Health and Human Services Committee
March 18, 2015

[LB518 LB548 LB631]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, March 18, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB518, LB631, and LB548. Senators present: Kathy Campbell, Chairperson; Sara Howard, Vice Chairperson; Roy Baker; Tanya Cook; Sue Crawford; Mark Kolterman; and Merv Riepe. Senators absent: None.

SENATOR CAMPBELL: Good afternoon and welcome to the hearings of the Health and Human Services Committee. I'm Kathy Campbell and I serve as the Chair for the committee and represent District 25 here in Lincoln. I'm going to have the senators introduce themselves so we'll start on my far right.

SENATOR KOLTERMAN: I'm Senator Kolterman from Seward representing the 24th District, Seward, York, and Polk Counties.

SENATOR BAKER: I'm 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: I'm Senator Tanya Cook from District 13 in northeast Omaha and Douglas County.

SENATOR RIEPE: I'm Merv Riepe. I'm the state senator from District 12 which is Omaha, Millard, and Ralston.

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

SENATOR CAMPBELL: And with us are our pages today. Brook: Brook is from Omaha and is studying at UNL in advertising, marketing, and political science. And Jay is here, is at...from Dalton, Nebraska, is at UNL in ag economics. I'm going to go through some procedures that we use here in the Health and Human Services Committee before we start in on the bills. I do want to make all of our guests aware that we are changing the lineup slightly. We will start with Senator Riepe's bill because Senator Scheer has an event from his hometown and the town he

represents. They're all here in the Capitol. So he needed to finish out some event things with them. So we said, sure, we would change it around. So we will start with Senator Riepe and then we will go to Senator Scheer's bill and then finally to mine. If you have a cell phone on you or something that makes noise, please turn it off or silence it so that it's not disturbing others. As you are testifying today, you need to complete one of the bright orange sheets that are located on either side of the hearing room. You can also just sign in if you want to say, I support or I oppose a bill. As you come forward, if you have brought materials...and we like to have 15 copies. If you need assistance on that, you can visit with Brennen or one of the pages and they will help you. But as you come forward and sit down, we do use the light system in the Health Committee so the first testifier has the same amount of time as the very last of the day. And you will sit down and see three lights in front of you. You have five minutes. It will be green for what seems like a long time, four minutes. It will go to yellow which means you have a minute. And then it will go to red and I'll be trying to get your attention. So as you sit down in the chair, please state your name for the record and spell it. And that's because the transcribers who listen to the recording need to hear your voice and know that your name...what your name is and that it's...how it's spelled. Since this is the last day of hearings for the Health and Human Services Committee, that's why all the senators are smiling. (Laughter) I want to thank my colleagues. We have gone through a lot of bills this session and had several longer nights than we all would have liked but they have just been terrific...and particularly want to commend our three incoming freshman senators who have done a great job to try to catch themselves up. Health and Human Services is very complicated and they're doing a great job of catching up. I hope that you will join me also in thanking Joselyn Luedtke who is the legal counsel and Brennen Miller, our clerk. I mean, they keep this moving, keep us apprised of what's happening, and then they've...and they also have this year...well, many of you might have realized, we've gone paperless here. So that's why we have our computers because everything is now on a drive for us and so we can watch that. Eventually, I hope the Legislature has a scanner in every room and your testimony can just be given to the clerk who will scan it in and we will see it on our computers. That's what we're moving to. That's what we hope. So please join me in thanking them as well as our two pages, Jay and Brook. So thank you. (Applause) All right. We will start with our first hearing today and we'll give Senator Riepe a chance to get settled in. Senator Riepe's bill is LB518. And LB518 provides for a change to the medical assistance program. Senator Riepe, when you're ready, go right ahead.

SENATOR RIEPE: Thank you, Chairwoman Campbell and members of the Health and Human Services Committee, for the opportunity to introduce LB518. I am Senator Merv Riepe, and that is spelled Merv, M-e-r-v, and Riepe is spelled R-i-e-p-e. I represent District 12 which is Omaha, Millard, and Ralston. As I have journeyed to the Legislature, I have kept a keen interest in looking at Medicaid through a different lens. My commitment has always been and will always be to assurance of appropriate access, quality of care, as well as appropriate cost controls. I wanted to understand how the market can bring greater structure and discipline to a healthcare

system that demands an orderly process and tamp down costs that are currently unsustainable. I feel I have a solid foundation to engage in this task. Some of you may know me. My background as such is I was a hospital corpsman at the age of 18. In that role, I took care of patients at the bedside and it was a wonderful experience and I think the bottom line is, I handled bedpans and I did...met with a lot of patients. I...following the Navy, I went to the University of California in Los Angeles where I became a respiratory therapist, returned to Omaha, was at Bergan Mercy as director of respiratory therapy, again having healthcare...direct healthcare patient clinical service experience. I attended the University of Nebraska-Omaha, took a degree in finance to complement my clinical side, went to graduate school at Iowa, came back, and started my career at Lutheran Hospital in Omaha where at the old age of 28, I was the CEO, the interim CEO, and I had responsibility there not only for the general hospital but also for Richard Young, the psychiatric hospital. I would also say that at that time, it was under the Carter administration, and I did write a federal community mental health center grant which was funded. And I went on then to Bergan Mercy. I was at Bergan for 18 years in a variety of administrative roles and later on at Children's Hospital in Omaha for 15 years until my retirement in 2008. Following my retirement, which I failed at, I did some interims. I did one in Grand Rapids, Michigan. But probably more important than that is I did one in rural Texas. And that rural experience, it was my first rural experience, and it gave me a different perspective on the balance side of healthcare. And I was there for almost two years in terms of working with that multispecialty group practice. With this experience, I do not mean to suggest that I have all the answers to this problem. The answers to this problem are extremely complex and challenging to all states. That said, I do understand the industry, its players, and the processes. LB518 was introduced on the tenth day of the session. Now, as you know or if you recall when you were freshmen, the first ten days is...I describe it as being in a baseball batting cage with two machines firing at full speed, you have a peewee bat and no helmet and you're trying to figure out how to...where do you go and how do you get your office and what committees you're going to be on and everything happens really fast. That tenth day, we did submit LB518 because we wanted to get a dialog going. Because of this, today I am asking the Health and Human Services Committee to hold LB518 with an understanding that I will research and study best practices and return to this body with one or more options to reform the current system to make it a better system for Nebraska. This needs to be done before we can ever consider expanding Medicaid. In fact, President Obama said, "It is not sufficient for us simply to add more people to Medicare and Medicaid to increase the rolls, to increase coverage in the absence of cost controls and reform. We can't simply put more people into a broken system that doesn't work," he said. "We can't simply put more people into a broken system that doesn't work." That was President Obama's remarks before a meeting with the Senate Democrats discussing healthcare concerns. Medicaid is not a sustainable program as the statutes are currently written. I believe we must consider a consumer-/market-driven model. Across the country, Medicaid is a state-by-state collection of broken systems. We need reform to get full value of Nebraska's tax dollars put into Medicaid. We need to be responsible to all Nebraskans. The Appropriations Committee has sent out its preliminary report which includes an

increase of Medicaid of 8 percent for 2015-2016 and almost 5 percent for 2016-2017. So again, I am asking for the committee to hold LB518 as we work into the interim. I am excited to collaborate with the new director of Medicaid, Mr. Lynch, and bring a new LB518 to the 2016 Session. Thank you and I welcome any questions you may have. [LB518]

SENATOR CAMPBELL: Thank you, Senator Riepe. Questions from the senators? Okay. Oh, sorry, Senator Baker. [LB518]

SENATOR BAKER: Thank you, Senator Campbell. Senator Riepe,... [LB518]

SENATOR RIEPE: Yes, sir. [LB518]

SENATOR BAKER: ...can you give me a sneak preview of what you might be thinking about? I'm pretty clear about what you're against. I'm not quite sure what you're for. [LB518]

SENATOR RIEPE: And that is a very good point. It's been one of my criticisms of, if I may, the Republican Party. They've been the party of "no." They have to get on the other side of this and say, how does this fit? How does this look? So I'm very much there. I also think that we need to look and we will be looking at different states. We're currently looking at Louisiana. I've done some reading in the last couple of days on that given, in fact, because of Mr. Lynch coming in here from Louisiana and Ms. Phillips from Louisiana. We've also read on Florida. Obviously I've looked at Indiana, looked at Kansas, and we will research any and all of those. And quite frankly, we're not assuming in any way that we can replicate and just pluck a plan. We're going to need to try to go through and say, how would that work for us? Now, going a little bit further on that, one of the models that I personally prefer is...and it goes back to the medical home. And the medical home, quite frankly, puts the primary care...it elevates the primary care physician. And that primary care physician would most likely have a...what I call a navigator. You could call it a caseworker. But it's...I even call it having...like having an LA, you know, one other person that's driving you, helping you get there because the physician can't do this. But the physician in this case would not only be responsible for the clinical side of it, but they're also responsible for managing the financial sides of it. And then only a patient could get to a specialist through the primary care doctor. And so you'd get...it just...it makes for a better, orderly use of the healthcare system. Now, I want to say that at the same time, though, I want to go at this thing which is--I'm convinced it's the right way to go after it--is don't go into it with a lot of preconceived notions. And try to keep an open mind. And look at different ways and hopefully get some of those aha moments that you kind of go, boy, I wish I'd have thought of that. [LB518]

SENATOR BAKER: So that would be...there would be a medical home rather than people having to go to the emergency room... [LB518]

SENATOR RIEPE: Well, they might... [LB518]

SENATOR BAKER: ...people who are not covered with insurance at present and don't have any money? Now they go, I assume, to the emergency room if they get...the situation is serious enough? [LB518]

SENATOR RIEPE: And needless to say, you know, this is a very complex, complicated kind of a process. We need more of clinics and offices that are open, maybe, until midnight that aren't emergency departments. I think, quite frankly, we probably need, in my opinion--just my opinion--we probably need to have those facilities reasonably close to where they've grown accustomed to going to the emergency services, you know? They need to be close to their neighborhoods. In a primary medical home kind of model as I see it, you know, you really have to get those people as best you can into the communities. I think OneWorld is doing that, the Drew Center is doing that. Some of these people are doing that. And we probably even have to pay the primary care doctors more money. I think that...and I think...quite frankly, I think the primary care doctors need to be doing more things. They've sort of gotten to...they fell into the process of letting specialists take their pieces away. So all of a sudden, they ended up with...Dr. Lou Burgher, who was the president of Clarkson, was saying at one time, you know, they kind of let them get down to doing sniffles and that was about it, that we have to turn that back. They're better trained than that. They're smarter than that. We need to get them back into that. I'm sorry. That was a long answer. [LB518]

SENATOR BAKER: No, I appreciate it. Thank you. [LB518]

SENATOR CAMPBELL: Any other...Senator Kolterman. [LB518]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Senator Riepe, this idea intrigues me simply because it...I've been on an HSA plan for many years. And as I read the bill, there's aspects of the HSA that I like. One thing that I...if I read this correctly, you're proposing that there be no additional funds, we just reallocate funds to this type of a program? Would that be accurate? [LB518]

SENATOR RIEPE: I would say that in the first ten days, while I had some ideas coming into it, we were scrambling around. [LB518]

SENATOR KOLTERMAN: Okay. [LB518]

SENATOR RIEPE: And so, I want to reserve decision on that. I want...you know, I just want to keep an open mind about going back and saying, you know, if I had it to do over again, would I put that back in there? And so I don't know. I don't know for sure on that. And I don't know, even, about the HSAs, whether that would be...I don't want to get locked in. And I want to hear what Mr. Lynch has to bring to the table. I want...I don't want this to be a me bill. I want this to be an us bill kind of a deal in saying, you know, I believe in a lot of things that are in the, you know, the Affordable Care Act. I believe in, you know, guaranteed issuance. I believe in a number of those things. We just have to try to figure out, how can we get to something that has enough efficiency in it and is also affordable for us? That's...and that's a tough nut. [LB518]

SENATOR KOLTERMAN: Okay. But you... [LB518]

SENATOR RIEPE: Yes, sir. [LB518]

SENATOR KOLTERMAN: Do you do...you do also itemize, as an example, if you're at 100 percent of the poverty level, you'd be eligible for different benefits than you would be at 140 percent. So you...it looks to me like you're trying to pick up some of the people that we aren't insuring now. And yet you're trying to control the costs. Is...would that be an accurate statement? [LB518]

SENATOR RIEPE: That was the original intent. But again, that was the ten-day rush... [LB518]

SENATOR KOLTERMAN: Okay. [LB518]

SENATOR RIEPE: ...if you will. So, you know, I'm not saying, you know, my feet are in concrete on this thing. I want to say I've always believed in...that you need to be open to have...if you really want to...you need to be open to having your staff tell you, like, that was a silly idea. You kind of go, okay. Believe me. I've worked with doctors for 30-some years. They're not bashful about coming in and telling you that you're wrong. Are there any doctors out there? So I mean, you know, so you have to be flexible... [LB518]

SENATOR KOLTERMAN: Thank you. [LB518]

SENATOR RIEPE: ...somewhat similar to being in the Legislature, you know? You kind of have to roll with some punches at times. [LB518]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Riepe. I know you're going to be here to close, so. [LB518]

SENATOR RIEPE: I am going to be here. Thank you very much. [LB518]

SENATOR CAMPBELL: Absolutely. All right. Those...and for the guests that are with us today, the committee starts with those who are in favor of the bill and we go to those people who are opposed to the bill and then we go to those people in a neutral position. So we will start with the people who support the bill. Good afternoon. [LB518]

DOUG KAGAN: (Exhibits 1, 2) Good afternoon, Senators. My name is Doug Kagan, D-o-u-g K-a-g-a-n, representing Nebraska Taxpayers for Freedom. Our group strongly supports the health savings account, HSA, principles embodied in LB518. Escalating Medicaid expenses are problematic here in Nebraska. Healthcare inflation grows at least twice the rate of general inflation. An increasing number of states currently are developing or have implemented Medicaid reform plans that incorporate a form of HSAs to accommodate Medicaid users and simultaneously save taxpayer dollars. Since the advent of Obamacare, states have shouldered the responsibility of how to connect their Medicaid systems to this federal system. Nebraska so far fortunately has resisted pressure to adopt Obamacare principles and still contemplates which path to use in updating our Medicaid system. We support state-supplemented HSAs as an excellent option for comprehensive care and catastrophic coverage. These plans decrease abuse of medical services--for example, doctor shopping to avoid work requirements and unnecessary self-referrals to specialists--and monitor prescriptions. This option presses Medicaid recipients to become more aware of medical service costs and more personally responsible for their own healthcare decisions and managing their care. Contributing to their accounts offers incentives for participants to utilize services in a frugal manner. Beneficiaries use medical care more intelligently and appropriately and learn how medical insurance actually operates. Review of this system reveals greater use of preventive care, less emergency room use, and greater use of generic drugs. Cost sharing for enrollees lessens for specific health behaviors completed or maintained, a definite incentive for participants by reduced premiums and a savings for taxpayers. Plans boast of incentives to reward recipients for adhering to a prevention services schedule and effective HSA management. Hospitals that treat many poor, uninsured patients are major beneficiaries of this plan. HSAs reward recipients whose upward mobility lifts them from this program. They can then use their HSA balances to pay premiums for private healthcare coverage. Two independent evaluations indicated high levels of satisfaction with coverage, comparable to commercial health plans. The objective, we believe, is to give recipients, those who are trapped in the medical coverage gap and have no health insurance, a financial incentive, a stake in the system, to change their health behaviors to improve and maintain good health. An accompanying benefit is managing and controlling Medicaid spending more closely. Thank you. And I have accompanied my testimony with our issue paper with more details. [LB518]

SENATOR CAMPBELL: Questions from the senators for Mr. Kagan? Senator Cook. [LB518]

SENATOR COOK: Thank you, Madam Chair. And thank you, Mr. Kagan. You say in your last paragraph that this might offer an incentive for those in the medical coverage gap. Do you...from your understanding of the concept, is this bill proposal only for those...intended for use by those in the gap or do you see this idea replacing Medicaid in its entirety in the state of Nebraska? [LB518]

DOUG KAGAN: Okay. Our group would support not only helping people in the coverage gap but others too. But you couldn't really apply it to everybody on Medicaid. That is, you have small children on Medicaid. You can't expect them to go out and get a health savings account, you know? Elderly people who are incapacitated either physically or mentally, I don't think we'd ask them to go out and figure out how to participate in a health savings account. So theoretically, you could apply to more people then in coverage gap but you couldn't apply it to everyone. [LB518]

SENATOR COOK: All right. Thank you. [LB518]

SENATOR CAMPBELL: Other questions, Senators? Mr. Kagan, of the plans that you've listed here, is there one in particular that you really think we should look at? [LB518]

DOUG KAGAN: No, and we purposely did not favor one state plan over another. And the reason we felt that way is states are different. In other words, people who live in Nebraska aren't the same as people who live in Michigan or people who live in Louisiana. What we hope for, and I think what Senator Riepe referred to is, we have to study this more and maybe outreach to people in Nebraska to see...you know, talk to people who need this kind of coverage and who could benefit from it as well as other people and see what Nebraskans think of this plan before we tailor our own plan. If you look at the individual state plans, you'll see that some of them are a little different and some of them have things in common. But they're not all the same. So what we do here in Nebraska probably would mirror in some respects what they've done in other states but not entirely. [LB518]

SENATOR CAMPBELL: Right. And the reason for the question is that, you know, I was just looking real quickly here, and now Indiana, who had the Healthy Indiana Plan, has begun accepting Medicaid expansion dollars and they've moved Healthy Indiana into that. And I didn't know whether...because Indiana has looked at the HSAs if I'm right. Am I correct, from your research, Mr. Kagan? [LB518]

DOUG KAGAN: Right, right. And when you look at costs, in some states you'll see that...who have...states that have implemented HSA plans, the startup costs, you will see a rise in expenditures because structurally you have to put the plan in action. But over a long term, over a long number of years, you will save taxpayer dollars. [LB518]

SENATOR CAMPBELL: And most of them have generated that money through their state general funds as you've looked at it, Mr. Kagan? [LB518]

DOUG KAGAN: Yes. [LB518]

SENATOR CAMPBELL: Okay. Any of them use any other type of funding? Cigarette tax... [LB518]

DOUG KAGAN: Well, the state pays part of it and then the people who have the HSAs, they pay a little amount. They pay copays. They pay a little bit for their premiums and it's usually on a sliding scale depending upon what their annual income is. [LB518]

SENATOR CAMPBELL: Okay. Thank you, Mr. Kagan. Thank you...oh, sorry, Senator Cook. [LB518]

SENATOR COOK: Thank you. I was thinking about the idea...in an ideal world, we keep up with our appointments, like I have a dental appointment that I remembered to schedule. And I...good news is I've got health insurance for right now. I guess my concern with going to this idea--very supportive of the concept of personal responsibility--is that so often, we don't know, especially as our...more birthdays happen. Do you know if that is what you ate for lunch or is Senator Cook having a heart attack for real this time? Like, this sort of...if I go, but then I choose not to go based on my coverage, I'm just concerned that, in our pursuit of personal responsibility and cost savings, what might be the risk for a potentially already vulnerable population? And that's rather a rhetorical question, but have you given any thought to those of us who think we're doing fine until maybe we're not? [LB518]

DOUG KAGAN: Well, some...I understand your question, Senator, and some people have some difficulty making those choices and that's why, as Senator Riepe said, you have help from the doctor's office. You have navigators. They help you through this. And some of the states have these programs where the patients not only get, you know, help for their ailments but they get medical advice too. [LB518]

SENATOR COOK: Okay. [LB518]

DOUG KAGAN: And that helps them do things like make good choices, how to keep appointments, how to get to appointments, that sort of thing. [LB518]

SENATOR COOK: All right. Thank you. [LB518]

SENATOR CAMPBELL: Any other questions, Senator? Thank you, Mr. Kagan. [LB518]

DOUG KAGAN: Okay. [LB518]

SENATOR CAMPBELL: Our next proponent for LB518? Anyone else? Okay. Those who oppose LB518? Good afternoon. [LB518]

CALDER LYNCH: Good afternoon. [LB518]

SENATOR CAMPBELL: We've all been anxious to extend a Nebraska welcome to you, so welcome. [LB518]

CALDER LYNCH: (Exhibit 3) Thank you very much. Good afternoon, Senator Campbell and members of the Health and Human Services Committee. My name is Calder Lynch. That's C-a-l-d-e-r L-y-n-c-h, director of the Division of Medicaid and Long-Term Care for the Department of Health and Human Services, a role I have now been in for ten days. (Laughter) I am happy to be before the committee today, and I look forward to what I hope will be a long and productive relationship with this committee and this body but I am here today to testify regarding our concerns with LB518. I want to first note that I have met with Senator Riepe to discuss this legislation. We understand and appreciate his intention to advance our Medicaid program through market- and consumer-driven reform efforts. However, we expressed to him that we cannot support LB518 in its current form due to its potential cost and that various components within the current bill do not meet federal requirements with respect to eligibility categories and benefit packages. One stated purpose of LB518 is that no additional General Funds will be expended. With the many unknowns and potential conflicts with federal regulations, it is difficult to project the programmatic and fiscal impact of implementing LB518. At a minimum, we believe that it would create significant new staffing requirements, intensive technology systems development, and major contractual changes. My understanding, therefore, and we heard testimony today, that Senator Riepe is not seeking to...not move the legislation forward at this time. And while we support that decision, we have committed to working with the senator to explore other ways to achieve meaningful reforms within our resources and the guidelines of federal rules and authorities. The department is actively working to develop a new request for proposals for its managed care programs and we believe that those contracts can also provide a vehicle to better engage Nebraska Medicaid recipients in their healthcare decisions and management. We very much look forward to continuing to work with Senator Riepe and all of the members of this committee to seek improvements to our Medicaid program. In just my short time here, I have observed an incredible interest to improve our Medicaid program within the agency as well as with our legislative partners and that is very encouraging. I'd be happy to answer any questions from the committee today and I'll also note that attached to my testimony,

I've placed a copy of my business card. And I invite any member to, please, reach out to me directly on any issues that you may have with Medicaid. Thank you. [LB518]

SENATOR CAMPBELL: Questions for Mr. Lynch? Mr. Lynch, I'm just curious. Had...would...in the programs that you were with in Louisiana, did you look at any...did you have any HSAs? [LB518]

CALDER LYNCH: Not specifically. We did have some programs within our managed care organizations where there were incentives for recipients who met certain healthy behaviors, for example, meeting a primary care physician preventative appointment, prenatal...meeting prenatal care appointments. And those benefits could be loaded onto a benefit card that could be used to help cover certain medical expenditures or even other things like purchasing diapers, baby food, formula, etcetera. And that's why I mentioned that there are opportunities within those contracts to better engage consumers in their healthcare decisions. But I think it's important for us to look at all the models that are emerging across the country and really look at what...the data that's coming out of those models and really drive decisions based on that. [LB518]

SENATOR CAMPBELL: I concur. Questions? Senator Kolterman. [LB518]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Thanks for coming. [LB518]

CALDER LYNCH: Absolutely. Thank you for having me here. [LB518]

SENATOR KOLTERMAN: Yeah. Question about patient centered medical homes: I think Senator Riepe alluded to that as maybe part of the mix here along with an HSA type of approach. Do you have any experience in that regard at all in Louisiana or have you looked at other states and the outcomes of those types of programs? [LB518]

CALDER LYNCH: I did both. You know, we have some experience, but I think it's also important to look across the country at the experience we've seen. Patient centered medical home as a concept is a wonderful concept in that you are really engaging patients in the delivery of their care at the primary care physician level and looking at changing those practice patterns to have extended hours, to have nurse navigators, to be able to help individuals with chronic conditions manage their interactions across the healthcare continuum. What we want to make sure we do is that any incentives that we build into our programs or requirements are really driven by what we know to be effective. There's data emerging that perhaps just a simple designation doesn't have a meaningful impact on outcomes or costs. So we need to look at, what are the specific practice changes that make a difference? Is it having those weekend and evening

hours available for working moms or families to be able to access primary care? Is it those chronic disease management programs in the primary care physician's office? So certainly I think we need to look at ways to improve the primary care physician model. And as the senator noted, that would include additional resources being put into that level of care in that medical home concept. And we would be supportive of that certainly. [LB518]

SENATOR KOLTERMAN: Go ahead, Senator Cook. [LB518]

SENATOR CAMPBELL: Go right ahead. [LB518]

SENATOR COOK: Thank you. I was just feverishly writing down the ideas. Can you name...give an example of an incentive that you found? I'm imagining in some way you've kept a record of the outcomes so that you can invest in the ones that work and maybe not invest in the ones that didn't work as well. Can you give an example beyond the incentives to apply the money to diapers, etcetera, that you found useful? [LB518]

CALDER LYNCH: I think incentives work both with...in terms of the individuals but also the providers as well. [LB518]

SENATOR COOK: Okay. [LB518]

CALDER LYNCH: I think that's a good point to make. We...you know, we want to make sure that our contracted health plans have the ability to promote value-based contracting with their providers. With primary care physicians in particular, there are opportunities to engage them in shared savings arrangements which we did see some examples of in Louisiana and in other states as well that, you know, when you look at an individual physician's patient panel and overtime and looking at their cost across the whole spectrum, their ER visits, their hospital cost, and if that engagement with that doctor or that care manager reduced those costs that there was an opportunity to share in those savings back with the providers. And so really being able to measure that... [LB518]

SENATOR COOK: Yes. [LB518]

CALDER LYNCH: ...that value that's being shared back to your, you know, Nebraska-based providers would be one way of encouraging better use of the system overall. And that could be around ER visits, rehospitalizations, hospitalizations, readmissions. So those would be some of the things that I think we should look at in terms of incentives. [LB518]

SENATOR COOK: Okay. Thank you. [LB518]

CALDER LYNCH: Thank you, Senator. [LB518]

SENATOR CAMPBELL: Senator Kolterman, did you have a follow-up question? [LB518]

SENATOR KOLTERMAN: Yeah, I did. [LB518]

SENATOR CAMPBELL: Okay. [LB518]

SENATOR KOLTERMAN: Thank you, Senator Campbell. As you...in your testimony, you indicated that you're willing to work with Senator Riepe going forward, and I assume that takes into account the rest of the committee as well... [LB518]

CALDER LYNCH: Absolutely. [LB518]

SENATOR KOLTERMAN: ...that might have an interest in... [LB518]

CALDER LYNCH: Absolutely. [LB518]

SENATOR KOLTERMAN: ...pursuing this, is that correct? [LB518]

CALDER LYNCH: Absolutely. [LB518]

SENATOR KOLTERMAN: Thank you. [LB518]

CALDER LYNCH: Thank you. [LB518]

SENATOR CAMPBELL: Just to comment, we have in the Legislature a senator, Senator Mike Gloor from Grand Island, who really was the pioneer in the state of Nebraska in terms of medical home and worked with the Division of Medicaid to do a pilot. And there is real continuing look at that through some of our ACOs in the state. So we've begun. We have a lot to do so we look forward to your good ideas on that. But sitting down and talking to Senator Gloor and his aide, Margaret, would give you a really good perspective of what's happened because I credit him with bringing it to the state. [LB518]

CALDER LYNCH: I appreciate that advice. I'll certainly do that. [LB518]

SENATOR CAMPBELL: Yeah. He would be a great resource. Any other comments? Thank you very much for coming. We look forward to talking to you. I'm not quite sure when we'll be holding the hearing with regard to your appointment but we'll have plenty of time at that one to talk about a lot of issues, so. [LB518]

CALDER LYNCH: That sounds wonderful. I'll look forward to it. [LB518]

SENATOR CAMPBELL: Okay. Thank you for coming today and for your testimony. [LB518]

CALDER LYNCH: Thank you, Senator. [LB518]

SENATOR CAMPBELL: Our next opponent to LB518. [LB518]

KATHY HOELL: Good afternoon. [LB518]

SENATOR CAMPBELL: Good afternoon. [LB518]

KATHY HOELL: (Exhibits 4, 5, 6) My name is Kathy Hoell, K-a-t-h-y H-o-e-l-l. I have given them testimony letters from two of our council members so the...in addition to my own. I am the executive director of the Nebraska Statewide Independent Living Council. This is a council that's required in every state and is established under the Rehab Act. Members of the council are composed of individuals with disabilities, family members. Every three years, we have to rewrite the state plan on independent living. This Statewide Independent Living Council has some very grave concerns about LB518 as it's currently written. It would be devastating to the disability community. It will not pay for the services needed by people with disabilities in order for them to live in their own home. Our understanding is that Medicaid beneficiaries would have a debit card with a certain amount of money on it to pay for approved medical expenses. However, this list of approved expenses is not comprehensive enough to cover the needs of people with disabilities. Nationally there is an effort to provide home- and community-based services for people with disabilities. According to the National Council on Disability, Nebraska pays $45,000 per individual per year to receive community-based services while we're paying $225,000 per year for them to receive institutional care. I bring this up because, with the proposed limits on LB518...is going to force people with disabilities to either go to emergency rooms or nursing homes to get their needed services. Then the services would be paid for. It will become mandatory. And so then they become a state problem that I don't think this bill realistically looks at. Another concern that we have is that we believe this would violate the U.S. Supreme Court's

standard that was espoused in Olmstead v. L.C. where people with disabilities need to live and receive services in the most integrated setting appropriate. We feel that the people who utilize Medicaid will not be able to get services out of state. This is ludicrous but anyway. What if you are called away to see a family member or something and they live in another state and you have a heart attack? You can't go to the hospital and get services. I mean, it's just...it doesn't make a whole lot of sense. Rather than cutting and capping Medicaid services, we need to be looking at innovative ways to transform the Medicaid system, moving away from costly institutional care. Putting people in the nursing homes doesn't work. I've lived in a nursing home. I can guarantee that it's not someplace you want to be. You...I mean, you're happier in your own home receiving the supports and services that you need. So we recommend, we highly hope, that LB518 will not move. And if you have any questions, I'd be glad to answer them. [LB518]

SENATOR CAMPBELL: Ms. Hoell, it's always good to see you. [LB518]

KATHY HOELL: Oh, it's always good to see you, too. [LB518]

SENATOR CAMPBELL: Well, we'll say you're sort of one of the perennial people that come to visit with us. So we appreciate it very much. Ms. Hoell, one of the... [LB518]

KATHY HOELL: Because it's not like I never have an opinion. (Laughter) [LB518]

SENATOR CAMPBELL: No, I count on that. I do. I just want to make sure...you gave us copies of testimony, so for the record--the clerk is nodding--they will go into the record as testimony by Tim Kolb and Jody...Faltys, am I saying that right? [LB518]

KATHY HOELL: Jody Faltys. [LB518]

SENATOR CAMPBELL: Jody. Okay. I just wanted to make sure of that. [LB518]

KATHY HOELL: Correct. [LB518]

SENATOR CAMPBELL: Are there any questions for Ms. Hoell today? Okay. Thank you very much for coming. [LB518]

KATHY HOELL: Thank you very much. [LB518]

SENATOR CAMPBELL: Okay. Our next opponent to LB518? [LB518]

JAMES GODDARD: Good afternoon, Senators. [LB518]

SENATOR CAMPBELL: Good afternoon. [LB518]

JAMES GODDARD: (Exhibit 7) My name is James Goddard. That's J-a-m-e-s G-o-d-d-a-r-d. I'm the director of the Health Care Access Program at Nebraska Appleseed, here today to testify in opposition to LB518. While we applaud the idea of innovation and ensuring Medicaid is an effective program and costs are contained, we have some significant concerns about the bill. We do appreciate that Senator Riepe intends to hold it and study the issue a bit more. In a nutshell, we're opposed to the bill because it would drastically alter an important and effective program without significant deliberation and it would create a structure that is inconsistent with federal law. I would refer you to the written comments that I've provided and will spend my time talking a little bit more about what we've been discussing this afternoon. One thing I just want to talk about briefly is the cost of the program. We all know it's critical to make sure that Medicaid costs are contained. But costs in healthcare have risen across the board both before the ACA and in some cases after. But this is occurring in the private market dramatically and was one of the reasons the Affordable Care Act was so important. So we can't just look at the costs of Medicaid in isolation. I think we need to look at the cost of healthcare in the private market as well. Looking at Medicaid itself, before the Affordable Care Act from 2008 to 2012, Medicaid spending on healthcare services was controlled significantly and grew at an average annual rate of about 2.2 percent. Last year, the program actually dropped in its utilization by about 2.1 percent so just something to consider when we're talking about the program and its costs and containing them. Ultimately, we appreciate the proposition that Medicaid can and should be studied and it should be improved. But a deliberate process is needed to do that, one involving collaboration. We would recommend the structure within LB472, the Medicaid Redesign Act, which would bring together many stakeholders to consider program improvement. It would also close the coverage gap and draw down our dollars to innovate and redesign the program in some of the ways that Senator Riepe mentioned in his opening. Those in the gap have waited years. We've heard their voices in this room. We walk by them on the street without even knowing it. And they can't wait any longer. And the good news is we can close the coverage gap for those individuals and draw down dollars to innovate at the same time. And so with that I would conclude and be happy to answer any questions if I could. [LB518]

SENATOR CAMPBELL: Questions for Mr. Goddard? Senator Cook. [LB518]

SENATOR COOK: Thank you, Madam Chair. And thank you, Mr. Goddard, for your testimony. In your oral testimony, you made reference to a 2.1 percent decrease. Were you referring to the costs of the...Nebraska's Medicaid program or the number of participants or... [LB518]

JAMES GODDARD: Utilization by participants. [LB518]

SENATOR COOK: Utilization by participants. [LB518]

JAMES GODDARD: As I understand it, it was expected, it was...the projection was to increase by quite a lot last year, I think around 7 or 8 percent. But in fact what we saw was a 2 percent drop. At one point in the year it was 4 percent. So it's the utilization rate. [LB518]

SENATOR COOK: To what would you attribute...might you attribute that decrease? [LB518]

JAMES GODDARD: You know, Senator, I'm not entirely sure. It was sometime around where the ACCESSNebraska system was split in half. [LB518]

SENATOR COOK: Okay. [LB518]

JAMES GODDARD: So where you...we were calling... [LB518]

SENATOR COOK: You couldn't get through. [LB518]

JAMES GODDARD: ...you'd call one phone number and now you're calling a different phone number. [LB518]

SENATOR COOK: It could be. [LB518]

JAMES GODDARD: I can't attribute it all to that. I'm really not sure. [LB518]

SENATOR COOK: All right. [LB518]

JAMES GODDARD: I'd have to talk to the department to get a sense. [LB518]

SENATOR COOK: All right. Thank you. [LB518]

SENATOR CAMPBELL: And, you know, if you look over time to the trends in Nebraska, it appears that, you know, as we went through the recession, of course the number of participants rose a great deal. But when you start seeing that recovery then sometimes that decrease comes in. And I can remember a lot of discussion about watching the national economic scene to give

some idea as to where we were going with Medicaid. I very much appreciate your comment on the Medicaid Redesign. And the reason I mention this is because in the early 2000s, and I'm sure you were not involved at that point, when we did the Medicaid Reform Council and we brought...we did a statewide effort and that really has been the model to take a look at of why we would look at Medicaid Redesign because I've found that in the discussions as I served on that that it was really the providers across the state that had the most innovative, creative ideas in how to be...how to serve Nebraskans in their healthcare effectively. And they had some of the very best ideas that we implemented, so. [LB518]

JAMES GODDARD: I was involved slightly in that process as an intern back in 2004. [LB518]

SENATOR CAMPBELL: I didn't want to age myself. [LB518]

JAMES GODDARD: It was the first time I had heard your name but my recollection was exactly that, was that what happened there was a broad group of stakeholders coming together and sharing ideas about how we can make the program even better and control costs. [LB518]

SENATOR CAMPBELL: It was a very interesting collaboration between the department at that point and the Medicaid Division and the legislative staff. And really, it was that working together between those two that did hearings, multiple hearings across the state, and it was really a tremendous effort and collaboration between the two to get us. And we made great changes in the Medicaid program. Hopefully we served people better in a more cost-effective manner. And that certainly was the goal at that point. Any other questions for Mr. Goddard? Thank you so much. [LB518]

JAMES GODDARD: Thank you. [LB518]

SENATOR CAMPBELL: Okay. Our next opponent to LB518? Anyone here in a neutral position? Good afternoon. [LB518]

BRUCE RIEKER: Good afternoon. My name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association, here testifying in a neutral capacity and would like to say to Senator Riepe, we appreciate the intent of the bill. We also appreciate him putting it on hold so that we can work on this. I know he's already at the party but we welcome everybody to the party. And we also like to be a part of working with everyone on those solutions and look forward to becoming a partner with Senator Riepe and his ideas and the many other great ideas that have been put forward before the committee not only this year but it in recent years. Mr. Lynch, welcome to Nebraska. I have...I know you offered them your business

card. They probably wouldn't take mine anymore. (Laughter) But I'm here a lot but we look forward to working with you, too, and I appreciated your comments on this particular issue. A lot of the things that Mr. Lynch commented about, patient centered medical homes, pay for performance, these are things that we would like to work with Senator Riepe and the rest of the committee and other stakeholders on. There are a lot of great things going on out there. Healthcare, there's...I don't think anybody is going to argue that the system is working well. The system is broken and we need to fix these things. There are...you know, as we move towards pay for performance, that's one of the areas of concern that we think that we'd like to work on a lot more in this proposal, moving away from fee for service to pay for performance. You know, that's where I get to step up on my soapbox and talk about the Medicaid Management Information System, data analytics, Behavioral Health Needs Assessment, all of those sorts of things to help us, the providers, be able to make those informed decisions and be creative in the way we deliver care...also looking to the state and other payers to create incentives for those well-performing providers out there. There should be incentives for, you know, rising above the rest in the way they're able to provide care to the folks that we're talking about here. As I talk about this rapid transformation and the patient centered medical homes, Accountable Care Organizations, one of our concerns...and, yes, there's definitely a cost issue to the health savings accounts. And we as hospitals have had a very interesting experience as we try to...as public policy and private payers and others move towards personal responsibility. As we've seen more prevalence of high-deductible policies, coverage, and then health savings accounts, we have to be careful about those because if they're underfunded...I represent a group that is the backstop by default. And I understand the purpose of EMTALA, the Emergency Medical Treatment and Active Labor Act, for the public good of all that...we as hospitals will provide care to everyone that comes through the emergency room door without asking about their ability to pay. However, if we do not create...if we try and create personal responsibility but yet there's still the ability to do the end run, there is still a hidden tax that, you know, if we go through the money that is in the HSAs and maybe their coverage, those are areas where we need to work with Senator Riepe and others in figuring out how we can have a successful model of pay for performance. I think a lot of that will involve nurse navigators, health coaches, and the like. And there are some states that have had a very good experience there. You know, just to give you an idea of what's happening with hospitals, from 2008 to 2012--and most of this comes from high-deductible plans and HSAs involved in this--collectively, the 89 hospitals we represent went from $175 million in bad debt to $239 million in bad debt. And anecdotally, for 2015 we're budgeting somewhere in the neighborhood of $0.5 billion in bad debt. There's only so long hospitals can absorb that. And so we need to figure out how to work through that as well. So we're glad this is out there. We look forward to working with all the players. And that concludes my comments. [LB518]

SENATOR CAMPBELL: And we're on red. Questions? Senator Kolterman. [LB518]

SENATOR KOLTERMAN: Thank you, Senator Campbell. I'm...just a question. That's a concern. You just commented on HSA challenges. That's a concern for the whole Affordable Care Act, really, as I see it, because we're seeing minimum out of pockets of $5,000 per calendar year up to $12,000 per family. Those are unsustainable. And so as we look at Senator Riepe's program here, we need to be looking at that from the whole Affordable Care Act perspective. [LB518]

BRUCE RIEKER: And we would agree with that, Senator. [LB518]

SENATOR KOLTERMAN: Yeah. [LB518]

BRUCE RIEKER: The...where the magic point is or where that critical point is, we've already hit it. [LB518]

SENATOR KOLTERMAN: Yeah. [LB518]

BRUCE RIEKER: We would contend that a portion of that is the Affordable Care Act. We would also contend that a portion of it is the economy, that there are various economic drivers that are playing a role in this as well and so it's a combination thereof. But the high deductibles, copays, we at the Hospital Association have changed our plan to keep the premiums down. But I personally am experiencing paying those high deductibles and copays right now. And the number is large, so. [LB518]

SENATOR KOLTERMAN: Exactly. Thank you. [LB518]

SENATOR CAMPBELL: Any other questions for Mr. Rieker? Thank you very much for your testimony. [LB518]

BRUCE RIEKER: You're welcome. Thank you. [LB518]

SENATOR CAMPBELL: Anyone else in the hearing room who wants to testify in a neutral position? Okay. Brennen, you want to give us the items for the record? [LB518]

BRENNEN MILLER: (Exhibits 8 and 9) Yes, two opposition letters, one from the Arc of Nebraska and one from Voices for Children in Nebraska. Thank you. [LB518]

SENATOR CAMPBELL: Okay. Thank you, Brennen. Senator Riepe, would you like to close? [LB518]

SENATOR RIEPE: I would like to, briefly. First of all, I would like to...my thanks to all who are here in attendance and for those who have testified. I truly believe the best ideas come from many views and opinions. I also am eager to work with Mr. Lynch and have him fully engaged. I want him to love his job in Nebraska because I believe that continuity in positions is one key to true success. I also thank each of you and I am, again, asking to hold LB518 and I welcome any questions that you may have as a follow-up. [LB518]

SENATOR CAMPBELL: Any questions, colleagues? Okay, seeing none, thank you, Senator Riepe. [LB518]

SENATOR RIEPE: Thank you very much. [LB518]

SENATOR CAMPBELL: And I know I saw Senator Scheer here. We will close the public hearing on that bill and move to LB631, Senator Scheer's bill to change Medicaid provisions relating to acceptance of and assent to federal law. Good afternoon. Welcome. [LB518]

SENATOR SCHEER: Good afternoon, Chairperson Campbell and Health and Human Services. I don't get here that often. It's not on my regular track of committees, so it's a pleasure to be here this afternoon. My name is Jim Scheer, S-c-h-e-e-r. I am representing Legislative District 19 in the Nebraska Legislature. I'm here to introduce LB631 which there has been some confusion about. My intent of the bill was to provide Medicaid expansion for the underserved area, the 38,000 to 54,000, whatever that magic number might be, in Nebraska with the Medicaid program or policies or services that are available currently to the other constituents that are being provided by Medicaid. There seem to be...and I guess I can take the fall for that although I think other people as well assumed that's what the bill said, but it didn't. And so we have an amendment that can do that. And we can get to that point. So you'll look at a fiscal note that says $0 which was astounding to me when my intent was to see what the cost would be for that and I thought if Liz can do that for $0, we need to make her the budget director because we're going to end up with a lot of tax relief if we can continue to do...let her get...let her go over to Judiciary and finish up with the prison reforms. But the intent of the bill is, I think from my perspective as we discuss Medicaid expansion, this is similar to Senator Campbell's bill two years ago. But as we move forward, I guess I'm one of those that always like to have the want and the need available. And by that I mean, we may want--and that is what Senator Campbell's bill is right now--what we would like to see happen in Nebraska with Medicaid expansion. My bill would be the other side of that fence which would be what we need in order to fulfill the obligations under the ACA. So it's a fairly simplistic approach. It should have been a fairly simple bill. But that is

the intent is just so that we have both those parameters in front of us as a Legislature in order to gauge what we would like to do forward knowing all the information that is available to us. And that really is the sum and substance of the bill. [LB631]

SENATOR CAMPBELL: Okay. Questions, Senators? Senator Crawford. [LB631]

SENATOR CRAWFORD: Thank you, Chairwoman Campbell. And thank you, Senator Scheer. So am I hearing correctly, the intent of your bill is Medicaid expansion as simple as possible. Is that true? [LB631]

SENATOR SCHEER: Absolutely. That is correct. [LB631]

SENATOR CRAWFORD: Okay. Thank you. [LB631]

SENATOR CAMPBELL: For the senators who have been here before, this, as Senator Scheer and I just visited briefly this morning, is really LB577 which was straight, we take the Medicaid expansion dollars from the federal government and we bring in the people in the gap... [LB631]

SENATOR SCHEER: That's pretty much it. [LB631]

SENATOR CAMPBELL: ...in terms of...and providing the health benefits as required by the ACA. [LB631]

SENATOR SCHEER: Very simple, again, just trying to provide, you know, the want and the need. And there may be very financial difference. There may be a lot of financial difference. We don't know for sure yet. At some point in time, I believe we will have an accurate fiscal note that would give us that parameters. But essentially that is it. And I will apologize. I will not be here to close. We are in Revenue trying to exec all afternoon to get done with those. [LB631]

SENATOR CAMPBELL: Okay. Okay. [LB631]

SENATOR SCHEER: And so, not that I'm not interested in the testimony... [LB631]

SENATOR CAMPBELL: No, I appreciate that. [LB631]

SENATOR SCHEER: My LA will be here to take notes on it--but in the interest of fairness to the rest of the other committee, I need to get back there, so with that I thank you very much. [LB631]

SENATOR CAMPBELL: And, Senator Scheer, I have to tell you that, you know, I appreciate your support for Medicaid expansion and looking at it from LB577. So thank you. [LB631]

SENATOR SCHEER: Thank you. [LB631]

SENATOR CAMPBELL: All right. Our next proponent? Those in favor of LB631? Good afternoon again. [LB631]

JAMES GODDARD: Good afternoon. My name is James Goddard, J-a-m-e-s G-o-d-d-a-r-d, and I'm the director of the Health Care Access Program at Nebraska Appleseed, here today to testify in support of LB631. I will be very brief. We just spoke a minute ago about the importance of closing the coverage gap. We would recommend some language changes to the bill to make it a bit more clear on what it does specifically and who it affects. But seeing that and hearing that the intent is to close the coverage gap, we wholeheartedly support that. It's another vision for how we can close the coverage gap in Nebraska. And so I see that as the...it's not a question of whether to do this, it's a question of how. So we applaud Senator Scheer's effort to find common ground on this issue and agree it's vital to close the coverage gap for thousands of Nebraskans. And with that, I would conclude. [LB631]

SENATOR CAMPBELL: Mr. Goddard, one of the questions--and I meant to ask this of Senator Scheer and he left and I'm sorry I didn't--as you read the bill, is this by...the Legislature saying that we will have a state plan amendment rather...I mean, obviously I think that was LB577, saying we would use the state plan amendment approach whereas last year and this year both deal with an 1115 waiver. So as you read the bill, is that what you think is implied here? [LB631]

JAMES GODDARD: I think it is implied. As I said, I think there are some...there is language that could make it more clear. But the way it's written would be an adoption by reference of federal law, something that we actually did just about every year to make sure our Medicaid provisions were in line with federal provisions. So this would adopt federal law by reference and as I would see it potentially including the new eligibility group. And that would be through a state...a simple state plan amendment and not a waiver. Again, I think there are some...there could be some more detail that could be added to the bill to make it abundantly clear about what it does, who it covers, and how and still keeping it simple and clean as Senator Scheer was indicating his desire was. [LB631]

SENATOR CAMPBELL: Any other questions? We'll go back and look at LB577, see the...because the language there was fairly clear and direct, I think, if I remember right. [LB631]

JAMES GODDARD: Yes. [LB631]

SENATOR CAMPBELL: But my memory dips. [LB518]

JAMES GODDARD: Well, this bill is very brief. [LB518]

SENATOR CAMPBELL: Excellent. Any questions for Mr. Goddard? Thank you very much. [LB631]

JAMES GODDARD: Thank you. [LB631]

SENATOR CAMPBELL: Our next proponent for LB631? Anyone, anyone? Okay. Those who are opposed to LB631? Good afternoon. [LB631]

CALDER LYNCH: (Exhibit 10) I'm so lucky, I get to come be here twice today. [LB631]

SENATOR CAMPBELL: Absolutely. [LB631]

CALDER LYNCH: Would you like me to begin or wait for the... [LB631]

SENATOR CAMPBELL: Oh, you can go right ahead. [LB631]

CALDER LYNCH: Okay, thank you. [LB631]

SENATOR CAMPBELL: You do have to restate your name and spell it because it's a different hearing. [LB631]

CALDER LYNCH: Absolutely. Good afternoon, Senator Campbell and members of the Health and Human Services Committee. My name is Calder Lynch, C-a-l-d-e-r L-y-n-c-h, director of the Division of Medicaid and Long-Term Care for the Department of Health and Human Services. I am here to testify in opposition to LB631. The language of this bill would adopt by reference provisions of the Patient Protection and Affordable Care Act as currently exists in state statute for applicable provisions of the Social Security Act. When the department first reviewed

LB631, it was viewed as technical legislation with no fiscal impact. However, after further review, there was concern that LB631 could be interpreted as a mandate to comply with what are now optional provisions of this federal law, specifically the expansion of Medicaid eligibility to a new category of childless adults and an expansion of income eligibility for other adults. Because there is some ambiguity related to the new language referencing the Affordable Care Act, its addition in statute could lead to potential future litigation against the state. As a note of reference, the Nebraska Medicaid program currently provides coverage for low-income individuals in specific categories. In fiscal year 2014, Nebraska Medicaid covered, on a monthly average, approximately 235,000 individuals at a total cost of more than $1.8 billion. Clearly, the decision to greatly expand these eligibility criteria requires transparent and thoughtful discussion amongst the branches of government, our stakeholders, and constituents and should not be accomplished through a piece of technical legislation. I will not repeat all of the prior testimony that has been heard by this committee on this subject. I will note that the Medicaid program is the single largest and one of the fastest growing programs in state government. There are clearly costs associated with expanding Medicaid in Nebraska. And while LB631 does not include the level of requirements that have been proposed in other Medicaid expansion attempts, much of that analysis remains relevant. Based on our better understanding of the potential impact of this legislation, the department will be submitting a revised fiscal note. Regardless, as a result of expanding Medicaid, nearly one in five Nebraskans would be enrolled in the program. And even with initial federal support under the ACA, federal funds will decline by 10 percentage points by the end of the next four years, shifting a huge burden onto the state budget. The uncertainty of federal funding of the Medicaid program is clear. Our state is currently dealing with a $75 million General Fund impact in the Medicaid program due to the federal government's change in our state's federal match rate, or FMAP. In another example, there is significant uncertainty as to whether Congress will maintain the enhanced FMAP for CHIP services that is scheduled to begin this fall. Should Congress repeal this provision, Medicaid would require an infusion of an additional $17.4 million General Funds in FY '16 and $23.7 million General Funds in FY '17. This provides a stark example of the financial risk that states accept with the fleeting promise of federal money. There is also a practical impact to access to care for our current recipients. Many providers either limit the number of Medicaid clients they will see or refuse to see any Medicaid patients at all. Expanding enrollment in Medicaid will exacerbate this problem and escalate the pressure to increase provider rates which would further increase the cost to the state budget. I will note that just a few months ago, a federal district judge in Florida ruled that the Florida Medicaid program had failed to meet its statutory obligation to provide access to care due to its low reimbursement rates. That case is currently on appeal before the U.S. Supreme Court, whose decision could ultimately have a significant impact on state budgets. For all these reasons stated, the department opposes LB631 and I'd be happy to answer any questions from the committee. [LB631]

SENATOR CAMPBELL: Thank you, Mr. Lynch. Questions? Senator Howard. [LB631]

SENATOR HOWARD: Thank you, Senator Campbell. Thank you for your testimony today. [LB631]

CALDER LYNCH: Thank you. [LB631]

SENATOR HOWARD: I'm curious about the uncertainty in federal funding of the Medicaid program. From my knowledge of Nebraska history, since we've bought into Medicaid, they've never reneged on their match. Is that correct? [LB631]

CALDER LYNCH: My understanding is that the match rates change annually based on changes in the formula which is driven by per capita personal income. And so as per capita personal income shifts in the state, that will influence the FMAP change. I'm not aware of the full history of the enhanced match rates. I will tell you that the larger promise of the enhanced CHIP FMAP that was scheduled to begin this October is questionable at this point based on recent conversations in Washington among Congress. I'll also note from a personal experience when I was in Louisiana, there was a provision that provided for an enhanced FMAP for disaster-related recovery that was repealed by Congress during some of the budget negotiations that removed about $1 billion in federal financing from our program in the fiscal year in which they repealed that provision. So there are several examples I could point to where match rates have been altered by congressional action. [LB631]

SENATOR HOWARD: I guess more what I'm questioning is not that the FMAP fluctuates because it fluctuates in its nature, but the matching rate for the newly eligibles is set in statute and, therefore, would not fluctuate in that way. [LB631]

CALDER LYNCH: And I...and so was...the disaster FMAP that Louisiana was benefiting from was also set in statute but repealed by Congress during budget negotiations. And the FMAP that's scheduled to begin, the 23 percentage point enhancement for CHIP services this fall, is also in statute but there is significant uncertainty as to whether it will be repealed. So my point would be that the...while the 90 percent enhanced rate is in statute, there is concern that some future congressional action could repeal that provision and return the expansion population to the traditional FMAP rate which would require significant infusion of state General Fund. [LB631]

SENATOR HOWARD: And your suggestion would be... [LB631]

CALDER LYNCH: I'm sorry? [LB631]

SENATOR HOWARD: Your suggestion would be for us to walk away from Medicaid? [LB631]

CALDER LYNCH: My statement is that there is significant budget risk associated with that that the committee should be aware of. [LB631]

SENATOR HOWARD: Thank you. [LB631]

SENATOR CAMPBELL: Senator Crawford and then we'll do Senator Riepe. [LB631]

SENATOR CRAWFORD: Thank you, Chairwoman Campbell. And thank you, Calder, Mr. Lynch, for being here. [LB631]

CALDER LYNCH: Thank you. [LB631]

SENATOR CRAWFORD: I have just a concern. I think you, in answering Senator Howard's question, you know, about the FMAP, you stated it correctly, I believe, in what you said there which was, the FMAP changes with the change in income in the state. So reading the testimony, it's in a paragraph about the uncertainty of federal funding. And that seems to imply that the reduction in FMAP in Nebraska is because of some change in a decision at the federal level that they decided not to give us as much money. But I don't think that is true. What has happened is Nebraska is getting less money because we are doing better. So is that correct? [LB631]

CALDER LYNCH: You're correct, and I should have bifurcated that comment related to the enhanced FMAP under the Affordable Care Act versus the traditional FMAP which is a rolling...based on a rolling average of per capita income. [LB631]

SENATOR CRAWFORD: Well, we've seen that line in some other testimony. So we'll give you a new guy pass on it today. But I think it's just important to make sure the testimony is clear and the record is clear because we do set a record here... [LB631]

CALDER LYNCH: Yes. [LB631]

SENATOR CRAWFORD: ...about what's happening and people read these transcripts to understand what's happening in the state. So it's important that we're not indicating that the federal government has changed the FMAP. Our FMAP has changed because we're doing better economically. Thank you. [LB631]

CALDER LYNCH: That is duly noted. Thank you. [LB631]

SENATOR CRAWFORD: Thank you. [LB631]

SENATOR CAMPBELL: Okay. Senator Riepe. [LB631]

SENATOR RIEPE: Thank you, Senator Campbell. I wanted to pick up on Senator Crawford's that it is the improving economy in Nebraska. But I think the aggregate number, and correct me if I'm wrong, is still a decrease of $27 million. And you can say, I don't know, because you've been here...I know the ten-day rule, so. (Laughter) [LB631]

CALDER LYNCH: One more day. Related to the decrease scheduled to begin this October, I believe that is correct. I would have to go back and double-check. [LB631]

SENATOR RIEPE: That's okay. It's not an insignificant number. [LB631]

CALDER LYNCH: No, it is not. [LB631]

SENATOR RIEPE: The only positive thing--excuse me... [LB631]

SENATOR CAMPBELL: Oh, no, that's all right. [LB631]

SENATOR RIEPE: ...is it can't get much worse because you can't go below the 50 percent, right? [LB631]

CALDER LYNCH: That is correct. That is the floor established in statute. [LB631]

SENATOR RIEPE: But one point in there is a lot of money. [LB631]

CALDER LYNCH: Um-hum, yes, sir. [LB631]

SENATOR RIEPE: Thank you. [LB631]

SENATOR CAMPBELL: Any other questions, Senators? Mr. Lynch, when they passed, CHIP, they also had set a deadline in which they'd relook at it and that's this October, is it not? [LB631]

CALDER LYNCH: That's correct. So the... [LB631]

SENATOR CAMPBELL: So... [LB631]

CALDER LYNCH: Go ahead. [LB631]

SENATOR CAMPBELL: ...in 1965, when they established Medicaid, they didn't have an end date that they'd look at it, did they? [LB631]

CALDER LYNCH: They did not. [LB631]

SENATOR CAMPBELL: Okay. I just wanted to make sure the record that we have anticipated and known that this review was going to happen in Congress. I agree with you. Congress is going to review it, absolutely. [LB631]

CALDER LYNCH: There are three...and just for the committee's awareness, there are three potential scenarios that could occur with CHIP in this fall. The CHIP is up for reauthorization beyond the end of this current federal fiscal year. There exists in statute today a 23 percentage point enhancement on CHIP services beginning the next federal fiscal year. Should Congress choose not to reauthorize CHIP at all, we would revert back to the...actual...the regular FMAP rate, the 51 percent, for the CHIP services that we would be required to maintain under the federal maintenance of effort requirements in the Affordable Care Act through 2019. If they reauthorize it without addressing the enhanced match, which is how our current budget is built, we will receive the enhanced federal funding. If they...what everyone believes is probably the likely scenario is that it will be reauthorized but the enhanced FMAP will be repealed. [LB631]

SENATOR CAMPBELL: Okay. Any other questions? Thank you, Mr. Lynch. [LB631]

CALDER LYNCH: Thank you very much. I look forward to working with the committee. [LB631]

SENATOR CAMPBELL: Okay. Our next opponent? Anyone else? Okay. Anyone in a neutral position? Seeing no one, Senator Scheer has waived closing and so that ends... [LB631]

JOSELYN LUEDTKE: Letters for the record. [LB631]

SENATOR CAMPBELL: ...letters for the record, thank you. [LB631]

BRENNEN MILLER: (Exhibit 11) Thank you. I have a proponent letter from the Nebraska Medical Association. That's all. Thank you. [LB631]

SENATOR CAMPBELL: All right. I will move to the chair. Senator Howard, you're up. [LB631]

SENATOR HOWARD: This will open the hearing on LB548, Senator Campbell's bill to adopt the Surgical Assistant Practice Act. [LB548]

SENATOR CAMPBELL: Thank you, Senator Howard and colleagues. My name, for the record, is Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, representing District 25. I intend to make this the shortest opening I have ever given on a bill. (Laughter) This bill was introduced at the request of the Nebraska Hospital Association and was meant to be a placeholder until the 407 process had been completed. And I know that there are some amendments to that process. I realize that. So we will be holding this bill until the 407 is completed. And if there's...it's necessary for legislation then we will use this bill. That concludes my opening on this bill. [LB548]

SENATOR HOWARD: Are there questions for Senator Campbell? [LB548]

SENATOR COOK: A short one, I guess, may I? [LB548]

SENATOR HOWARD: Senator Cook. [LB548]

SENATOR COOK: Thank you. When do you anticipate completion of the 407 process or do we know yet? [LB548]

SENATOR CAMPBELL: I don't think we know yet. [LB548]

SENATOR COOK: Okay. [LB548]

SENATOR CAMPBELL: We have gotten a letter that they've started the process. Someone here testifying today... [LB548]

SENATOR COOK: Okay. [LB548]

SENATOR CAMPBELL: ...will probably have a better idea because they're been participating in that process. Good question, Senator Cook. [LB548]

SENATOR COOK: Oh, thank you. [LB548]

SENATOR CAMPBELL: Last day, last hearing,... [LB548]

SENATOR COOK: I tried to ask fast. [LB548]

SENATOR CAMPBELL: ...short opening. [LB548]

SENATOR HOWARD: Any other questions? Seeing none, thank you. [LB548]

SENATOR CAMPBELL: Thank you. [LB548]

SENATOR KOLTERMAN: You're off the hook early. [LB548]

SENATOR HOWARD: We'll hear from our first proponent for LB548. Good afternoon. [LB548]

LINDA SHOEMAKER: (Exhibit 12) Good afternoon. Senator Campbell and members of the Health and Human Services Committee, my name is Linda Shoemaker, L-i-n-d-a S-h-o-e-m-a-k-e-r. I am a registered nurse in the state of Nebraska and currently serve Sidney Regional Medical Center as the corporate compliance officer, the HIPAA privacy and security officer, and the risk manager. On behalf of Sidney Regional Medical Center, I'd like to explain the driving force of this application. In 2013, we received our critical access hospital survey through Health and Human Services for the state and federal survey. At that time, when records were requested from our surgical department, the credentials of certified surgical first assist occurred. And we were told to cease. We could not use these individuals because there is no credentialing in the state of Nebraska. And there is a case law on the books that a physician cannot delegate to an unlicensed individual. So, therefore, that changed the practice of our surgeon who comes in from Steamboat, Colorado. Part of our mission to our community is to provide access to our patients. The closest facility would mean driving 100 miles for care. So LB548 is intended to introduce the committee to the occupation of surgical assisting as an application for licensure completing the credentialing review process which, by the way, we've had one technical review committee meeting. And that was held on March 6. Through the Department of Health and Human Services we, Sidney Regional Medical Center, submitted an application sponsored by Nebraska Hospital Association, the Association of Surgical Assistants, and the Association of Surgical Technologists to the Department of Health and Human Services credentialing review program in late February. Among other things, the program, the credentialing review program, accepts the applications for new credentials or changes in the scope of practice and provides recommendations through a technical review committee and that is in current process. The

primary goal of the 407 process is to advise lawmakers on potential benefits and consequences of credentialing proposals and to provide recommendations for legislative action. Evaluation of proposals for new credentialing of members of an unregulated health occupation follow four criterion: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public; regulation of the health profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise; the public needs assurance from the state of initial and continuing professional ability; and the public cannot be protected by a more effective alternative. According to the American College of Surgeons, the surgical assistant participates during a surgical operation and is a trained individual who is able to participate in and actively assist the surgeon in completing the operation safely and expeditiously by helping to provide exposure, maintain hemostasis, and serve other technical functions. And you'll see the proposed scope of practice for a surgical first assistant prepared and before you. Licensure is the best means of protecting the public and ensuring the minimum qualifications of surgical assistants. We look forward to working with the Department of Health and Human Services and the 407 process. Sidney Regional Medical Center thanks Senator Campbell for introducing LB548 and setting a foundation for licensure of the surgical first assistant as we await the conclusion of the credentialing review process. Thank you for your time and your consideration. [LB548]

SENATOR HOWARD: Are there questions? Senator Crawford. [LB548]

SENATOR CRAWFORD: Thank you, Senator Howard. And thank you for being here to give us a preview of what the issues are going to be as you're looking forward. Is there a particular state or set of states that have a model that you were looking at as you were looking at this licensure? [LB548]

LINDA SHOEMAKER: When I did the review of this, initially there are five states: the District of Columbia; I believe Texas; Virginia is currently working on it, have not gotten to the final point yet; and I believe there's two other states and I'm sorry, my mind just went blank, but... [LB548]

SENATOR CRAWFORD: That's okay. That's okay. And in those states, is the set of activities in the scope similar to what you're suggesting here? [LB548]

LINDA SHOEMAKER: Yes. Yes. [LB548]

SENATOR CRAWFORD: Okay. Thank you. [LB548]

SENATOR HOWARD: Senator Riepe. [LB548]

SENATOR RIEPE: Thank you. Thank you for making the trip down. [LB548]

LINDA SHOEMAKER: You're welcome. Thank you for hearing it. [LB548]

SENATOR RIEPE: Yeah. My question is, I think in your testimony you said that the physician is a visiting professor or physician from Colorado, is that correct? [LB548]

LINDA SHOEMAKER: Yes. Yes. [LB548]

SENATOR RIEPE: Does...how long following postsurgery does he then in close proximity to the patient in Sidney? I mean... [LB548]

LINDA SHOEMAKER: When he does surgery, he stays all night and sees the patient the next day. [LB548]

SENATOR RIEPE: And then leaves town? [LB548]

LINDA SHOEMAKER: If everything is going well...otherwise there is a hand-off, an appropriate hand-off. [LB548]

SENATOR RIEPE: Okay. Where I'm going with this is, if probably it might be a concern if he...if the patients should eviscerate, if he's out of town and then with the expectation that the surgical first assistant is going to be there to, you know, help with any hemorrhaging or...any problems can and usually or can go wrong. [LB548]

LINDA SHOEMAKER: We currently have a physician assistant that works with our visiting surgeon who comes in. [LB548]

SENATOR RIEPE: But he's not a surgeon? [LB548]

LINDA SHOEMAKER: No, he's not a surgeon. However, in critical access, he would make sure that his patient is stable before leaving. Otherwise, at that point, we would be required to transfer to a higher level of care. [LB548]

SENATOR RIEPE: Okay. I don't want to be badgering... [LB548]

LINDA SHOEMAKER: No. [LB548]

SENATOR RIEPE: ...but I'm not sure I fully understand what stable means because...and, you know, having very little but some experience in the rural markets in healthcare, it's very concerning with visiting physicians who leave town and patients get in trouble pretty fast, not always, but they can. [LB548]

LINDA SHOEMAKER: There's a possibility, you're right. [LB548]

SENATOR RIEPE: And I know it's partly a survival of rural hospitals but I'm not sure it's always in the best interest of the patient. [LB548]

LINDA SHOEMAKER: Well, luckily we've not had any problems. But that doesn't mean it won't happen. [LB548]

SENATOR RIEPE: Okay. Thank you. [LB548]

SENATOR HOWARD: Other questions for the testifier? Seeing none, thank you for your testimony today. [LB548]

LINDA SHOEMAKER: Thank you. [LB548]

SENATOR HOWARD: Our next proponent for LB548. [LB548]

CASEY GLASSBURNER: (Exhibit 13) Good afternoon. Senator Campbell and members of the Health and Human Service Committee, I am Casey Glassburner, C-a-s-e-y G-l-a-s-s-b-u-r-n-e-r, and I am currently serving as president of the Nebraska State Assembly of the Association of Surgical Technologists representing surgical assistants and surgical technologists across the state of Nebraska. I would like to recognize and respect the fact that this bill was introduced as a placeholder bill and would not like to take a lot of your time at this moment. I did submit a letter of support from our organization that does go more into depth about the difference between the professions of surgical technology and surgical assisting. So it will give you more delineation of the duties of the difference between the two professions because they are very closely related but they do differ as to what specific duties each member of that profession would be allowed to perform inside the operating room. We would like to recognize that language related to the

establishment of a mandatory registry for surgical technologists is not included in the introduced version of LB548. This registry is part of the application that is currently under review in the 407 process and our organization supports inclusion of language in LB548 to establish a mandatory registry for surgical technologists that would establish minimum education requirements that currently do not exist. So while surgical assistants and surgical technologists are similar professions, their duties do differ. And like I said, there is a delineated list in that letter that is in front of you. Although they are different, they do...they are both highly complex and require formal education in order to protect surgical patients from harm. So that is why we feel it is necessary to include minimum education requirements as a condition for surgical technologists being part of that registry. So at this time, I thank you for your attention to this matter and would be willing to take any questions you may have. [LB548]

SENATOR HOWARD: Senator Riepe. [LB548]

SENATOR RIEPE: Thank you, Senator Howard. I guess my question would be is have you had this discussion with your legal liability carrier because it looks to me like it's an expanded scope of practice that could get rather serious rather quickly? [LB548]

CASEY GLASSBURNER: You're talking about surgical assistant or the surgical technologist? I'm sorry, I'm confused. [LB548]

SENATOR RIEPE: Well, the...I guess the surgical...well, in either case, I guess, it, you know... [LB548]

CASEY GLASSBURNER: So the surgical technologists in the state are currently employed by a hospital where they have a job description. We don't currently have a license. And currently in the state, there is no minimum education requirement or certification requirement. Anybody that has a high school diploma can be put in an operating room and on-the-job trained and could be standing in your operating room when you have surgery. And we feel, as an organization, that that really does potentially provide the potential for harm to occur to a surgical patient as they have that care provided to them. There are several hospitals within the state that have taken it upon themselves to only hire surgical technologists that have been educated in accredited programs and are certified which establishes their minimum education...or their minimum competence. So surgical assistants, as Linda did testify, currently in the state are not practicing because they were ordered that cease and desist order. Prior to that, they were practicing in this state. And then each hospital had different requirements as to what they required somebody to be functioning in that position. [LB548]

SENATOR RIEPE: May I ask a follow-up question? [LB548]

SENATOR HOWARD: Certainly. [LB548]

SENATOR RIEPE: Thank you. Is this training on-line or is... [LB548]

CASEY GLASSBURNER: Again, it's kind of confusing because we are talking about two different professions. So surgical technology, there are over 500 accredited surgical technology programs in the country. There are two that are located in the state of Nebraska, one at Southeast Community College and one at Nebraska Methodist in Omaha. The Southeast Community College program is offered on-line so it does provide access to potential applicants that are out in the western part of the state and, therefore, then the applicants could be educated that way. And then they could also perform their clinical requirements in their local hospital and then hopefully would get hired in that facility that they performed their clinical requirements in. There are nine accredited surgical assisting programs across the country, two of which are offered on-line. The other seven are physical. There is no surgical assisting program in the state of Nebraska. [LB548]

SENATOR RIEPE: Thank you. [LB548]

CASEY GLASSBURNER: Yes. [LB548]

SENATOR HOWARD: Other questions? Seeing none, thank you for your testimony today. [LB548]

CASEY GLASSBURNER: Yes, you're welcome. [LB548]

SENATOR HOWARD: Our next proponent for LB548? [LB548]

BRUCE RIEKER: Good afternoon, Senator Howard. [LB548]

SENATOR HOWARD: Good afternoon. [LB548]

BRUCE RIEKER: Members of the committee, my name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association, here in support of this measure. You have a resident expert on the technical review committee process with Senator Crawford having gone through it with the nurse practitioners. But congratulations on that particular effort. To answer the question about when we anticipate completing the technical review process, I would say about a year from now. We have four or five meetings. We

have...yeah, four or five meetings already scheduled with the technical review committee. Sometime around July or August we will have a public hearing. At that time, we will have prepared a revised application. I do have an application laying right here that we've completed and it's all available on-line. We could get that for you. At that point, we'll probably have another meeting or two with the technical review committee and then it will...it's...they will make their recommendations to the Board of Health and then the Board of Health will review it, make their recommendations, then ultimately it goes to Dr. Acierno for his input. And all of those recommendations will be made to the Legislature and we will bring those forward next year with that particular...with this particular proposal. As we approached this, this has been a steep learning curve, I think, for a lot of us in the process as well as the scope of practice and how we divided this up. Our approach was to look at three areas. Those are the scope of practice, the education and experience level required, and then supervision. The scope of practice, as the application stands, is for the surgical assistant. The surgical assistant would perform under personal supervision and we will provide all of these things in great detail. But personal supervision means that the surgical assistant cannot do any...provide any direct patient care without the direct...I mean, not direct, but personal supervision of the physician. The physician has to be there observing everything that the surgical assistant is doing. If we were to go to direct supervision, which we are not recommending, then the physician could be...leave the room but that is the consensus as to where we are with supervision. Senator Riepe, along the lines of once a visiting practitioner leaves Sidney or something like that, the surgical first assistant cannot provide any direct patient care. That would have to be...the care would have to be handed off to another physician and the direct supervision accordingly so. The surgical assistant cannot do any practice unilaterally. It all has to be with the supervision of a physician. Education experience, I think that some of that has been laid out already. And then the scope of practice, you know, there are fine lines that we are looking at. There's a scope of practice which means we're talking about providing some level of direct patient care or...the surgical technician...or technologist, I don't want to oversimplify this, but they would have a job description rather than a scope of practice. The surgical technologist ensures a sterile environment, things like that, in the OR. But as far as direct patient care, in order for you to be able to do that, you have to be licensed and that's what we're seeking with the surgical first assistant. It was mentioned that the registry wasn't part of this placeholder legislation. We will definitely be seeking that modification or amendment in the actual legislation we'll pursue. We're pursuing licensure of the surgical assistants and a registry for the surgical technologists so that we and all others have a good idea as to who exists in the state in those categories and to what level they're educated. And we have explored some of the liability issues. I'm sure we have a lot more to tackle. However, you know, the insurance companies have already weighed in with us talking about how this may or...may positively or negatively impact our liability issues. And so those are things that we'll also be tackling throughout the review. So with that, I just wanted to share a little bit of the information and conclude my remarks. [LB548]

SENATOR HOWARD: Senator Riepe. [LB548]

SENATOR RIEPE: Thank you, Senator Howard. I know that we both have had longstanding concerns about itinerant surgeons. And you said something that the surgeon couldn't pass it off to a technician, is that right? [LB548]

BRUCE RIEKER: The... [LB548]

SENATOR RIEPE: A case? [LB548]

BRUCE RIEKER: Right. [LB548]

SENATOR RIEPE: He has to pass it off to another physician. [LB548]

BRUCE RIEKER: Right. [LB548]

SENATOR RIEPE: Is that...and school me here a little bit. Is that...can that be to...a surgeon passes off to a general physician or a clinical nurse practitioner? I would think not, but... [LB548]

BRUCE RIEKER: I do not know this... [LB548]

SENATOR RIEPE: Otherwise he's an itinerant surgeon if he leaves town too fast, right? Or is that wrong? [LB548]

BRUCE RIEKER: Right. This is an excellent reason why we had this hearing, to bring some things forward, because I don't know the answer to that one. And that's one of the areas that we'll have... [LB548]

SENATOR RIEPE: Well, that makes me feel good, because I didn't either. [LB548]

BRUCE RIEKER: Yeah. I don't know. You know, I am under the impression that the care would have to be transferred to the physician, the family physician or someone that...and maybe there is a hospital list or...I don't know. I'm going to have to find that out. So, you know, and that's part of why we wanted to have this hearing is because each step of the way there are questions that are asked that we did not anticipate and these are things we want to get answered by the time we're, you know, we're ready for prime time next year. [LB548]

SENATOR RIEPE: Thank you. And thank you for your honesty. [LB548]

BRUCE RIEKER: You're welcome. [LB548]

SENATOR HOWARD: Other questions for Mr. Rieker? Seeing none, thank you for your testimony today. [LB548]

BRUCE RIEKER: You're welcome. Thank you. [LB548]

SENATOR HOWARD: Our next proponent for LB548. Seeing none, is there anyone wishing to testify in opposition to LB548? [LB548]

KAREN RUSTERMIER: Good afternoon. [LB548]

SENATOR HOWARD: Good afternoon. [LB548]

KAREN RUSTERMIER: (Exhibit 14) My name is Karen Rustermier. That's K-a-r-e-n R-u-s-t-e-r-m-i-e-r. I represent AORN which is Association of periOperative Registered Nurses. And I speak in opposition of LB548. If there were a category between opposition and neutral, that would be me. But there's not. I have 45 years of OR nursing experience. I've worked with a lot of people. I've scrubbed, I've circulated, I've first assisted. I've been an instructor. There's many different levels of first assisting and that is one thing that I think is lacking in this bill is any delineation of, "at what level?" We currently have seven different people that do the...that perform the first assistant role in this state that are not surgeons. But I'm going to give you an analogy. There's arithmetic, algebra, geometry, trigonometry, calculus. Some people are first assisting at the arithmetic level. Some are at the algebra level. What this requests is at the trigonometry and calculus level. So I think we need to be pretty clear. You know, there...it does state that this is not precluding anyone else from first assisting. And a lot of this stuff, a lot of the questions that you all have had, are regulated by hospitals, their medical boards, their credentialing committees. So it isn't that nobody knows who is doing what. That is not the case. There are some things in the bill that I just...I kind of got heartburn over. I've given you a copy of the bill on the left. On the right is the 407 paper. My card there...for contact is there also. The things that I'm most concerned with are level of education...that I want the committee to remember. I want them to look at the areas that...in throughout the duties that require physical assessment. There are some...positioning is one thing. There are some listed in there having to do with applying a tourniquet. I personally don't think that any of these practitioners should be applying a tourniquet. That is an MD duty just because of the inherent danger. There is a possibility of permanent nerve damage and we, as an association, do not feel that anybody but

the physician should be taking that responsibility. There's also some things...it talks about their collaboration with anesthesia for temperature monitoring. Those are medical decisions and that should be going on between the surgeon and anesthesia, not any of us that assist. It's unclear what their relationship with the circulating nurse is. The circulating nurse is there to make sure that this patient gets through this process safely. We are planning their care. We want to be having a collaborative relationship. And I don't think that the bill clearly enough delineates that. There was one other thing in the bill that...in the paperwork, let me say, that said that there would be a provisional license until the board could meet. That's inconsistent with anybody else that's licensed in this state. You're either licensed or you're not. So I don't see that...if we license these people that they should have a provisional license. I think that is not the best. On the very last paper on the side with...on the left side, I believe...it's the right side, sorry. It delineates what you have to do. These are minimum requirements. And I'm only comparing it to what RN first assistants do. The RN first assistant has to have a bachelor's degree. You've got to have 2,000 hours of first assisting that's proctored after you've completed a program which is 35 credit hours. The CSFA does a program that is approximately 28 hours and they must log only 200 cases. The renewal requirements, they're every two years, we're every five years. We require 200 hours if they've done 1,000 active minutes of the first assisting--so you might only get four hours in an eight-hour day--and 300 if you've only logged 500 hours. Theirs is only 50 hours which would equate to 125 hours for a five year. So it's much less stringent requirements. So, you know, I just...I guess what I want the committee to do is to really look at the educational preparation in their decisions. I'm not saying these people are not qualified. I'm not saying they, you know, shouldn't be working. I'm not saying they shouldn't be licensed. But I'm looking for the committee to put your foot down and ask for some more quality. Are there any questions? [LB548]

SENATOR HOWARD: Are there any questions for the testifier? Seeing none, thank you for your testimony today and thank you for the handouts. They were... [LB548]

KAREN RUSTERMIER: Thank you. I could answer your question about that...if the doctor goes away. [LB548]

SENATOR RIEPE: Okay. [LB548]

KAREN RUSTERMIER: That's called ghost surgery. [LB548]

SENATOR RIEPE: Yes. [LB548]

KAREN RUSTERMIER: And I think pretty much it's really on everybody's plate. I just came from our national meeting. We had a program on it and I think that states are going to have to put

something into statute that's going to regulate that because right now, I think, pretty much across the board it's left to medical...their credentialing boards at their hospitals how that is handled, what those policies are. And if it's not in state statute, then let the buyer beware. And the patients don't know. [LB548]

SENATOR RIEPE: Thank you. [LB548]

KAREN RUSTERMIER: Thank you. [LB548]

SENATOR HOWARD: Thank you. All right. Our next opponent testifier for LB548? Is there anyone wishing to testify in a neutral capacity? [LB548]

DON WESELY: (Exhibit 15) Senator Howard, members of the Health and Human Services Committee, for the record, I'm Don Wesely, D-o-n W-e-s-e-l-y, lobbyist on behalf of the Nebraska Nurses Association. You'll have a letter that basically takes a neutral position and this is one of those issues where a 407 is...this is what 407 is made for. I went to the first meeting of the technical committee and it was...I'm telling you, this is complicated and there's a lot of interest and lots of concern. You just heard from the operating nurses that they've got their concerns. And we're going to have to balance all that out and figure out what to do. But obviously this is going to go through 407 and we'll see what happens and we'll be back next year. I think most of you...I don't know if it was mentioned earlier, but Senator Dubas for a couple of years had a bill on surg techs. And, you know, at that time we were trying to figure out what to do. And now that...kind of a little issue has become a huge issue. So we really are going to have to do something. So thank you very much and glad...you're probably pretty glad you're almost done with your hearings, so. [LB548]

SENATOR HOWARD: Are there any questions for Mr. Wesely? Seeing none, thank you for your testimony today. [LB548]

DON WESELY: Thanks. Thank you. [LB548]

SENATOR HOWARD: Is there anyone else wishing to testify in a neutral capacity? [LB548]

SENATOR KOLTERMAN: You can close. (Laughter) [LB548]

SENATOR HOWARD: Seeing none, Senator Campbell waives closing. Brennen, are there items for the record? [LB548]

BRENNEN MILLER: (Exhibit 16) Yes, a neutral letter from the Department of Health and Human Services. That's all I have. Thank you. [LB548]

SENATOR HOWARD: And this will close the hearing on LB548. [LB548]