD: Okay. Thank you. [LB315]

SENATOR COOK: All right. Senator? [LB315]

SENATOR RIEPE: I'm good. [LB315]

SENATOR COOK: Are you aware in any...how this might conflict with the law as it reads from the federal government at this time, the practices that you've described in terms of communicating the information to the practitioners or the procedures that the RAC auditors--that

sounds a little redundant--but the RAC folks undertake? Are you aware if that is in any conflict? [LB315]

JEANNE LARSEN: If the bill is in conflict? [LB315]

SENATOR COOK: If the current procedures within your agency division are in conflict. This topic is sort of... [LB315]

JEANNE LARSEN: Yeah. You know, when the federal register is written, then the next step is CMS takes that information and provides the guidance to state Medicaid agencies on how to proceed with the RAC. [LB315]

SENATOR COOK: All right. And you've followed that as far as you... [LB315]

JEANNE LARSEN: That's correct. [LB315]

SENATOR COOK: Right. Thank you. Senator Crawford. [LB315]

SENATOR CRAWFORD: I'm sorry, I just have one other question. I appreciate that you are looking at your policies and procedures to see how to correct the frustration that happened with this first audit. I appreciate that you're taking effort to do that. Are there dental providers involved in that discussion right now? [LB315]

JEANNE LARSEN: No, because it's about the RAC...how we proceed with RAC audits in general. [LB315]

SENATOR CRAWFORD: I would think that would be important to bring the dental providers into that discussion too, so they could give you some input in terms of what it looks like or how...you know, what a reasonable audit might look like from their perspective, since they're the ones out on the field doing this work for us which is very valuable. And if we have fewer providers, it puts our Medicaid program at great risk. So I would respectfully ask that you consider that. [LB315]

JEANNE LARSEN: Thank you. [LB315]

SENATOR CRAWFORD: Thank you. [LB315]

SENATOR COOK: Any more questions from the committee? Senator Baker. [LB315]

SENATOR BAKER: Just I comment: I feel for you. I know it can't be very comfortable for you sitting there where you are today with all you've heard. So thank you. [LB315]

JEANNE LARSEN: Sure. Thank you. [LB315]

SENATOR COOK: All right. Thank you very much, Ms. Larsen. [LB315]

JEANNE LARSEN: Thank you. [LB315]

SENATOR COOK: We look forward to working with you on addressing these concerns. [LB315]

JEANNE LARSEN: Absolutely. Thank you. [LB315]

SENATOR COOK: Next testifier. Any more testifiers in opposition to LB315 this afternoon? Would anyone like to testify in a neutral capacity for LB315? Mr. Committee Clerk, are there any items for the record? [LB315]

BRENNEN MILLER: No items. [LB315]

SENATOR COOK: No items for the record. Senator Howard, would you like to close? [LB315]

SENATOR HOWARD: I would. Thank you, Senator Cook. [LB315]

SENATOR COOK: Thank you. [LB315]

SENATOR HOWARD: (Exhibit 16) I promise never to bring this committee a solution in search of a problem. (Laughter) How about that? I will always bring you a true problem, and this is a true problem. The challenge for our Medicaid providers is that we don't pay them enough. And I acknowledge that. And then to further add insult to injury, to conduct an audit that makes them feel like criminals, I think is criminal on our part. I was unaware of our opposition testimony until briefly before the committee hearing. But I have prepared just a--if Jay would help me again; I apologize--a fiscal note analysis that notes how the changes in the amendment--that ideally will eradicate the fiscal note--how it aligns with federal law. I think that this is the best thing we could do to assure all of our providers in Medicaid that we want to work with them, that

we want to ensure that the audit process is clear and fair. There were just a few points I wanted to make. Mr. Rieker's concern about the date of initial payment versus the date of service was amended into...is in the amendment. So we have changed date of initial payment to date of service. Federal law does require--to Senator Crawford's question to Ms. Larsen--federal law requires our state to set a limit on the number of documents, so that is our burden to do so. When you look at HMS's Web site, so our recovery audit contractor, they note that their automatic RAC found excessive use within time frames allotted for our dental prophylaxis audit. So even though there's some dispute between what's in the Medicaid guidebook, our RAC contractor is still saying that our dentists are doing the wrong thing in terms of time frames. What I think is best about this bill and the two highlights...Senator Baker, you did take the time to ask about the informal and formal appeals process. And that starts on the bottom of page 5 and goes on to the top of page 6 and puts in clear time frames so that providers know what the appeals process looks like but also how to appeal and what their expectations are in terms of time. And then I think the most important piece of this bill is actually on page 5 in the green copy, Section 10, where it requires the RAC contractor to provide education and training programs for our providers so they know what to expect when an auditor comes. They know what to expect when it's time for a RAC audit. I think that will provide a lot of clarity for our providers to ensure that we are being good stewards of their time and their money as well. My concern is that without this bill, there won't be clarity for RAC audits. There won't be clarity for our Medicaid providers. And so while I appreciate the corrective action of the state--and I really do look forward to working with them on this--I must insist that LB315 go forward with as much of an amended and clean, beautiful version as we can put together for you. With that, I would be happy to try to answer any questions you may have. [LB315]

SENATOR COOK: Seeing none, thank you very much, Senator Howard. [LB315]

SENATOR HOWARD: Thank you, Senator Cook. [LB315]

SENATOR COOK: This closes the hearing for LB315 and the hearings for today. Thank you very much. [LB315]