[LB360 LB439]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, March 16, 2017, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB439 and LB360. Senators present: Merv Riepe, Chairperson; Steve Erdman, Vice Chairperson; Sue Crawford; Sara Howard; Mark Kolterman; Lou Ann Linehan; and Matt Williams. Senators absent: None.

SENATOR RIEPE: It's...we're going to break up the conversations and get started here. This is the Health and Human Services Committee. And before we really get started, Senator Kolterman asked me to tell everyone that it is his birthday (laughter) and any large or small gifts can be left out by the front door, but less than $50.

SENATOR KOLTERMAN: I was just telling you that it's my brother's birthday today.

SENATOR RIEPE: Okay. He has a twin brother, so (laughter). Anyway, this is the Health and Human Services Committee so if this is not the meeting you were planning on going to, please find the room that you do want. I'm Merv Riepe, I serve as the Chairman of the Health and Human Services Committee. I represent Legislative District 12 which is Omaha, Millard, Ralston. And today, we're going to wait...well, let's wait just a minute before I have people announced because Senator Linehan may...Senator Crawford is out for a committee introduction in Revenue, so I'm going to go through some of the ground rules, if you will. We will take up bills in the order that they're on the agenda today and this is your part or opportunity to be part of the legislative process here in the state of Nebraska. You will see some of our senators on this committee, there are a total of seven of us and some staff, and you will see us at times come and go because we either have hearings or we're opening on bills in other committees. You'll also see people working on their computers and that's not paying attention to your particular bill, but rather some are very techie and some of us are still more paperish, if you will. The committee members...or as you come in to register you'll see some white sheets over here. If you would...the written materials, if you want to sign in but you do not wish to testify, those comments will be made as part of today's records at the conclusion of the hearing. If you are going to testify, we would ask you to bring along the orange sheet and we would ask you then to give that to the clerk or to one of the pages and they will do that. Any copies, we need ten copies of those and they will make copies if you don't have the ten copies. The...some of the rules of engagement that we ask for your cooperation with is to please silent or turn off your cell phones. If you're going to be testifying, please move to the front seats the best you can so that we can move the process along. The process for the testimony will first of all start with the introducer of the bill and that introducer, the senator, will have the opportunity to spend the time they wish to introduce their legislation. Following that we will go to proponents, then we go to opponents,

then we go to neutral, and then we'll ask Tyler to read in any correspondence that we have received regarding the bill both favorable and in opposition. We will then ask the introducing senator if they so choose, to come back up and to respond to any comments that have been made or to face some additional questions, if you will, from the committee. We ask people coming forward to please state your name and spell out your name and that's for purposes of the record. We'll ask you to be concise and please, if there are large numbers...this doesn't look like an overwhelming crowd today, so we're probably in good shape, but we try to ask people to try to coordinate or listen to what's going on in front of them so that we can be concise. We run a five-minute clock. We run four minutes on the green, these are for the people coming up and testifying, and then we run one minute on the amber and then we go to a red light. We don't ask you to necessarily, abruptly, to quit on the red light, not like a stop sign, but we'll ask you to try to draw your conclusions together. If it goes beyond that, I may ask you to please try to pull that together. If you have some extended conversations, hopefully, some of the questions you might get from a committee member, you can kind of move that a little bit to the way that you want to respond as well to get in some final remarks, if you will. With that, I am going to ask committee members to introduce themselves and we're going to start with the birthday Senator over here, Senator.

SENATOR KOLTERMAN: Senator Mark Kolterman from the 24th District, Seward, York and Polk County.

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

SENATOR ERDMAN: Steve Erdman, District 47, ten counties in the Nebraska Panhandle.

KRISTEN STIFFLER: Kristen Stiffler, legal counsel.

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

TYLER MAHOOD: Tyler Mahood, committee clerk.

SENATOR RIEPE: And as I mentioned, Senator Crawford will be coming and I think Senator Linehan, I think will be coming as well. So, in addition to these members, another part of our important team are two of the pages that we have had. We've had them all session and we have grown to appreciate them very, very much. Our first one that I would like to introduce is Brianne Hellstrom and she's from Simi Valley, California, and Mr. Jordan Snader who is from Oakland, Nebraska, and they are both students at the University of Nebraska here in Lincoln, so. We work

them hard and we appreciate them much. With that, we will start today's hearing with LB439. Senator Wishart, you're welcome to introduce yourself and please spell your name and then tell us your story. [LB439]

SENATOR WISHART: Okay, great. Well, good afternoon, Chairman Riepe, members of the Health and Human Services Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th District in Lincoln and I'm here today to introduce LB439. And before I get into the details of the bill, when I was knocking...I spent two years knocking doors while I was campaigning to serve in the Legislature, and the face of poverty in District 27 is, by far, senior citizens. And when people ask me what were you most surprised about when you were knocking doors, what I was most surprised about is how many senior citizens are living in complete isolation in my district. You know, I would be the first person that they would have seen in a week and so that was very concerning to me, so when I entered into the Legislature I knew I wanted to do something to support senior citizens in the district. And I had been made aware of a coalition that has been working pretty diligently on the bill that I bring before you today. So representatives of assisted-living facility consumers, assisted-living facility providers, and assisted-living employees began meeting about two years ago to try and determine how we can improve the delivery of assisted-living services in Nebraska. After meeting for a period of time, it was determined that progress towards that goal was complicated by the current provisions of the Assisted-Living Facility Act. A basic flaw in the act is that it effectively bans nurses who are employed by an assisted-living facility from providing simple healthcare services that fall within their scope of practice to facility residents. Current state law prevents nurses employed by the facility from performing simple nursing tasks to meet the healthcare needs of residents in the assisted-living facilities. The fundamental change that LB439 offers is to allow, but not require, an assisted-living facility to employ a nurse who would be able to provide healthcare services to residents. Under current law, nurses may assess residents of an assisted-living facility and they are required to oversee the management of medications for assisted-living facility residents, but that is the limit of their ability to practice in an assisted-living facility if they are employed by that facility. This means that residents of these facilities who need additional medical care are required to hire an outside nurse to come in specifically for their care. The nursing ban was designed to establish a bright line between assisted-living facilities and nursing facilities. It was an attempt to create a black and white distinction between the two facility types. However, the needs of older Nebraskans who need residential care often fall into a gray area. We need a statutory framework that allows assisted-living facilities to effectively meet the needs of their residents. Nebraska needs an efficient and effective long-term care system. The demands on that system will grow by an unprecedented degree beginning in less than ten years. In 2026, the oldest baby boomer will reach the age of 80. While the need for long-term care can occur at any age, it's prevalence begins to spike around the age of 85. While we have made progress towards building an efficient and effective long-term care system in Nebraska, we aren't there yet. To get there we need to be cognizant of those who need long-term care services but do

not require 24-hour nursing. While the group of stakeholders work to find language that could address this gray area in our statute, it was not possible to come to an agreement with the Department of Health and Human Services prior to this hearing. At this time I would ask the committee to hold this bill over into the interim and give the stakeholders and the department the opportunity to work to find language that will address this problem. I believe it's a critical issue in the development of our state's long-term care system, and so again, I would ask that the committee would hold this bill over. We will work diligently on it over the summer and bring you...and hopefully bring you legislation that everybody is on board with. And so with that, I would be happy to answer any questions. [LB439]

SENATOR RIEPE: Okay, thank you. I see Senator Howard's hand. Senator Howard. [LB439]

SENATOR HOWARD: Thank you, Senator. No, I'm curious about this issue with the department though...have they not been a part of these stakeholder meetings? [LB439]

SENATOR WISHART: So it was my understanding when I agreed to take on this legislation that, this two years this group had been working, the department was included in these meetings. For two years, for us, they've been working together to come up with legislation that everybody seemed to be on board with. And so I'm somewhat surprised that the department has some issues with it, but I'm absolutely willing to work with them and come to a solution and bring you something next year. [LB439]

SENATOR HOWARD: Okay. And then just for clarification, so in an assisted-living setting a nurse can do assessments and med management and that's it? [LB439]

SENATOR WISHART: That is what I am aware of and there will be more experts within the field who can talk more specifics about that. [LB439]

SENATOR HOWARD: And then in what type of setting can they do more? [LB439]

SENATOR WISHART: So in like nursing home facilities. [LB439]

SENATOR HOWARD: All right. Thank you. [LB439]

SENATOR RIEPE: Have you had an opportunity to...a recently-released long-term care plan out of DHHS? I've seen two copies--one is short, one is long--but... [LB439]

SENATOR WISHART: Yes, I have not had an opportunity yet. That is on my shelf to read. Weekend reading. [LB439]

SENATOR RIEPE: Okay. Have you also or will you be looking at adult daycare? [LB439]

SENATOR WISHART: That is something, Senator, again, you know, if we want to really take the time over the interim and look at, you know, an even broader issue, that would be great. This one was an issue that a coalition came to me and said, hey, we've been working really hard on this. We think we've come to a compromise and want to move forward on it. And it appears that we need a little bit more time to get there. [LB439]

SENATOR RIEPE: I understand that there is a redesign briefing tomorrow at 1:30. Are you aware of that? [LB439]

SENATOR WISHART: No. That would be great. Okay. Great. At 1:30? [LB439]

SENATOR RIEPE: And I don't know where it's at. In this room? So if you just want to wait around (laughter). [LB439]

SENATOR WISHART: Well, I'll have to talk with Chairman Stinner because we do have Appropriations. [LB439]

SENATOR RIEPE: Oh, okay. Are there other questions? Will you be staying? [LB439]

SENATOR WISHART: Yes. [LB439]

SENATOR RIEPE: Okay. Thank you. [LB439]

SENATOR WISHART: Thank you. [LB439]

SENATOR RIEPE: Thank you very much. Additional proponents that we would like to hear from. [LB439]

MARK INTERMILL: Good afternoon, Senator Riepe, and members of the Health and Human Services Committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP in support of LB439. As Senator Wishart indicated, this is the product of a consortium of groups who have an interest in assisted-living services. And I just want to thank

the members of that consortium for the time that they've spent in trying to come to agreement; and I think we will be able to come to an agreement. We just have a little bit more work to do that we just weren't able to get done before this hearing. The basic, as Senator Wishart indicated, the basic change that's being proposed here is to allow a nurse to practice within the scope of her license if she is employed by an assisted living with the assisted-living facility. And that is the issue that I think we still need to work on is to describe...to define what those circumstances, any circumspection that needs to be provided around that role. We are using the term part-time and intermittent care and we need to do a better job of defining what that is. So, I think there are a couple of issues that we need to continue to work on and we would appreciate any advice that the committee would have and any assistance that we can provide...that you can provide and help us get to that point. Assisted living, I think is a critical piece in the long-term care system and I have reviewed the long-term care redesign plan and I haven't seen any reference to assisted living in that plan. That's one of the things I will be talking...as a member of the Redesign Advisory Committee will be raising with the department. We...I started my career as a long-term care...a nursing home ombudsman in the day. And the type of person that I received complaints from were people who really didn't need to be in a nursing home. I would receive complaints about people who didn't have an adequate place to park their car because they went downtown for lunch every day. And we've changed a lot since then. Nursing homes don't have those types of individuals living in them. Some...many of them have moved to assisted living. They still have nursing healthcare needs that need to be provided and the question is whether we allow that to be provided by the staff of the facility or not. We think it makes sense to allow the staff to do that in terms of continuity of care, in terms of making sure that there is a consistent means of providing this. The bill that we brought forward does not require an assisted-living facility to provide nursing services because there's some facilities in rural areas of the state which may have a difficult time finding a nurse to serve in that capacity. On the other hand, I think some rural facilities would find it advantageous to have a nurse on staff. We have seen some closure of nursing homes in rural areas over the past few years and an assisted-living facility that did have a nurse on staff might step in to fill that void in that community. We are facing a significant increase in the demand for long-term care services and I think Senator Wishart alluded to that. The oldest baby boomer will reach the age of 80 in 2026, and at that point, we will start to see an increase on the demand for long-term care services in the state. We have some challenges in private financing of long-term care. We have one insurance company that has gone into receivership, Penn Treaty. We have some others that I think have similar types of actuarial, so we're going to need to think this through clearly about how we provide long-term care services, and the residential component is a critical part of that. And I think assisted living will play an increasingly large role in how we deliver those services. With that, I will stop and try to respond to any questions that the committee might have. [LB439]

SENATOR RIEPE: Okay, we may have some. Before we go further with this, Senator Linehan. [LB439]

SENATOR LINEHAN: Good afternoon. [LB439]

SENATOR RIEPE: Thank you very much. Are there any questions? Senator Williams. [LB439]

SENATOR WILLIAMS: Thank you, Chairman Riepe, and thank you, Mark, for being here. Who was all involved with the group that you called the consortium? [LB439]

MARK INTERMILL: Yeah, the group that...there was a subgroup of the consortium that worked on this issue and several representatives are here today, but Nebraska Health Care Association, Nebraska Assisted-Living Association, LeadingAge Nebraska, Nebraska Nurses Association, AARP, those are probably the primary groups that were represented. I just want to say that when I talk to my counterparts in other states and tell them that I'm working closely with the Health Care Association and LeadingAge, they look at me with bewilderment. I think what we have in Nebraska is a really good working relationship between consumer groups and provider groups, and I just want the committee to know that we do have that good working relationship. [LB439]

SENATOR WILLIAMS: That happens because of people like you and Senators like Senator Wishart that help put that together. Thank you. [LB439]

SENATOR RIEPE: Senator Kolterman. [LB439]

SENATOR KOLTERMAN: Thank you, Senator Riepe. Mark, thank you for coming today. I would ask that as you start down the road of attempting to reconstruct the bill the way you want it to, is that you keep it as flexible as possible simply because it is a changing market and it's becoming very difficult in the insurance world to find carriers that will even provide private insurance any longer. And so we have to make it as affordable as possible and I've seen that the type of coverage that you 're looking at, assisted living, is a lot more affordable at the present time than long-term care facilities, nursing home. [LB439]

MARK INTERMILL: Thank you, Senator, and happy birthday, by the way (laughter). And I think that the flexibility of allowing assisted living...allowing, but not requiring an assisted living to provide nursing staff, nursing from staff individuals was an attempt to try to provide that flexibility, recognizing that there's some facilities that it may be appropriate and others that will have more difficulty. And it will have an impact on cost, I think it's probable. [LB439]

SENATOR KOLTERMAN: The other question I would ask is, is there anything now in statute that prevents them from hiring a nurse? [LB439]

MARK INTERMILL: As we read the statute, and I think as assisted-living facilities read the statute, there is. There is a requirement to do the medication management and an allowance to do the assessment, but beyond that...and this goes back to the assisted-living statutes were formed in 1997 and there was an interest in creating that bright line between assisted living and nursing facility and the way that it was done was through the requirement that you...assisted living doesn't provide nursing services by the staff of the facility. Now, an assisted-living resident can bring in a home health agency to provide skilled nursing, but again, the question is, is that in the best interest of the rest of it in terms of, you've got the assisted living that may be managing the medications, but the...another organization providing the services. I think we'll continue to see skilled nurse...home health agencies provide that service, but in some cases it might make more sense if the facility did it. [LB439]

SENATOR KOLTERMAN: To have them on staff. Thank you. [LB439]

SENATOR RIEPE: Are there other questions? Senator Williams. [LB439]

SENATOR WILLIAMS: Thank you, Chairman Riepe. I just want to clear something up so I don't have a misunderstanding. As I understood it from Senator Wishart's introduction, an assisted-living facility could hire a nurse. It's just the scope of practice that they could conduct themselves in...they couldn't...they would be limited in some way from what their normal scope of practice for a nurse would be. [LB439]

MARK INTERMILL: That's exactly the case. And there is, in terms of the management of medications, there is the role that an assisted living does have to have somebody to do that medication management and also many of them choose to have somebody to help with assessment. There are issues in terms of determining if the person is appropriate for the assisted-living facility, if their level of care needs are beyond what the assisted living and their nurses who are there to do that type of an assessment. But in terms of, you know, addressing change, for example, that wouldn't be allowed. [LB439]

SENATOR WILLIAMS: Thank you. [LB439]

SENATOR RIEPE: I have a question and this may come back up when the good Senator closes again, but my question is this, is trying to determine the scope of these things because on the one hand there's the personnel that might be involved, on the other are the facilities. And this thing could be done on a continuum of (a) keep them in their own home as long as they can possibly do that safely, all the way to assisted living that are independent facilities and some that are assisted living that are adjacent to nursing homes. And then, of course, there's always the chapter or the section that talks about financial feasibility, which oftentimes is the real tough one to get

over in terms of how do you get there out of a lot of people that are concerned. Have you folks kind of thought about the...making the skeleton as to what your study is going to look at? Because you could probably be a couple of years doing this if you weren't careful. [LB439]

MARK INTERMILL: We have been already (laughter). No, I think...and there is...in long-term care there is a what's called a continuum of care and that people advance through different stages of. It seldom works that way for individuals. It's usually big steps instead of gradual changes. But there are a variety of assisted-living facilities which is why we wanted to build in the flexibility of some could and some couldn't, but it is...it's a challenging issue and I think, I think we're very close to being able to come to an agreement but, as I said, we're just not quite there yet. [LB439]

SENATOR RIEPE: Okay. I know we talk all the time about the Silver Tsunami that's coming on to Nebraska, so. [LB439]

MARK INTERMILL: The oldest baby boomer turned 71 today, or this year. So, they're starting to learn about minimum distributions of IRAs, but we're still a few years away from long-term care probably. [LB439]

SENATOR RIEPE: Okay, thank you very much. Seeing no other questions, we appreciate your testimony... [LB439]

MARK INTERMILL: Thank you. [LB439]

SENATOR RIEPE: ...and we'll move on to the next proponent, if you will. [LB439]

ROSALEE YEAWORTH: Good afternoon, Senator Riepe, and the committee. My name is Rosalee Yeaworth, R-o-s-a-l-e-e Y-e-a-w-o-r-t-h. I am a registered nurse and have been for 65 years and actually I've been working on this for 17 years. [LB439]

SENATOR RIEPE: That was 17, not 70, wasn't it (laughter)? [LB439]

ROSALEE YEAWORTH: Seventeen, yeah. I'm testifying in favor of LB439. After many years of managing my husband's early onset Alzheimer's at home, I decided to place him in a special care unit for memory care in a new facility only five minutes from home. That was in 2000. I had been led to believe that an RN would be in charge of the unit, so I was shocked to learn that it was an LPN in charge and that medication aides, with no knowledge of the action of drugs--potential interaction, gave my husband his medicines. He couldn't even remember if he had taken

them, let alone direct their administration, which was the claim of why medication aides with training only in giving the right medication, to the right person, at the right time, by the right route, were permitted to give medications. I decided to see what Nebraska law said about staffing in an assisted-living facility, and I learned that not only did the law not require any registered nurses, even in memory care units with very vulnerable people, but it essentially prevented a registered nurse who was hired by the facility from practicing. It stated that the facility would not provide any complex nursing intervention, which is merely any intervention that requires nursing judgment to modify a procedure. Any professional who can't use their judgment can't practice. I'm not sure why such a stipulation was put into the law, but it wasn't because people who can get along quite well in assisted living never need an RN's judgment. Shortly after my husband was admitted, the whole memory care unit came down with a severe pink eye infection, so severe, I had to take my husband to an eye specialist. During my husband's stay he had a pneumonia, two urinary tract infections, all requiring hospitalization, all recognized by this nurse, not by the AL staff. I am personally aware of two individuals who died unnecessarily because they didn't have the benefit of RN judgment. As soon as I learned about the assisted-living law restricting the practice of RNs hired in assisted-living facility, I started trying to change it, and to require RNs to be in charge of memory care units with their vulnerable people with dementia. It was probably 2002 when Senator Deborah Suttle first introduced a bill for us, then Senator Marian Price. Senator Gwen Howard did sponsor a bill that was...part of it was enacted that required assisted-living facilities to disclose information to applicants for admission, including information about the staffing, so that they would not be as surprised as I was. Usually the Nebraska Health Care Association would oppose allowing nurses to practice in assisted-living facilities. But when Heath Boddy assumed a leadership position in the Nebraska Health Care Association, he set up a diverse group of people representing different interest groups of people trying to solve the difference. Mark Intermill, with much persistence and patience, worked with the different interest groups on the bill to be submitted to remove the restrictions on nursing practice in assisted living. The bill does not require any assisted-living facilities to provide an RN, it just permits those that are staffed with an RN to let that RN practice in her scope as needed, and it allows residents of these facilities that have an RN, to have a limited number of nursing hours of care each month. One certainly does not need to have to be moved to a nursing home to get a few hours of intermittent care. Right now it's very difficult to find an empty room in a nursing home in Omaha with all the rehab they're handling. I can personally attest to that. It's late in the season and priority bills have been selected, but I implore you to move this bill to get it as quickly as possible into law. Don't leave RNs working in assisted living unable to give needed services to people in that assisted-living facilities. Nebraska is behind many states in this. Thank you. [LB439]

SENATOR RIEPE: Thank you. You weren't pandering to our Senator Sara Howard when you mentioned her mother, Gwen Howard's name (laughter)...trying to get a favorable vote there or something? [LB439]

ROSALEE YEAWORTH: No, Gwen was a big ally. [LB439]

SENATOR RIEPE: We know that very much. Thank you very much. We'll see if we have some questions from the committee, and Senator Howard does. [LB439]

SENATOR HOWARD: Well, it's more just a comment. Rosalee, it's really nice to see you and it's really nice to know that Senator Wishart is joining such an esteemed group of women who have worked on this issue. My hope is that she will be the last one, so. [LB439]

ROSALEE YEAWORTH: I appreciate her and her work. [LB439]

SENATOR HOWARD: Thank you. [LB439]

SENATOR RIEPE: Are there additional questions? [LB439]

ROSALEE YEAWORTH: Thank you. [LB439]

SENATOR RIEPE: Thank you. More proponents? Welcome. If you would just state your name and spell it, please. [LB439]

JULIE SEBASTIAN: (Exhibit 2) Sure. My name is Julie Sebastian, it's J-u-l-i-e, Sebastian, S-e-b-a-s-t-i-a-n, and I am the president and CEO of New Cassel Retirement Center, the largest single-site assisted living in the state of Nebraska with 179 apartment homes. We're in midtown Omaha. I am also the chair of LeadingAge Nebraska, which represents the nonprofit providers of housing and services across the state of Nebraska. And I would like to thank you for the time you have spent on this bill, and especially Senator Wishart, for addressing this important issue. I am echoing the sentiments of our other testifiers that we want to hold the bill over to take additional time, but I want to be clear that currently assisted-living statutes and regulations and the expectations of our consumers do not match. This bill was something that was driven by consumers and we, as providers, want to ensure that we are listening to their needs. The consumers we serve want person-centered, comprehensive care, which allows them to age in place. And an assisted living is considered a community-based home, not an institution, so people naturally want to stay in this setting for as long as they can. Rosalee has gone through the crux of the problem that nurses are unable to perform the complex nursing functions within AL even though it's in the scope of their practice of their license. So consumers see a nurse in the assisted living and expect that the nurse can help them when they need, but when we try to explain to them that a complex set of statutes by the state Legislature and regulations by DHHS limit a nurse's ability to perform nursing functions, it doesn't make sense for them. Another point

that I just want to make sure that I explain is that some of what we are proposing in this bill can be accomplished if the resident contracts with third party providers, namely home health or hospice, which are able to perform complex nursing within our buildings, but the care thus provided is fractured and doesn't always make the best sense for consumers. Again, it's hard to explain to a consumer that the home health company can come into the building and provide the service, but the nurse right down the hall who they know and trust with the same qualifications cannot provide it. The AL nurse is already on site and knows the consumer. Also, the home health companies have reimbursement regulations to follow that sometimes causes a gap in care so they're finished providing care but the assisted-living nurse cannot monitor to make sure that that person can independently continue to care for that themselves until they're better. So this also becomes financially burdensome and that's a situation we're trying to remedy. So I have two examples of residents. One might be a resident with diabetes, who comes down with a virus or an infection, which causes complications with their blood sugars and they might have to move temporarily to a skilled nursing facility for a few days just because they need sliding-scale insulin to make it through the illness. Home health care does not have reimbursement methods to allow them to provide this short-term care and so the resident's recovery suffers from the move, and makes no sense because the AL nurse could have directed the sliding-scale insulin provision under their scope of licensure but they can't because they're under the assisted-living scope of licensure. Another example is a resident who may have dementia who may receive complex wound care from home health or go to a wound center for wound care. But as it heals, the resident no longer qualifies for home health for the wound more than once or twice a week, but because of her dementia, she keeps removing the sterile bandages. Instead of the assisted-living nurse being able to replace the wound care bandages, the assisted living has to call home health and the home health has to privately bill to fix the dressings. While we wait for the wound nurse to come, the wound is exposed to nonsterile conditions and the resident risks infection. So thank you for taking the time to listen today. I believe that the framework of this bill has merit. It has been worked on by a great group of people and it can allow Nebraska to be a leader rather than a follower. We believe it listens to the consumer and is possible for providers if the statute allows it. So thank you for your time and I welcome any questions. [LB439]

SENATOR RIEPE: Thank you. Senator Williams. [LB439]

SENATOR WILLIAMS: Thank you, Chairman Riepe, and thank you for being here. Help me with the definition, and in Rosalee's testimony she talked about an RN. Are we only talking about registered nurses or are there other qualifications that could come under this? [LB439]

JULIE SEBASTIAN: I think in the committee we primarily focused on the idea of the RN and LPN can...there's a Nurse Practice Act that allows LPNs to function under the direction of an RN. So it really falls to the RN in the end, and that's, I think, why we concentrated on that. [LB439]

SENATOR WILLIAMS: Thank you. [LB439]

SENATOR RIEPE: Are there other questions? Thank you very much. I was intrigued that you referred to your centers on 90th street as central Omaha (laughter). [LB439]

JULIE SEBASTIAN: It feels like it these days. [LB439]

SENATOR RIEPE: I remember the days when 90th was west Omaha (laughter). Thank you so much for coming. [LB439]

JULIE SEBASTIAN: Thank you. [LB439]

SENATOR RIEPE: More proponents, please. [LB439]

TERESA ANDERSON: (Exhibit 3) Good afternoon. My name is Teresa Anderson, T-e-r-e-s-a, Anderson, A-n-d-e-r-s-o-n, and I testify in support of LB439. I'm a registered nurse. I have been a nurse for 35 years and I'm the immediate past president of the Nebraska Nurses Association for the last four years, but I am here as a consumer's advocate. My elderly mother managed her care independently until November of 2015 when she suffered a severe infection, fell, and broke the bone in her left upper arm. Following hospitalization, it was clear she would need a different level of care and we found her an assisted-living apartment near my home. Our first challenge was related to wound care. For a short time, she required medicated bandages and elastic stockings to promote healing. I soon discovered that the medication aides in her facility could apply the stockings each morning, but they could not touch the medicated dressings, a complex nursing intervention. The facility RN, scheduled 9:00 a.m. to 5:00 p.m., Monday through Friday, could not do the care. The current assisted-living facility statute restricts the registered nurse scope of practice. RNs can't perform complex nursing interventions within that facility. Our next setback was a bladder infection. She couldn't fully empty her bladder, so her doctor ordered a catheter twice a day until we knew she could urinate normally. Again, a five-minute procedure, classified as complex nursing intervention and beyond the scope of the medication and certified nursing assistants at the facility. I was able to arrange my schedule to provide the care she needed, but isn't it sad that the RN in her facility couldn't help out with yet another five-minute procedure that every other nurse working in Nebraska settings can provide? In June of 2016, while I was out of town, my mom had a breathing problem. The medication aide reported that my mom couldn't breathe, her oxygen wouldn't help. The aide couldn't assess her status and do anything. An ambulance was called. The presence of a registered nurse who can make judgments and provide complex interventions could have saved a $15,000 hospital charge. She was in overnight. My mom is now in a hospice program and I have been taught the needed assessments and medication adjustments to manage her heart failure and breathing problems. Every morning,

I make a face-to-face five-minute nursing assessment to check swelling, weight, oxygen level, vital signs, and lung sounds. She has been healthy and infection free for over nine months. But what about residents within the same or similar conditions who don't have a family caregiver who is a registered nurse? Wouldn't they benefit from these types of nursing assessments and interventions that take an RN only minutes and add quality of life. We pay $5,000 a month for assisted living which advertises an RN on site eight hours per day. With changes to the scope of practice for RNs in assisted living, a few minutes for other residents could save pain, suffering, and unnecessary costs. Please support LB439, and pass this bill out of committee so that the RN is more than marketing on the admission brochure. I know it is not a priority bill for you, but to families like mine, it is a priority. Thank you. [LB439]

SENATOR RIEPE: Thank you. We'll see if we have some questions. Any questions? Seeing none, I have a question. It says in your remarks, it says an RN on site eight hours per day was their advertisement. Are you saying there's an RN there but she couldn't do anything? [LB439]

TERESA ANDERSON: Correct. She's there Monday through Friday from nine to five. Her primary role is to assess the admission status of people coming into the building to see if they meet the admission criteria to qualify for assisted living. [LB439]

SENATOR RIEPE: So she's more of a greeter nurse than she is maybe anything. [LB439]

TERESA ANDERSON: Well, she's a marketing nurse. And again she supervises the medication aide and, you know, really...that's really the extent of what I've seen as a registered nurse family member in 15 months. [LB439]

SENATOR RIEPE: Is it statutes that limit this or is it liability? Do you have any...a guess? [LB439]

TERESA ANDERSON: Well, we know the statute limits them. I found it out firsthand. I could...the medication aide could put on any kind of a dressing, but as soon as we had to put antimicrobial gel, I mean the same kind of stuff you buy at CVS, as soon as that became part of the therapy, it was now not within the realm of a medication aide. That's how simple these things are that could so easily benefit from an RN. [LB439]

SENATOR RIEPE: Let's blame the administrators (laughter). I was an administrator... [LB439]

TERESA ANDERSON: I'm a true believer. It is past time for blaming anyone. It is time for action. You know, it doesn't do us any good to look retroactively and blame somebody for why

we are where we are today. It's better to move forward and let's fix this. $5,000 a month. My mom is lucky. She sold her ranch and she can afford that for another 13 years if I can keep her alive that long. Not every Nebraskan has those resources. Thank you. Any other questions? [LB439]

SENATOR RIEPE: Questions? We will probably be asking the Senator when she comes up for closing as to why now, why in this session? It sounds like it's a problem that's been there for some time. [LB439]

TERESA ANDERSON: Why wait any longer? [LB439]

SENATOR RIEPE: Maybe no one picked up on it. Okay. Thank you so much for testifying. [LB439]

TERESA ANDERSON: Thank you. [LB439]

SENATOR RIEPE: Do we have more proponents? [LB439]

CAROL ERNST: (Exhibit 4) Good afternoon, Senator Riepe and committee. Thank you for the opportunity to come forward today. My name is Carol Ernst, C-a-r-o-l, Ernst, E-r-n-s-t. I'm the executive director at Eastmont Towers, a continuing care, retirement community here in Lincoln. So we have entire continuum. We have 75 assisted living beds, 42...excuse me, 46 nursing beds, and I have about 150 independent apartments, and we own and operate a hospice facility here in Lincoln. I'm here also representing the Nebraska Assisted Living Association. I am chairman of the board of directors for that, and that is under the umbrella of the Nebraska Health Care Association, of which I also co-chair that board of directors. Our 430 members of Nebraska Health Care Association include 230 assisted-living providers. And the entire association employs more than 28,000 individuals who care for more than 20,000 of the most vulnerable Nebraskans every day. They're elderly, they're ill, they're frail, they're disabled, and many of them are at the end of their lives. Nebraska Health Care Association would like to thank Senator Wishart for introducing this important legislation. I guess the question about, why now? It has taken quite some time for us to get this all together. We've known for some time that consumers' expectations and needs have been changing, but we felt very strongly that we needed to bring stakeholders together so that we could get a better support for where this needs to go in the future. Assisted living is really growing and not just here in Lincoln and not just here regionally and not just here in the state, but nationally it's growing by leaps and bounds and so these are things that as it changes quickly and evolves, we need to be on top of. In the late 1990s, colleagues from diverse backgrounds worked to establish the original statutes for assisted living. So really assisted living in the state of Nebraska is not that old. At that point providers, as Mr.

Intermill said, wanted to define a bright line between nursing facilities and assisted-living facilities. And they felt strongly that they could do that through the social model and that would best serve the needs of the residents of Nebraska. So in 2000, the original assisted-living statutes were initiated. The founders of the initial statutes worked diligently to clearly differentiate those services between assisted-living and nursing facilities. The social model provided for a very home-like environment rich with activities and events for stimulation, serving stable and predictable residents, and allowing just a very, very comfortable environment. Assisted-living communities provided an attractive choice for individuals who needed increased structure, socialization, oftentimes nutritional stability, and oversight, but they didn't need the skilled nursing services provided in a nursing home. I applaud those efforts of our initial originators of the statutes and for a long time, it worked pretty well. The resident population, however, of the early assisted-living communities looked very different, looked very different from the population that we see today. And I've been an assisted-living provider administrator for almost 12 years now, and I can tell you in those 12 years the average resident coming into our assisted-living facility is much more frail, requires a lot more assistance, is older, and often has multiple diagnoses. So things have changed just as the people in the hospitals are staying there for shorter periods, in our nursing homes the population looks far more frail, far more complex than it did 12 to 15 years ago. The same now can be said for assisted living where people again are more frail. Maintaining quality of life and having choice are motivators for those seeking senior living options. Because assisted living has provided such a comfortable choice, more and more residents want to stay in our communities as long as possible, aging in place. LB439 seeks to allow clarity for provision of the nursing care and you've heard a little bit more about that from the previous providers. Some of our residents even receive hospice services in their assisted-living apartment. We're able to do that in a stable and predictable manner. With the changing needs and expectations of our consumers, allowing increased nursing services by our own staff just makes sense and would help ensure quality of care. I just need to make a comment about this collaborative that has been formed. I'm like Rosalee, I'm not sure I want to mention how long I've been in healthcare. It's been a long time. This truly is an amazing group and for the diversity to have come together the way that it has, has really been remarkable and I am so appreciative for that. And I don't know if it's just Nebraska or if it's the number...the types of people that we have in this group, but we're very close as we've said. And I think we thought we were there. The department was a part of this steering committee, Senator Howard, you asked that. But we're, I think, way too close to give up on where we've come at this point in time. So, we appreciate Senator Wishart's interest. We respectfully ask that you please hold LB439 in committee as we continue the work being done by our collaborative stakeholder group with the goal of consensus, and thank you. With that I would entertain questions. [LB439]

SENATOR RIEPE: Thank you. We may have some questions I see coming, but first I want to introduce Senator Sue Crawford who represents Bellevue. [LB439]

SENATOR CRAWFORD: Thank you. [LB439]

SENATOR RIEPE: Okay. Senator Howard, you have a question. [LB439]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you for visiting with us today. And you may not know the answer to this question, but what is the department's concern? [LB439]

CAROL ERNST: I think there are some concerns again about part-time and intermittent care and the definition of that as well as further defining the complex medical nursing care services. I think that's where it's sort of hung up. [LB439]

SENATOR HOWARD: And we don't have any other definitions of those things in statute, elsewhere? [LB439]

CAROL ERNST: We do (laughter). We do. And we also spent a fair amount of time looking at other states and some of how they define some of those services and Rosalee mentioned that we're...she mentioned that we're behind. We're very restrictive in assisted living here in the state of Nebraska. So that's why we're looking at many of the other states for some of their definitions. [LB439]

SENATOR HOWARD: Okay. Is there anything specific that the department...it's just a broad issue with the definition that's already in statute that you're trying to utilize here? [LB439]

CAROL ERNST: I think still...my impression is still being able to have nursing home needs being met in the nursing home and not in the assisted-living facility, making sure that we don't become many nursing homes, if you will, by providing too much complex. That's probably the broad stroke, but. [LB439]

SENATOR HOWARD: Okay. And then so should Nebraska shift into a managed care setting for long-term care, how would that interact with...I mean would there...there would be that billable issue. [LB439]

CAROL ERNST: About 24 percent of those in assisted living are on Medicaid waiver, so certainly there may be some effects there and we're working with them on home and community based-service definition also, so there could be some effects with that. We're still waiting to see. [LB439]

SENATOR HOWARD: Okay. Thank you. [LB439]

SENATOR RIEPE: Thank you. Are there additional questions? Senator Linehan, let's start with you. [LB439]

SENATOR LINEHAN: Thank you, Chairman Riepe, and thank you very much for being here. So what...kind of give me because I know it's changed a lot over the years, so if somebody is in a nursing home, what would that patient look like versus what a person in assisted living looks like? [LB439]

CAROL ERNST: The person in the nursing home requires 24-hour nursing care and skilled nursing services. So, you know, they need to qualify for that, but those folks are complex nursing and they require that oversight in structure 24 hours a day. [LB439]

SENATOR LINEHAN: So that's much more expensive. [LB439]

CAROL ERNST: Much more expensive. [LB439]

SENATOR LINEHAN: Than assisted nursing. [LB439]

CAROL ERNST: Yes. [LB439]

SENATOR LINEHAN: So the longer we can...someone can stay in assisted, I mean, the less it will cost. [LB439]

CAROL ERNST: Yes. [LB439]

SENATOR LINEHAN: So do most of assisted livings...if this would pass, do you think most of assisted living would have RNs? I know it says they don't have to have them, but what's it look like now? [LB439]

CAROL ERNST: So there's a wide variety. If you've seen one assisted living, you've seen one assisted living in the state. It's very, very different even within the city of Lincoln there are huge differences in terms of our staffing levels. For me, I have all levels of care so I have nurses on campus at all times, but if you were a small, independent, rural assisted living that has a difficult time even finding a nurse consultant for oversight, they're not going to staff, most likely, with a nurse 24 hours a day, even eight hours a day. It's just not practical, so that's part of the choice,

allowing the choice. If you want to continue to operate as we have been, you can do that or you can allow a nurse to do more brief and intermittent nursing care. [LB439]

SENATOR LINEHAN: So services are paid for on a monthly basis? [LB439]

CAROL ERNST: Correct. [LB439]

SENATOR LINEHAN: On both situations, right? [LB439]

CAROL ERNST: Correct. [LB439]

SENATOR LINEHAN: So if there was extra...if this passed and there was more services available for an RN, would those services be billed any differently, do you think, or still...? [LB439]

CAROL ERNST: They could be. They could be. I think it all would be up to the facility and the...their proximity to a nurse...having nurses. For us, it's very easy to allow a nurse to come over and do some of those things and perhaps go back to another level of care and slide back and forth. [LB439]

SENATOR LINEHAN: But you don't bill out separately? [LB439]

CAROL ERNST: We could. We could, yes, but right now... [LB439]

SENATOR LINEHAN: But now you can't do it. So, do you envision if you could do it, there would be an additional bill for those services? [LB439]

CAROL ERNST: You know, we would have to see how much utilization there would be. Initially for us, we would choose not to do that initially until we saw if there was a high utilization of that, a frequent utilization of that, we don't expect that. So we probably would keep our...we, Eastmont Towers, would keep our level of charges at the same to start out with. [LB439]

SENATOR LINEHAN: Okay. Thank you very much. That's all. [LB439]

SENATOR RIEPE: Thank you, Senator Linehan. Senator Williams, did you have a question? [LB439]

SENATOR WILLIAMS: I pass. [LB439]

SENATOR RIEPE: Okay, Senator Kolterman. [LB439]

SENATOR KOLTERMAN: Thank you, Senator Riepe. Ms. Ernst, talk a little bit more about how you assess because you do an assessment when somebody comes into assisted living to find out whether they need complete assisted living, or I assume there's probably some independent living in a lot of facilities as well, so talk about...because it addresses I think what Senator Linehan was going...where she was going with her question. [LB439]

CAROL ERNST: So earlier when you talked about an RN, an RN can assess at the beginning and to make sure that it's appropriate for that person to move in that they truly need assisted-living services, that they understand what the assisted-living services would be and they can also reassess. If those needs change, are they still appropriate to stay in the community, do they need to go elsewhere to a higher level of care. [LB439]

SENATOR KOLTERMAN: So you might have somebody that comes into, like in my hometown there's several facilities, and they might come in as an independent living and then gradually move into the assisted living on the other side of the building. [LB439]

CAROL ERNST: There has to be an assessment between that independent living and the assisted living. [LB439]

SENATOR KOLTERMAN: And you bill according to their... [LB439]

CAROL ERNST: Level of care. [LB439]

SENATOR KOLTERMAN: ...level of care. And then when you get to a nursing home it's the same thing except that's an ongoing situation. [LB439]

CAROL ERNST: Correct, and, of course, typically independent living is less expensive. Sometimes if you bring a lot of home health services, that can change and then there's assisted, and oftentimes memory care are licensed as assisted also. That would be more expensive. There can be memory care in skilled facilities also, but the most expensive is nursing home care. [LB439]

SENATOR KOLTERMAN: And there can be memory care in nursing homes as well, can't it? [LB439]

CAROL ERNST: Correct. Oftentimes is, and different capabilities. [LB439]

SENATOR KOLTERMAN: Thank you. [LB439]

SENATOR RIEPE: Additional questions? [LB439]

CAROL ERNST: Thank you. Happy birthday. [LB439]

SENATOR RIEPE: Thank you very much. Thanks for being here. More proponents, please. If you would be kind enough to state your name and spell it, proceed on. [LB439]

MELISSA FLORELL: (Exhibit 5) Absolutely. My name is Melissa Florell, M-e-l-i-s-s-a F-l-o-r-e-l-l, and I'm here on behalf of the Nebraska Nurses Association in support of LB439 and we're here because, as my colleagues have testified to, this really does have the potential to meet the goals of the Institute of Medicine report, the Future of Nursing, allowing RNs to practice at the fullest extent of their education, training, and licensure is important. And we're committed to partnering with others to decrease the barriers within the agency licensure rules and regulations that now limit the practice of RNs and the more current restrictive language in the practice of RNs within assisted living. And, you know, this is the cause of distress for the RNs working in those facilities. They would like to be able to help that patient through that episode of care that is temporary that requires just, you know, that intermittent RN care to allow them to stay in what has become their home. And it would be very important to the Nebraska Nurses Association to be able to reduce that moral distress for RNs that are working in those facilities and it's also in the best interest of the patients. In conclusion, we would like to publicly commend Dr. Rosalee Yeaworth for her leadership and longstanding commitment to this, as a champion to this cause, on behalf of the RN's in Nebraska and the residents of assisted livings and their families. And as we continue to work through the details of this bill, we ask that you support the concept, that you support LB439 so that when it is passed into law, it can quickly move to be enacted and meet the needs of our aging population in the state of Nebraska. And I'd be happy to take any questions. [LB439]

SENATOR RIEPE: Okay. Are there any questions from the committee members? Seeing none, thank you for joining us again. [LB439]

MELISSA FLORELL: Absolutely. [LB439]

SENATOR RIEPE: Appreciate it. Other proponents. [LB439]

ROGER MEYER: I'm Dr. Roger Meyer from Utica, Nebraska, R-o-g-e-r M-e-y-e-r. I feel that it is really advantageous to have a nurse as in the nursing home or in the assisted living with these people. They know what they look like from day to day and oftentimes when something starts to go wrong with elderly, the more elderly you are the more frail you are, the easier it is to get sick, and the faster you go downhill when you do get sick. And the farther downhill you get when you get sick, the less farther up you can get back to normal again. So it just...there's every reason, from the patient's standpoint, to catch illnesses as quickly as possible. Many times when there's an urinary infection or something like that, it will actually affect the elderly patient's sensorium and the nurses that are with them every day can see this while some outsider wouldn't be able to. From a financial standpoint, if I'm not mistaken, it's about half the price to be in assisted living as it is to be in a nursing home. I think most nursing home type insurances today include assisted living at about half the rate of nursing home care. In other words, if you go into assisted living they'll pay about half what they will if you go into a nursing home. There's...again, the quicker you can catch this, the less discomfort there is to the patient and cost. You know, if you can keep that patient in assisted living rather than send them to the hospital, you've saved a tremendous amount of money. As physicians, the thing we try to do and particularly when you have third party payers looking all over...looking over you, is the last thing, you just want to...don't want to put people in the hospital because that's where the healthcare dollars go down the drain real fast. In our...out in the rural area, I almost feel that there's competition sometimes between assisted living and nursing homes because neither one of them are full to capacity. And this pretty much started when assisted living came about because nursing homes were full and that took a lot of...or most of them were full, a lot more up to capacity than they are now. And once the assisted-living facilities opened, of course because of the cost, the nursing homes in our area, at least, have not been full since that time. So, I guess, unless you have some questions, I guess that's about all I have. Just wanted to make those points. [LB439]

SENATOR RIEPE: For the record, you are a medical physician? You said, doctor, but... [LB439]

ROGER MEYER: Right, I am a retired medical doctor, yes. [LB439]

SENATOR RIEPE: I wanted to make sure you weren't a doctor of education. [LB439]

ROGER MEYER: No. Okay. [LB439]

SENATOR RIEPE: Are there questions from the committee? I was...I have to tell you as a recovering hospital administrator, I was intrigued by your comments about money going down

the drain in the hospital, but...(laughter). Thank you for being here. Any more proponents? [LB439]

ROGER MEYER: Do you know what it costs per day just being in the hospital now? I don't. [LB439]

SENATOR RIEPE: More than a little. [LB439]

ROGER MEYER: I'm guessing more than a month in assisted living. [LB439]

SENATOR RIEPE: Oh, yes. Thank you, sir. More proponents. Any more in speaking in support? Any opponents? None speaking in opposition? Any in the neutral capacity? Seeing none, we will then go to Tyler. Do we have any letters of support? [LB439]

TYLER MAHOOD: I do not have any letters for the record. [LB439]

SENATOR RIEPE: Okay. Excellent. Senator Wishart, would you like to close, please? [LB439]

SENATOR WISHART: Sure. Well, I'm somewhat surprised that there is no opposition on record from the Department of Health and Human Services, so I would like to retract my statement (laughter) and maybe there is something we can do this year. You know, this is one of those pieces of legislation where I feel more compelled after the hearing than I did even going into it that this is something we need to address. You know, it's a complicated issue, but that's what all of us are elected to do and that's why the citizens invest in a Department of Health and Human Services and elect us to be here. So I'm happy to circle back with the coalition and we can be back in touch if this is something we feel that would be ready to go this session. [LB439]

SENATOR RIEPE: Okay. Senator Kolterman. [LB439]

SENATOR KOLTERMAN: Thank you, Senator Riepe. Senator Wishart, I would encourage you to do that and this is something that needs to happen sooner than later. And my experience is that if we...a lot of times things don't move as fast as they should move in the bureaucracy that we have and we need to move things faster at times, so keep up the good work and bring it back. [LB439]

SENATOR WISHART: Thanks, Senator. [LB439]

SENATOR KOLTERMAN: You're welcome. [LB439]

SENATOR RIEPE: Senator Erdman. [LB439]

SENATOR ERDMAN: Thank you, Senator Riepe. Thank you, Senator Wishart, for coming. Have you reviewed the fiscal note that they sent with this? [LB439]

SENATOR WISHART: Yes, a little bit and that is something that I potentially had thought that they would speak to today. [LB439]

SENATOR ERDMAN: How many facilities are we talking about that need a different license? Do you know how many there might be? [LB439]

SENATOR WISHART: I don't know off the top of my head how many there would be, but that is something I can get to you, Senator. [LB439]

SENATOR ERDMAN: Because in the fiscal note, it says it would require additional nursing services supervisor...or surveyor, I mean. And we always have to add someone if we have something else, right? I mean, you can...it's amazing how many people we have to add. It doesn't seem to me like that would be a long-term deal where you needed to put another person on to do. [LB439]

SENATOR WISHART: Right, and again like was said earlier, you know, there already are RNs working within a lot of these facilities. This is not a mandate on assisted-living facilities. They can choose whether this is something that they'd like to incorporate into their institution. So, that is something that, again, we can talk with the department about and I'll talk with the Fiscal Office as well. [LB439]

SENATOR ERDMAN: And the point I was trying to make, I just...I don't see it to being a new full-time person to do that. Unless they have something they can explain to me different than what I see, it looks to me like that's a lot of money. [LB439]

SENATOR RIEPE: Are there other questions? Senator Howard, please. [LB439]

SENATOR HOWARD: Thank you. In regards to the surveyor, most of these assisted livings or some of them already have an RN on site. [LB439]

SENATOR WISHART: Yes. [LB439]

SENATOR HOWARD: Right. And so this would just be allowing them to perform more duties, so presumably they're already being surveyed by someone in the department right now. [LB439]

SENATOR WISHART: Yes. [LB439]

SENATOR HOWARD: Okay. Great. Thank you. [LB439]

SENATOR RIEPE: Senator Crawford. [LB439]

SENATOR CRAWFORD: Thank you, Chairman Riepe, and thank you so much for bringing this bill, Senator Wishart. Just following on Senator Howard's comment, sometimes it's helpful in going back to the Fiscal Office, going back on those conversations to have that evidence. So I'm sure your nursing colleagues and your coalition can help find out how many of those nursing homes...or excuse me, the percent of those assisted-living facilities that already have an RN on staff and clarify that they're already there and so it doesn't look like there would need to be a new person if there's already RNs there. [LB439]

SENATOR WISHART: Yeah, and we can get those percentages and then talk through whether they have a projection of how many additional assisted-living facilities would be interested in hiring an RN. [LB439]

SENATOR CRAWFORD: Great. Thank you. Good work. [LB439]

SENATOR WISHART: Yeah, thank you. [LB439]

SENATOR RIEPE: Seeing no other questions, the one that I have with this, with your request for reconsideration that it not necessarily be held over. We will be interested if you get a new fiscal note, particularly under General Funds, because anything going out to General File with a fiscal note is an endangered species in the session, so. If you could help us, we will... [LB439]

SENATOR WISHART: I know that very well being on the Appropriations Committee (laughter). Yes. Yeah, we will look at trying to get you another fiscal projection. [LB439]

SENATOR RIEPE: Okay. [LB439]

SENATOR HOWARD: Or do you think more could come from cash funds? [LB439]

SENATOR WISHART: I would...again, this...I'm more compelled than I've ever been, after hearing a lot of the testimony, that we need to do something as soon as possible especially since it appears that the department does not have issues with it as I had originally thought. So we can look at cash funds if it comes to that, but again I tend to agree with Senator Erdman, I...looking at this and having looked at a lot of fiscal notes and looked through a lot of departments being on the Appropriations Committee, this seems like something that could be accommodated in-house. [LB439]

SENATOR HOWARD: Great. Thank you. [LB439]

SENATOR RIEPE: Okay. Thank you so very much for being here. [LB439]

SENATOR WISHART: Thank you. [LB439]

SENATOR RIEPE: This concludes the public hearing by the Health and Human Services Committee on LB439. Thank you. We're going to take a bit of a break. [LB439]

BREAK

SENATOR RIEPE: Thank you. This is a continuation of the Health and Human Services Committee and we are now to...on the second part of our hearing. We're going to open with LB360 which is Senator Kolterman and we would invite you, sir, to give us your name, spell it, and then start.

SENATOR KOLTERMAN: (Exhibit 1) Good afternoon, Chairman Riepe, and fellow members of the Health and Human Services Committee. I am Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent the 24th District in the Nebraska Legislature. I'm here today to introduce LB360, a bill that adopts the Surgical Technologist Registry Act. Similar legislation to LB360 was introduced last year and many stakeholders worked hard on this bill over the interim to come to an agreement on the language of this bill and help ensure that it's passed in a timely manner this session. Many of those stakeholders are here to offer their support today. There have been two 407 reviews which involved surgical technologists. Both reviews acknowledged the registry...was it appropriate to ensure public safety? Others here today will go into the details of those reviews. In addition to a first-time registry, the surgical technologists, the bill also adopts language in state statute clarifying delegation by physicians, including surgeons. Consider surgical techs the entry level to a profession that has become a critical part of every surgical team

directed by the surgeon in the operating room. There are about 800 surgical technologists in Nebraska. Currently in our state, the surgical technologist is the only member of the surgical team that does not have minimum competency standards. This legislation allows for those who have on-the-job training to continue to work in their jobs giving them 180 days to register. And if they have not been certified or have gone through an educational program, they can register after a competency assessment by a licensed professional in their place of employment. For those of us of a certain age, we remember Hot Lips Houlihan from a series called Mash. Hot Lips was a scrub nurse in a war zone working in probably not a necessarily sterile environment. Modern surgeries are much different. Surgical technologists have taken the place of scrub nurses and are specifically trained in setting up sterile environment in these days of new and deadly infections. The surgical technologist readies equipment and surgical instruments which number, in the most basic surgeries, in the hundreds. The surgical technologist takes direction from the surgeon: handling instruments, holding retractors, and suctioning wounds. As you might expect, there are others here today that can go into much more detail, but suffice to say from my vantage point, if I were on the operating table, I want to know that everyone in that operating room had the training and expertise to conduct a surgery in a safe and sterile manner. Modernizing state statute to reflect what is actually going on in the operating room is what we are here today to do with LB360. I believe that there is a significant need for surgical technologists to be regulated by the state for the safety of our citizens. LB360 closes the circle of establishing a registry with competency in education standards under the Department of Health and Human Services. After four years of discussion, negotiations, and compromise between physicians, hospitals, and the Department of Health and Human Services, this bill has been brought to you. I think when you hear the testimony, you will also come to the conclusion that surgical technologists should be regulated. One issue remains. Who is the boss of the surgical technologist? In all states that have passed this type of legislation, this debate has always occurred. Is it the nurse or the surgeon? The surgeon you will hear from today will tell you they clearly direct the technologist. We note in the bill that a circulating nurse will also be supervising them outside of the sterile field. All states that have passed this legislation have included oversight by the Board of Medicine and Surgery or a similar board. No state gives oversight to a nursing board. Finally, DHHS had a few concerns with the surgical technology registration and some technical issues changes, but those concerns have been addressed by the AM565, which I passed out earlier. The department approves of the amendment so they are fine with the bill. Thank you for your time today and as I said, there will be several experts behind me that will go into greater detail about the details of the bill, and I'd be happy to answer any questions you might have at this time. [LB360]

SENATOR RIEPE: Thank you, Senator Kolterman. Are there questions? Senator Crawford. [LB360]

SENATOR CRAWFORD: Thank you, Senator Kolterman. Thank you for bringing this to our attention. So just to clarify, I think you said that other states that have this similar bill, have it under the...have supervision under the Board of Medicine. Is that what you said? [LB360]

SENATOR KOLTERMAN: Correct. [LB360]

SENATOR CRAWFORD: Correct. Okay. And it's the same exact position that you had in this statute? [LB360]

SENATOR KOLTERMAN: Correct. [LB360]

SENATOR CRAWFORD: Okay. Okay. So we had a letter that indicated it was against federal law, so. [LB360]

SENATOR KOLTERMAN: Well, I think that letter will be addressed, but my information that I've been told is what I just stated. [LB360]

SENATOR CRAWFORD: Great. Thank you. I appreciate that. [LB360]

SENATOR KOLTERMAN: Thank you. [LB360]

SENATOR RIEPE: Any other questions? Seeing none, thank you, sir, and we know that you'll be here for closing. Proponents, please. If you'd state your name and spell it, and then just begin. [LB360]

BRAD OLBERDING: (Exhibit 2) Yes. Good afternoon. My name is Brad Olberding, B-r-a-d O-l-b-e-r-d-i-n-g. I have been a general surgeon here in the Lincoln area for the past three years. I am here today to describe my daily interactions with surgical technologists and describe their role in the operating room as I see it. I currently operate at four locations here in Lincoln. I also perform outreach surgery in Nebraska City, Syracuse, Fairbury, as well as some other small towns in the area. As a general surgeon, I perform a breadth of cases that may take up to six minutes or up to six hours. It all depends on the case. I think this range of surgery gives me a unique insight into the surgical technologist's scope of practice here in Nebraska. I break down a typical surgery into basically three phases: the preoperative setup, the intraoperative care, and a postoperative changeover phase. Surgical technologists play a pivotal role in each of these phases, and each of these phases have a direct impact on the patient and their safety. The preoperative phase begins as the room is opened and instruments are prepared for the surgery. This requires meticulous technique and skill to maintain sterility and avoid damage to the

equipment. They are responsible for ensuring equipment is in good working order, replacement pieces are available if needed, and the equipment is organized in a way that will allow for seamless passing of the instruments during the surgery. A well-trained, experienced surgical technologist goes well beyond this however. They develop a working relationship with the surgeon and are dedicated to learning the surgery so they can anticipate what may or may not happen during that surgery. As with anything in life, preparation is key to any good outcome and this starts with a surgical technologist in the preoperative setup. A good set up minimizes interruptions during surgery which cause distractions, can lead to mistakes, lengthens operating time which not only increases overall cost to healthcare, but increases the amount of time that patient spend under anesthesia, therefore increasing the risk to patients. The intraoperative phase is probably the most variable for surgical techs and depends on many factors. At a bare minimum they are responsible for the safe handling of sharp instruments and maintaining sterility. As an integral member of the surgical team, however, they do what is necessary to safely care for the patient and complete that surgery. I would love it if every surgery I performed went exactly as planned. Actually, I'd probably hate it because it would be quite boring. But if it did, I would be able to plan on the exact personnel that I needed during a case, the exact tools I needed during a case, as well as the exact amount of time I would need for that case. Patients don't come standardized or in a one-size-fit-all suit though. Adjustments have to be made during most cases, And it's the surgical technologists, under the direction of, and supervision and direction of myself, the surgeon, that often are called to fill these voids. Depending on the surgery, a technologist may be asked to retract tissues, cut suture, suction or aspirate fluids. These are functions that are safely performed under the direction under the surgeon, but do directly impact the patient, surgical outcomes, and the safety of the patient and surgical team. The postoperative period rolls directly into the preoperative period for most cases of the day. Again, surgical techs are key in keeping the changeover of the room moving smoothly and safely. A fast changeover to the next case keeps surgeons happy, which is in everyone's best interests. In closing, the operating room team is just that, it's a team, only as strong as its weakest link. In the last decade, the operating room functionality has been molded after the avionics industry to help reduce mistakes in the OR. In the cockpit, there is a captain, there's a co-captain, engineer, 1st officer, etcetera, each with different seniority and different levels of ego. Each member of the crew, however, has the authority to make commands if safety is in question. I, myself was a flight medic in the national guard before medical school, and I witnessed this firsthand. As the low man on the totem pole back then, to the captain of the ship today, I respect this equal authority. As a member of the team, I think it's paramount that surgical technologists be required to maintain a certain set of standards and competency, the same as the nurse, anesthesiologist, and me, the surgeon. I support LB360 in establishing these measures. Thank you. [LB360]

SENATOR RIEPE: Let's see if we have any questions from the committee. Seeing none...Senator Williams, please. [LB360]

SENATOR WILLIAMS: Thank you, Colonel Potter (laughter). I do have a question, Doctor, and I've had a chance to talk to a surgery tech that has talked a little bit about the education requirements where they can do some training, but can you explain to me the relationship between the surgeon and the surgery tech and in your case, in particular where you're doing surgeries at multiple locations here in other hospitals, describe how that system works, whether you're taking somebody with you, whether they're different, and whether you're doing the training, ultimately leading to the question of who's the boss? [LB360]

BRAD OLBERDING: Yes, sir. It definitely varies depending on the type of case, the complexity of the case. My biggest cases I will bring my own first assist, or a physician assistant to assist me with the case. Regardless, there's always a surgical technologist present. They're usually staffed by the hospital and so they are unique to each individual hospital. As far as the working relationship with them, it's a very intimate relationship. We are side by side in very close confines, you know, next to the abdomen of the patient in like most cases for me. And so it is very intimate, it's down in the foxholes, as you could say, so. [LB360]

SENATOR WILLIAMS: How difficult is it from your judgment to determine or assess the qualifications of the person providing that assistance? [LB360]

BRAD OLBERDING: You know, I don't think I could make that assessment. There's different levels of ability, I think at each place that I go. Here in Lincoln, obviously the surgical techs have more experience, it seems, so it goes a little bit smoother. I guess there's less direction that I have to give than say in some of the smaller towns that don't get to operate as frequently. But those are, you know, adjustments that I make to keep the case going smoothly. [LB360]

SENATOR WILLIAMS: And would you address my final question of who's the boss? [LB360]

BRAD OLBERDING: You know, I definitely feel that it is a team, it is. But I do feel it is led by the surgeon, without a doubt. [LB360]

SENATOR WILLIAMS: Thank you. [LB360]

SENATOR RIEPE: Senator Erdman, please. [LB360]

SENATOR ERDMAN: Thank you, Senator Riepe. Thank you, Doctor, for coming. So help me understand now, right now these people don't have to have any...there's no specifications on how they do this? They can be trained by the hospital that they work for, is that correct? [LB360]

BRAD OLBERDING: That is my understanding, correct. [LB360]

SENATOR ERDMAN: And in this bill, Section 12 talks about the regulations and rules would be setting minimum standards of competency and so then they would have to have a certain amount of ability and pass some kind of a test before they became a technician? [LB360]

BRAD OLBERDING: That is my understanding. [LB360]

SENATOR ERDMAN: And that's not the case now? [LB360]

BRAD OLBERDING: That is my understanding, sir, yes. [LB360]

SENATOR ERDMAN: So I see the letter we received from the Nebraska State Board of Health and it said that the Board of Health had...the chief executive officer did not want these people to be licensed. Are they interested in putting their credentials together to make sure these people can be trained correctly? Who is going to do that? [LB360]

BRAD OLBERDING: Yeah, that's a good question. I'm sure it will be addressed by some of the other proponents. [LB360]

SENATOR ERDMAN: Okay. Thank you. [LB360]

SENATOR RIEPE: Are there other questions? I have a...did you have one, Senator Linehan? [LB360]

SENATOR LINEHAN: Yes, thank you, Mr. Chairman. So how long have you been practicing? [LB360]

BRAD OLBERDING: Three years. [LB360]

SENATOR LINEHAN: So have you ever had any problems with any techs, you thought? [LB360]

BRAD OLBERDING: You know, there is always education that goes on in the operating room. Okay. After every case we have an after-action review. We discuss what could have gone better, what could have gone worse. It is a working shift at all times it seems like. As far as have I had any negative consequences or outcomes directly related to a surgical technologist, probably not.

Cases have been delayed, you know, length in procedures because certain equipment wasn't ready or was malfunctioning, absolutely happens every single day. Do I blame that completely on the surgical technologist or their training? Not necessarily. [LB360]

SENATOR LINEHAN: You've been overall pretty happy with it? [LB360]

BRAD OLBERDING: Absolutely. [LB360]

SENATOR LINEHAN: Thank you very much. [LB360]

SENATOR RIEPE: Senator Erdman. [LB360]

SENATOR ERDMAN: Thank you, Senator Riepe. Maybe one more question, if you would. Do some surgeons have their own technologists that they take with them when they're...when they go travel to a different hospital? [LB360]

BRAD OLBERDING: They may take an assistant, a first assist, or a physician's assist, someone that will assist them with the actual procedure, but the surgical technologist that's passing the instruments is always employed by the hospital, as far as I know. [LB360]

SENATOR ERDMAN: Okay. Thank you. [LB360]

SENATOR RIEPE: Other questions? I have a couple of questions. Do you close on every surgical case or do you rely on the surgical tech to close? [LB360]

BRAD OLBERDING: Either me or if I have a physician assistant working with me, I...one of us will close. At this time, no, surgical technologists don't close. [LB360]

SENATOR RIEPE: Who covers when you...I guess I'm kind of old school where they used to talk about itinerant surgeons and how do you cover when you're...you do a surgical case in Nebraska City, Syracuse, or Fairbury? I assume you live here in Lincoln. [LB360]

BRAD OLBERDING: Correct. [LB360]

SENATOR RIEPE: What happens if the case goes south in one of those remote towns? [LB360]

BRAD OLBERDING: Yeah, if there's a postoperative complication which, thankfully, I haven't had one yet in those towns, but they are managed usually by the primary care physicians that are there locally. We have direct communication with them by phone and such, but if there is anything emergent, it would have to be managed by them, or I would be making a return trip there or they would be shipped here to Lincoln. [LB360]

SENATOR RIEPE: Other than being an MD, they don't have surgical training to speak of. [LB360]

BRAD OLBERDING: Some of them actually do. A lot of them will actually be my first assist during some cases. As far as being able to handle a take-back to the operating room, no, I don't think any of them would be comfortable with that. [LB360]

SENATOR RIEPE: And serving as a first assist isn't simply for a financial gain for them. I assume that they can bill for that. [LB360]

BRAD OLBERDING: They do. They do, yeah. [LB360]

SENATOR RIEPE: Okay. So are they of more value or less value than a surgical tech? [LB360]

BRAD OLBERDING: Well, I don't think they take the place of a surgical technologist. They might take the place of a physician's assistant or a first assist. But again, a surgical technologist will always be there. Now again, depending on the complexity of the case, if I need say somebody to hold tissues to retract as well as somebody to help suction fluids, then that requires two different people. Often there's not two surgical technologists available to help, so that's where that first assist or that primary care physician can be of benefit. [LB360]

SENATOR RIEPE: Okay. Senator Crawford. [LB360]

SENATOR CRAWFORD: Thank you, Chairman Riepe, and thank you, Doctor, for being here today. Do you have a nurse on this team generally? [LB360]

BRAD OLBERDING: Yes, there is a circulating nurse. [LB360]

SENATOR CRAWFORD: A circulating nurse. And what does that look like? [LB360]

BRAD OLBERDING: You know, today, I think most circulating nurses are very busy with documentation. They're very busy with getting the patient in and out of the room. They are busy with running, actually. They're called the circulating nurse because they truly are running to get equipment that we did not have in the room for one reason or another. But really, I would say their primary role is the documentation of the case. They do our time-out beforehand to make sure certain things are where they need to be, but that would be their primary role. [LB360]

SENATOR CRAWFORD: So are they involved in any way in training or...training or overseeing the surgical tech? [LB360]

BRAD OLBERDING: They are present and the surgical tech and the nurse work together when opening the room. So when opening sterile packages and things like that, they're present. They work together in making sure that counts are correct and that after the procedure, again all instruments are accounted for so that nothing is left behind. They are...work in a team fashion during those periods. As far as training and overseeing and kind of giving the feedback throughout the case, not really. That's when they're more focused on their documentation. [LB360]

SENATOR CRAWFORD: Excellent. Thank you. [LB360]

SENATOR RIEPE: Okay. Thank you very much for taking the time to come to talk to us. We appreciate it. Next proponent. If you'd state your name and spell it, please. [LB360]

CASEY GLASSBURNER: (Exhibit 3) Sure. Yes, Chair Riepe and members of the Health and Human Services Committee, I am Casey Glassburner, C-a-s-e-y G-l-a-s-s-b-u-r-n-e-r. I am currently serving as the president of the Nebraska State Assembly of the Association of Surgical Technologists. This organization is the local chapter of our national organization which represents the interests of surgical technologists as well as surgical first assistants in the state of Nebraska. I, myself, am a certified surgical technologist and have been for eleven years. Nebraska's 800 surgical technologists are allied health professionals who are an integral part of operating room teams across the state, just as you heard Dr. Olberding describe. Unqualified surgical technologists can cause harm to patients by poorly maintaining the sterile environment resulting in an increased number of surgical site infections; poorly assembling sophisticated surgical equipment and instrumentation and by slowing down procedures. The surgical technologists 407 application seeking licensure, which we mentioned earlier, was approved by the Technical Review Committee, but was unsupported by the Board of Health and Courtney Phillips and the lack of support from these two latter reviewers was due to their belief that a license wasn't necessary but that rather a registry could accomplish the same type of regulation of the profession. The Board of Health as well as Courtney Phillips expressed their belief that

action was necessary to provide surgical patients in the state greater assurance of the minimum competence of every member of their surgical team. As Senator Kolterman mentioned earlier, the surgical technologist is the only member of the immediate surgical team that does not have to demonstrate minimum competence and is not held to mandatory reporting requirements. LB360 establishes a registry administered by the Board of Medicine in surgery that will accomplish this need to further regulate the surgical team. On January 1, 2017, LB721, better known as the Surgical First Assistant Act, became effective in Nebraska. This law established a license for surgical first assistants administered by the Board of Medicine in surgery and was the result of a separate 407 that was submitted in relation to surgical first assistants in which surgical technologist were also included. So surgical technologists have been through two separate 407s. This 407 sought to establish this license for surgical first assistants as well as a mandatory registry with competency assessment for surgical technologists. And this was approved by the Technical Review Committee, the Board of Health, as well as Courtney Phillips. This 407 was submitted in response to a cease and desist order that was issued in 2014 in response to an 1898 ruling called Howard Paul v. State of Nebraska which deals with the delegation by physicians to unlicensed personnel. So, due to this really close interrelation between the surgical technologist and the surgical assistant, as most surgical assistants begin their career as a surgical technologist. They then go on and get additional training which allows them to perform additional tissue alteration tasks such as suturing that a surgical technologist does not perform. We believe that the Surgical Technologist Registry should be administered by the Board of Medicine and Surgery as well as the intimate relationship as described by Dr. Olberding of the delegation by the surgeon to the surgical technologist at the sterile field. So LB360 will establish this crucial mandatory registry which will establish those essential minimum competency requirements as well as mandatory reporting, but it will also amend that language from that 1898 case to bring it into alignment with the current practice as it occurs daily in operating rooms across the state. This update will ensure the avoidance of a cease and desist for surgical technologists similar to the one that dramatically impacted the practice of surgical first assistants in the state. It is the firm belief of our organization that every surgical patient in Nebraska deserves nothing less than a surgical technologist who has demonstrated minimum competence and LB360 will ensure that this standard can be met. We'd like to thank Senator Kolterman for his continued support in this measure and ensuring this competence of every member of the surgical team, so I'm happy to answer any questions that you may have. [LB360]

SENATOR RIEPE: Thank you. Are there questions from the committee members? Seeing none, thank you for being here. Thank you for testifying. Senator Erdman. [LB360]

SENATOR ERDMAN: Thank you, Senator Riepe. It says that they shall collect fees, that the department shall establish and collect fees for the registration under the Surgery and Technology Registration Act. You know what those fees are going to be? [LB360]

CASEY GLASSBURNER: We would anticipate it would be similar to the medication registry which is $18 every two years. So the idea behind the competency assessment is that it would mimic the medication aid competency assessment that is required for their registry. We would anticipate utilizing the same application having a similar competency assessment practice that is administered by a licensed professional in a facility that can identify the competence of those individuals. You had asked earlier about that competency assessment and those individuals would be required to go through that after...within 180 days of employment. So an argument from the Hospital Association as well as the Surgery Center Association was that they wanted the ability to train their own individuals and by adding that 180 days we have allowed them to do this, but at some point the competency of those individuals needs to be assessed. And that's what that competency assessment will do in order for those individuals to be listed on the registry. [LB360]

SENATOR ERDMAN: So who will do that assessment? [LB360]

CASEY GLASSBURNER: It would be a licensed professional within that facility that would be competent or know those specific basic functions of a surgical technologist that need to be assessed in order to establish minimum competence. [LB360]

SENATOR ERDMAN: Okay. Thank you. [LB360]

SENATOR RIEPE: Okay. Are there additional questions? Senator Linehan. [LB360]

SENATOR LINEHAN: How do you become a surgical technologist? [LB360]

CASEY GLASSBURNER: So if you attend a formalized education program, there are two accredited programs in the state, one at Nebraska Methodist and one at Southeast Community College. Both are associate degree, approximately 15 months in length, and then there is a national certification exam that individuals sit for that establishes them as a certified surgical technologist which is again a standard of minimum competence by passing that exam. However, there are some facilities that do require that certification and that education but there are some facilities that do not require that. And if they do not, then they will hire anyone without any educational background whatsoever and then train them and place them into the role of the surgical technologist and then at no point during their employment or their career is their minimum competence assessed. [LB360]

SENATOR LINEHAN: Okay. Thank you. That's all. [LB360]

SENATOR RIEPE: Okay. Senator Crawford. [LB360]

SENATOR CRAWFORD: Thank you, Chairman Riepe. So the bill does allow that the competency assessment be completed by...it just says a licensed healthcare professional, and it includes components of the act. So are you expecting that to be outlined really in the rules and regs what that looks like? [LB360]

CASEY GLASSBURNER: Yes, absolutely. Yes, we would expect that. The department would outline that in the rules and regulations process. [LB360]

SENATOR CRAWFORD: Thank you. [LB360]

SENATOR RIEPE: Okay. Other questions? Seeing none, thank you very much for being here. [LB360]

CASEY GLASSBURNER: Thank you. [LB360]

SENATOR RIEPE: Next proponent, please. Good afternoon. If you'd be kind enough to state your name and spell it. [LB360]

JOHN TENNITY: (Exhibit 4) Absolutely. I'm Dr. John Tennity, T-e-n-n-i-t-y. I'm a foot and ankle surgeon here in Lincoln, Nebraska. And you haven't been told happy birthday in a while (laughter). Do you know what a doctor gets you for a birthday? A colonoscopy (laughter). So, I've been before you before on this exact position over the course of time. I think...I don't think I can expand too much on what Dr. Olberding brought to you today. If you have any other questions regarding it, please let me know. I've been in this process for a long period of time. I served on the Board of Health for several years, served on the Professional Board's Committee on the Board of Health for several years and chaired several of these 407s, participated in several 407s. So, you know, sometimes the modals and what has been hashed out before in committee meetings I think I can provide maybe some of that for you, if you have any questions in that regard. To reinforce what Dr. Olberding was saying, the role of the surgical technologist and the surgeon is intimate. I mean, we are literally face to face, hand to hand, working on a patient. And it can be pretty intense at some times and I've always been impressed with the level of training of a surgical technologist and their ability to absorb the ever-changing technological landscape. It is much different than it was 25 years ago when I graduated. So, as natural evolution, I do think the proposition ahead of you with competency requirement and registry, I think it's a reasonable conclusion from this entire process. You talked earlier about who's in charge, that's one thing, who's liable eventually is one thing. The state of Nebraska really recognizes that the captain of

the ship is the surgeon in the operating room. That's why my belief that the Board of Medicine is probably the best to oversee this because ultimately it is our responsibility as the surgeons to provide for that patient's care. I did provide my written testimony, but I'm really open to any questions you might have for me. [LB360]

SENATOR RIEPE: Thank you very much. Senator Williams, please. [LB360]

SENATOR WILLIAMS: Thank you, Chairman Riepe, and thank you, Doctor, for being here. From your experience over these years, and I would assume most of that is here in Lincoln. [LB360]

JOHN TENNITY: It is. [LB360]

SENATOR WILLIAMS: What difference would you see when we're talking about this issue of the surgery centers and hospitals that you do surgery at here compared to what we might have in rural Nebraska? [LB360]

JOHN TENNITY: Well, I hope nothing, really to be honest with you because I do have rural outlying clinics that I...and I do expect my surgical team to be appropriately vetted and appropriately trained. [LB360]

SENATOR WILLIAMS: Do you...would your experience be that the person that is at least operating as a surgery tech in a rural setting has the same training or are they more on-the-job training at the facility? [LB360]

JOHN TENNITY: You know, all the facilities I go to have the same standard. They...there's no on-the-job training in any of those facilities, so I don't know I can be the best assessment for you for that. I think that should be part of the equation as is...I shouldn't say that. We should have the ability to at least address the competency of those patients that...or of those technologists or assistants that need to be... [LB360]

SENATOR WILLIAMS: And it's your understanding that LB360 takes us that direction. [LB360]

JOHN TENNITY: Oh, absolutely. [LB360]

SENATOR WILLIAMS: Thank you. [LB360]

SENATOR RIEPE: Are there other questions? Seeing none, thank you for being here. [LB360]

JOHN TENNITY: Thank you for your time. [LB360]

SENATOR RIEPE: Additional proponents, please. [LB360]

STEPHANIE WHALUM: (Exhibit 5) Good afternoon. My name is Stephanie Whalum, S-t-e-p-h-a-n-i-e W-h-a-l-u-m. I am the government affairs manager for the Association of Surgical Technologists. We are based out of Denver but we are a national organization. We have a membership of about 60,000 members right now, but we do represent the interest of about 100,000 practicing surgical technologists across the country, including about 800 here in Nebraska. Our organization is committed to patient safety and we feel that we can advance patient safety by enhancing the profession by ensuring that all practicing surgical technologists are competent. LB360 would ensure that those techs practicing here in the state are deemed competent by way of education and certification. Another safety mechanism that would be provided by this bill is that it would provide the transparency that's necessary to be fully...or have full disclosure of the criminal histories and work histories of the registrants. Colorado, my home state, learned the hard way, the value of this information. We had an incident in 2016 where actually it had been going on prior to 2016, there was a surgical technologist who was working at one of the medical centers in Colorado. He was engaged in what was called drug diversion. He was a drug addict. He would go into the operating room pre-op, he would take a syringe that was loaded with fentanyl, which is an opioid pain killer, he would inject himself. He would replace the syringe with saline and the saline syringe would become the syringe that was used during the surgical procedures. The worst part about this is that this bad actor, Rocky Allen, was infected with HIV, hepatitis B and hepatitis C. So he endangered thousands of patients and it's an unnecessary risk to have someone like him working in operating rooms. Had Colorado had a system in place that would have allowed them to know his history, they would have learned that he had been court-martialed by the Navy where he was working as a surgical technologist and discharged for the same behavior, drug diversion. He was discharged and worked in six different hospitals in three different states, was fired from them all for the same behavior. So with a registry in place, this sort of disclosure will be at the state's, you know, fingertips and they can tell who should and shouldn't be working as a surgical tech in the state. Obviously very important to the safety and health of the patients. Mr. Allen is now serving seven and a half years in Bureau of Prisons for his crimes. He was sentenced last fall. This registration would also clear any confusion. I heard from some of the previous speakers about the Howard Paul case and how that created some gray area in terms of doctors delegating to unlicensed personnel. The way the legislation is written is that it would kind of clarify by giving these surgical technologists this registered status. It would put them in a category of the doctors being able to fully delegate to them without being worried about blurring the lines of...you know, am I delegating something that is truly the practice of medicine that they shouldn't do or who I can delegate to, so we feel

that the registry, by giving them a registered status, it kind of...it clarifies that a bit, kind of gets rid of that gray area. We believe AST, our association believes that the oversight of this registry contemplated by this bill should be with the Board of Medicine and Surgery. Just to give you an idea of what's going on nationally, with the states that do have registries for surgical technologists--and right now that's Virginia, Illinois, Colorado, the state of Washington, and, as of last week, Arkansas, this bill passed in Arkansas--those states that have registries are having the registry overseen by the Board of Medicine, Department of Health, Department of Professional Regulations, Department of Regulatory Agencies. There is no oversight by a nursing body. Also in states that have specific education and certification laws for surgical technologists--that would be New Jersey, Indiana, South Carolina, Massachusetts, New York, Texas, Oregon--in those states the Department of Health oversees these professionals: the Department of State Health Facilities for Texas, the State Health Authority for Oregon. So there are the health agencies or the medical agencies that are providing the oversight. In no state does nursing play any role in that oversight. And the current structure in Nebraska for the licensed certified surgical assistants that you've heard people speak about is...they are actually a closely related profession to the surgical assistant. Some of their duties actually overlap. They are being overseen. Their licensing is being overseen by the Board of Surgery and Medicine. So again, we feel that it's a national home for this registry. I see that I am out of time. I'm happy to answer questions and I know that... [LB360]

SENATOR RIEPE: If you just want to make some concluding remarks. [LB360]

STEPHANIE WHALUM: Sure, I can, you know, just tell you that there are, by our estimates there are about 32 million surgeries taking place annually across the country, a lot of them here in Nebraska. We just feel that these surgical patients deserve to have the most qualified team members, and the most responsible team members in terms of prior history, working on them and that they deserve that assurance. [LB360]

SENATOR RIEPE: Are there questions from the committee? Senator Erdman. [LB360]

SENATOR ERDMAN: Thank you, Senator Riepe. How many surgical technicians do you have in Nebraska that are members of your organization? [LB360]

STEPHANIE WHALUM: About 400. [LB360]

SENATOR ERDMAN: 400, so that would leave...there's 800 altogether? [LB360]

STEPHANIE WHALUM: Yes. [LB360]

SENATOR ERDMAN: So about half of them are not. [LB360]

STEPHANIE WHALUM: Right. [LB360]

SENATOR ERDMAN: So if they become registered, would they have to become part of your organization? [LB360]

STEPHANIE WHALUM: They don't have to be part of our organization. We are one of the organizations that does confer a certification credential. There is one other organization but they don't have to have membership necessarily from ours. It can just be from any organization that the board deems qualified to give that credential. [LB360]

SENATOR ERDMAN: I would assume you probably have an annual membership. [LB360]

STEPHANIE WHALUM: We do. The annual membership fee is $80. So in order to be certified by the National Board of Surgical Technology and Surgical Assisting, the...you have to have completed an accredited surgical technology program. You have to pass the certification exam, and you have to complete 15 hours of continuing education every year for four years. At the end of those four years, you recertify. [LB360]

SENATOR ERDMAN: Okay. Thank you very much. [LB360]

SENATOR RIEPE: Senator Linehan. [LB360]

SENATOR LINEHAN: Thank you, Mr. Chairman. Thank you very much for being here. I appreciate it. So when you were going through the states, you mentioned two different groups. I think it added up to 12 states, so does that mean there's 38 states or what's the number of states that don't do this, that don't have any licensing or registering, or...? [LB360]

STEPHANIE WHALUM: I think it is 38 and we are actively pursuing legislation and we just passed out of the house in North Carolina last week, so we are actively pursuing legislation in about six states this session. But, yes, there are about 12 that have either registries or certification laws for surgical technologists. [LB360]

SENATOR LINEHAN: And the fellow that you said was using the syringes, are you saying that seven different hospitals, or six hospitals fired him and yet he kept getting hired like they didn't check back with the other hospital? [LB360]

STEPHANIE WHALUM: They didn't check back, he even created a hospital that didn't... [LB360]

SENATOR LINEHAN: And nobody called to see what's this guy's...? [LB360]

STEPHANIE WHALUM: No, not in Arizona, not in California, not in Colorado. [LB360]

SENATOR LINEHAN: Okay. Thank you. [LB360]

SENATOR RIEPE: Other questions? Senator Crawford. [LB360]

SENATOR CRAWFORD: Thank you, Chairman Riepe, and thank you for being here today, your experience in those states. I'm trying to just process just what that screening process looks like because as I see the registry you give your name...you know, you're giving your name and Social Security number and age and your filing it with the department. And so I'm trying to figure out how that registry gets used in cases like the case that you mentioned. Like where's this great...what are we adding that helps in terms of the screening when I'm hiring someone new? [LB360]

STEPHANIE WHALUM: Right. In Colorado, the specifics of it came about when DORA was given their official oversight of the registry. They require registrants to submit to a fingerprint test through the Colorado Bureau of Investigations so that handles the criminal background piece, and then they also require the work history at that level of being under the regulatory agency. So those specifics were hashed out once they got to the overseeing agency. [LB360]

SENATOR CRAWFORD: So those were components in the registry there? [LB360]

STEPHANIE WHALUM: Yes. Yes. There is one thing I would like to address. Someone raised the question with one of the earlier proponents about whether federal law was being broken. It might have been you, Senator Crawford. It's our understanding that the code of federal regulations that is being relied upon by the Association of periOperative Nurses in determining their belief of who should oversee the registry. The CFR set out a list of conditions of participation. So essentially, if a hospital wants to participate in CMS, Medicaid, Medicare, they need to follow those codes of regulation...oh, I'm sorry, those conditions of participation including there being one of those conditions is sort of speaks to the hierarchy of supervision in the operating room with respect to nurses and surgical technologists. If the hospital doesn't follow the regulation, then they're not in compliance with the conditions of participation and they can't participate in CMS. That is very different than them breaking a law, that there is no federal

law that says that you have to...that the nurses supervise the techs. It is this regulation that points to these conditions of participation. That is very separate. A hospital can comply with the federal regulation exclusive of the language in a registry statute indicating who oversees the registry. We just don't see that there's an extension from saying, well, you oversee nurses in the...I'm sorry, that nurses oversee techs in the operating room according to the conditions of participation, therefore, those nurses, at the state level under a state statute, should also oversee the registry related to surgical techs. I think they're mutually exclusive. Hospitals can comply at the federal level irrespective of who is overseeing the registry. So I don't see the gap being bridged in terms of operating rooms supervision and registry supervision. Of all the states that have the registries in place, I mean these are big hospital systems, I can't imagine that they're sacrificing their CMS participation, excuse me, simply to have the registry. They are able to do both. They're able to federally comply and have the Health and Medical Boards oversee the registry. [LB360]

SENATOR RIEPE: What oversight does the registry have on any staff surgical tech? [LB360]

STEPHANIE WHALUM: What oversight does the registry have? [LB360]

SENATOR RIEPE: The registry that you're representing, what oversight do you have? What control? What influence? [LB360]

STEPHANIE WHALUM: When you say, we, do you... [LB360]

SENATOR RIEPE: Your organization. [LB360]

STEPHANIE WHALUM: Oh, we don't. We...right. [LB360]

SENATOR RIEPE: Thank you. My point is, whoever pays them, be it the hospital, they are then the agent of the hospital and if the hospital...I'm stunned by the fact that that many hospitals, because it's gross negligence on their part, that they wouldn't have procedures for drug testing, for peer review, for a variety of things. You know, I've worked...I've never worked in a hospital that would have allowed seven times. I don't know where these hospitals are at. [LB360]

STEPHANIE WHALUM: It's stunning. [LB360]

SENATOR RIEPE: Unless they're...I don't know. I don't even want to start guessing, but so it's the hospital that really has to control this. Whoever is their agent, whoever pays them is accountable and they have to be responsible, not the registry, not anybody else. [LB360]

STEPHANIE WHALUM: Well, I think the registry is just one safeguard, but I do agree that... [LB360]

SENATOR RIEPE: Well, they could help the hospitals, but the hospitals certainly, definitely shouldn't rely on that. [LB360]

STEPHANIE WHALUM: Of course with it being their direct personnel, I agree. [LB360]

SENATOR RIEPE: Okay. Thank you very much. Thank you for testifying. [LB360]

STEPHANIE WHALUM: You're welcome. [LB360]

SENATOR RIEPE: More proponents, please. [LB360]

KIM ROBAK: Chairman Riepe and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here today on behalf of the Nebraska Medical Association in support of the bill. Specifically we are in support of paragraph 21 on page 7 and you've heard a couple of times this afternoon reference to a case called...people have referred to it as Howard Paul, but it's State v. Paul. And it's a 1898 case in which three individuals were working in a doctor's office. One of them was actually a physician, another one held himself out as being a physician, and the third person did not. The third person is Howard Paul and Mr. Paul evidently conducted surgery. I think he actually amputated a limb. And as a part of this amputation, he said that he was delegated these responsibilities by the physician. This went to the Nebraska Supreme Court and the Nebraska Supreme Court said that he was, despite the fact being delegated this duty, he was engaged in the unauthorized practice of medicine. Now, leap forward 120 years and you have members of the Department of Health and Human Services who somehow have dusted off this case and, in the last three to five years, have ordered cease and desist orders in several instances, requiring that individuals go and change their scope of practice in order to allow individuals who had, in the past, been assigning duties to these individuals, saying that this case did not allow them to assign duties. So two examples would be the surgical first assists that some of you recall, that came before you that went through the 407 process. They had to change because for years they had been being assigned duties by doctors in the OR and what the Department of Health and Human Services said, you can't do that because you will be in violation of State v. Paul. The second one, which is a case I think that came before you this year, and that was the dialysis techs and that for years dialysis techs have been allowed to put IVs into patient's arms. The Department of Health and Human Services said, no, you can't do that anymore because of this lawsuit in 1898, and so you have to now go and change your scope of practice in order to continue to do that. The paragraph that is set forth in page 7, Section 21, is intended to say that physicians can, not delegate duties, but actually assign tasks so that we would not have to now

create new licensed entities in order to allow them to assign tasks so that they would not be performing the unlawful delegation of medical services. So for that reason, the NMA would hope that this bill, and particularly that paragraph, would be enacted so that we can stop cease and desist orders and stop adding to the multiple layers of services that are adding to the cost of medicine. I would happy to answer any questions. [LB360]

SENATOR RIEPE: Okay. Are there any questions? Senator Linehan. Give her a hard one (laughter). [LB360]

SENATOR LINEHAN: Can you tell me again, because I didn't have my papers in order over here, page 7? [LB360]

KIM ROBAK: Page 7, line 3, paragraph 21, line 3 through line 8. [LB360]

SENATOR LINEHAN: So would you be happy if this is all the bill said? [LB360]

KIM ROBAK: The Nebraska Medical Association has not taken a position on the remainder of the bill. We do want this particular paragraph, yes. [LB360]

SENATOR LINEHAN: But you haven't taken a position on the remainder of the bill? [LB360]

KIM ROBAK: That's correct. [LB360]

SENATOR LINEHAN: Okay. Thank you. Appreciate it. [LB360]

SENATOR RIEPE: Any other questions? Seeing none, thank you very much. Any more proponents? Seeing none, are there any opponents? Thank you, sir, if you would check in. If you would be kind enough to give us your name and spell it and then you may proceed. [LB360]

JAY SLAGLE: (Exhibit 6) Chairman Riepe and the committee, I'm Jay Slagle, J-a-y S-l-a-g-l-e. I represent both Midwest Eye Surgery Center and Ophthalmology Surgery Center located in midtown Omaha...the old midtown, and Nebraska Association of Independent Ambulatory Surgery Centers. I'm also an administrator for 19 doctors of medical practice and my job is also to keep doctors happy, and I don't want to be licensed or registered for that. Surgery centers are the second largest employer of surgical technologists in Nebraska. I am opposed to LB360 and the proposed registration of surgical technologists. From a statutory standpoint, the initial two requirements of Section 71.6221 of Nebraska statutes indicate that a health profession should be

regulated only when the unregulated practice can clearly harm or endanger the public, and the regulation does not impose significant new economic hardship on the public or significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest. LB360 fails to meet those requirements. First, there is no data that suggests that patients are receiving substandard care under the current delivery model. Rocky Allen is one example out of 60,000 surgical techs in the United States and as you've noted, it's a failure of the hospital as a credential and not the failure of the state to register him. Patients are not asking for registration, and there is no evidence to support the claim that unregistered surgical technologists are providing substandard care. Registering surgical technologists won't make the public safer. In fact, the most egregious example of public harm by medical personnel in Nebraska was the Fremont hepatitis C outbreak in 2001. That outbreak arose from the conduct of two licensed individuals, a doctor and a nurse. Second, the proposed registry does create an economic hardship for the public. The registry would require a registration fee, which hasn't been determined, but could be significant. LB360 also requires that each registrant submit to a competency assessment by a qualified individual, which might also require additional costs. There is no need for mandatory registration. All surgical technologists work under the supervision of a registered nurse or physician, most often in a licensed facility. The facilities are subject to strict licensure requirements established by the state, Medicare and accrediting organizations. The facilities and surgeons are responsible for maintaining professional liability insurance, and they have a vested interest in ensuring that the surgical technologists are well-trained. In many cases, however, as opposed to Dr. Olberding's testimony, surgeons don't have the standing to supervise or train surgical techs. I have an ophthalmologist who visits Fall City's hospital four hours a month to do surgery. She certainly isn't supervising a surgical tech or training her. This is clearly the first of a two-step process by the surgical technologists. They attempted to have a bill passed in 2016 that would require all surgical technologists to be licensed. That effort failed, so they're now asking for mandatory registration and competency assessments. Next year or the year after they'll be back here asking for mandatory licensure. Once mandatory licensure is enacted, the surgical technologist labor pool will shrink because the surgical technologist society believes that only those technologists with associates' degree should be practicing. If you require an associate's degree, the colleges offering a surgical technology degree at a cost of up to $35,000 or more, not to mention housing costs and lost income, will reap the rewards. The state society that's pushing this bill is led primarily by full-time or adjunct professors at surgical technologist training programs. And they will win if this bill is passed, but the public will not. The labor supply will shrink, registered nurses will have to cover vacancies, and the registered nurse shortage will become more acute. The hospitals do not support this bill. The surgery centers do not support it. The registered nurses don't support it. Patients have not requested it. The Nebraska Medical Association only supports the portion of the bill that addresses the State v. Paul. In July of 2015, President Obama's Council on Economic Advisors put out a report that looked at employment data for states and concluded that licensing requirements raise the prices of goods and services, and restrict employment opportunities. Many

of the states that the national lobbyist has cited are poster children for overregulation. Our own Governor Ricketts has legislation introduced this session to scale back occupational licensure. Registration will create a barrier to the surgical technology field, which will lower labor supply and increase wages. When the labor supply shrinks, the 50 hospitals located in rural Nebraska communities will be hard-pressed to find new technologists. [LB360]

SENATOR RIEPE: Thank you. Before we maybe ask for some questions, on the second paragraph you say, I am opposed to LB360. Is that you or does this include all the practitioners at the Midwest Eye Surgery Center? [LB360]

JAY SLAGLE: Yes, Midwest Eye Surgery Center and the NAIAC, yes. [LB360]

SENATOR RIEPE: Okay. With that, I'd like to open up for any questions that may exist. And I noticed, too, on the...oh it looks like the third page you have at least posed the question about whether we should license hospital janitors. Do you want to go into that too? [LB360]

JAY SLAGLE: Well, we talked about...it's been the assertion made that the only person in the operating room who isn't licensed, but the janitors are responsible for making sure that the hospital rooms...or the surgery suites are clean at the end of the day. If they're not good, they're not supervised by the appropriate people in the hospital, that's also a risk. And then the tech who runs the MR system, if they don't put in the right drug interactions or the handyman who doesn't have the right humidity levels, it's a...they're not the only...the only individual in the hospital that's not licensed or registered. [LB360]

SENATOR RIEPE: Well, I want to...it's very serious testimony on your part with a little tongue in cheek which is always helpful too, so we appreciate all that. Are there any other questions from the committee? Seeing none, thank you very much. Thanks for coming down and for testifying. [LB360]

JAY SLAGLE: Thank you. [LB360]

SENATOR RIEPE: Any other opponents? [LB360]

KAREN RUSTERMIER: (Exhibit 7) Senator, and members of the committee, I appreciate this opportunity to testify today. My name is Karen Rustermier, K-a-r-e-n R-u-s-t-e-r-m-i-e-r. I'm a registered nurse. I've been a perioperative registered nurse for a little over 45 years and I hate to break this to you, but Hot Lips is still at work (laughter). RNs do scrub. And as a matter of fact, we're not really treated like Hot Lips. At any rate, we at AORN, and I represent the state AORN,

we are opposed to this bill for a few reasons. We don't really think that it's necessary to have a registry. You know, I don't think it's really mandatory that we should have to have this. We think that hospitals are highly motivated to turn out a good product because their reimbursement is tied to it. Hospitals have job descriptions, they have committees that assess duties, who can do what. There are annual competencies that must be met, and hopefully...and as you all know, we are inspected by the state every year to see that we are doing all of this. The same with the drug screening that you were mentioning in other hospitals, that it is up to the hospital to check these people out. It doesn't matter what position you're hired in. I work at Nebraska Medicine. I don't care if you're applying for the janitor position or the CEO, you're going to be drug tested and it is a very unfortunate situation that happened in Colorado. And oftentimes things get spurred out of very unfortunate situations. I did include the letter that came from the National Association and I think you probably have gotten that, that referred to the CMS regulation regarding supervision. If the state desires to go ahead with the registering, there are some things that are written into this proposal that we are very strongly against. They're all in Section 8 that have to do with one, two and six. And number one lists several things that a scrub person would do whether that be an RN or whether that be a surgical technologist. Obtaining medications and solutions needs to be off that list primarily because there's no mention of any oversight by a nurse. We...I think have pretty strong legislation about who can dispense medications and if you're obtaining medication, putting it on the field without RN supervision or any interaction there, then you're dispensing medications. And we don't believe that that should occur like that. There was an instance in Canada where an infant died following...during a surgery because the wrong medication was given. Well, that shook everybody up, so now there is a very elaborate situation that goes on in really every hospital that I know of that medications are checked between the circulator and the scrub, whether it be two RNs, an RN and a tech, get the medication itself, the dose, the expiration date and there's labeling requirements so that those would be on the field that there's not going to be those kinds of mishaps happening again. The other things are surgical counts. The way this is listed, it kind of looks like that the surgical techs could do a count by themselves. It needs to be...that's a high-risk situation where retained objects may be...may occur and that needs to happen between the nurse and the scrub. The third thing is positioning and that is also a high risk and it's a...patients are positioned in a certain manner depending on what surgery they're having to facilitate good exposure to make the procedure easier. So depending on what you're having done is what position you're going to be placed in. There are inherent dangers that can be permanent...can be permanent injuries. That needs to be not just verified, you know, the tech isn't just positioning this patient. It needs to be verified by the nurse and in most cases, also by the physician. It's been my experience in 45 years there isn't a physician that didn't say, this is okay, or this is not okay with positioning. So those kinds of things, if we do go ahead with the registry, have to be fixed. I'm available for any questions that you might have. [LB360]

SENATOR RIEPE: Okay, we'll see if we have some. Thank you very much. [LB360]

KAREN RUSTERMIER: Okay. [LB360]

SENATOR RIEPE: Are there questions from the committee? Seeing none, this time it will give us a chance, we'll study this. Thank you for being here. [LB360]

KAREN RUSTERMIER: Thank you very much. [LB360]

SENATOR RIEPE: Any additional opponents? Thank you for being back. [LB360]

MELISSA FLORELL: (Exhibit 8) That you for allowing me to be back. My name is Melissa Florell, M-e-l-i-s-s-a F-l-o-r-e-l-l, and I'm speaking on behalf of the Nebraska Nurses Association in opposition of LB360. The Nebraska Nurses Association is the voice of registered nurses in Nebraska and patient safety and improved health is a priority for our association. NNA seeks to support the delivery of safe, cost-effective care for Nebraskans, and we...so, therefore, we support the concept of a registry for surgical technologists, but oppose the current format proposed in LB360, specifically the supervision by the Board of Medicine. It's the position of the NNA that the proposed Surgical Technologist registry should be supervised by the Board of Nursing consistent with findings of part B of the 2015 407 review. And the report further goes on to recommend that the department use the current Medication Aide Registry as a potential model and that registry has been successfully supervised for many years by the Board of Nursing. The recommendations of the credentialing review committee are also consistent with the supervisory relationship that has been described between the circulating RN and the surgical technologist. It's the RN who is responsible for the OR suite when the surgeon is out of the room. This is common during periods of patient prep and positioning, as well as during the care and transfer of the patient post-procedure. And while many tasks can be delegated or assigned to others in the OR suite, the responsibility for maintaining that safe environment rests with the nurse. And maintaining that supervisory relationship is especially important in situations that have arisen of dovetailing where the surgeon will leave, go on to another case, and leave someone else to close. The circulating RN is then the licensed person in the room and left in an untenable situation many times. NNA recognizes the valuable role that surgical technologists play in the operating room. The creation of the registry will allow identification of those who are working in those environments. We feel that that's important and can help to serve hospitals in their due diligence of hiring safe personnel, and will help ensure patient safety in the operating room. Supervision of the registry by the Board of Nursing is the most practical means to achieve that goal. There's no compelling evidence to support placing it under the Board of Medicine when the Board of Nursing is already prepared to manage such a registry. And, therefore, we ask you to oppose LB360 in its current form. Thank you. [LB360]

SENATOR RIEPE: Okay. Are there questions from the committee? I would have a question. You said, I believe, that the circulating RN is in charge when the surgeon is not in the room? [LB360]

MELISSA FLORELL: They are the license in the room when the surgeon is out of the room and responsible for maintaining a safe environment for the patient. [LB360]

SENATOR RIEPE: So I'm trying to follow this a little through on the organizational chart in case you can't have two people in charge at the same time. Is that what you're saying? [LB360]

MELISSA FLORELL: When the surgeon is out of the...the surgeon is the captain of the ship, that's true, but... [LB360]

SENATOR RIEPE: Used to be. [LB360]

MELISSA FLORELL: ...but it is a team environment and when that surgeon is out of the room, then the RN is responsible for maintaining a safe patient environment. While the patient is being positioned, you know, there's a lot of very critical things that happen during that time and they have to be able...to be able to make decisions that put patient safety...keep patient safety first. [LB360]

SENATOR RIEPE: That said, is that the logic that you follow then, that the surgical technologist should report in essence to the Board of Nursing and not to the physicians? [LB360]

MELISSA FLORELL: That was...that is NNA's thought process is that recognizes that supervisory relationship and doesn't create a conflicting relationship within the OR. And also for means of expediency because the Board of Nursing already manages the registries. [LB360]

SENATOR RIEPE: I'm a believer of Jesus said you can only serve one master, you can't serve two, so. Okay, are there other questions? I sound like Senator Chambers here. Are there any other questions? Okay, seeing none, thank you again for being with this. [LB360]

DON WESELY: Thank you, Mr. Chairman, and members of the Health and Human Services Committee. For the record, my name is Don Wesely, D-o-n W-e-s-e-l-y, and I actually represent both NNA and the NAIAC on this issue. Just real briefly. I think the first point is, I think the one you made, Senator, that 12 states may have some type of regulations. That means 38 do not. This is a new area. Very few states have done anything on this and I think there's a real question about, is there a problem in Nebraska that needs to be addressed with regulation? And I think the answer is no. The example given was Colorado. Through the 407 hearings and what have you,

there was really no example given ever at any of the meetings I went that there's ever been even one case of a situation where you called for some type of intervention by the state in regulation. No, you didn't hear that today. Second off, you've heard bills and you've had different entities come in opposing reduction regulation and stepping back from overregulation and what have you, and you know the situation, once you provide regulation, if you change your mind it's awful hard to make a change. And this is an area where you don't need regulation, don't start regulation. Things are working well here. If times change and need to reevaluate that, you can. And you think about the groups that are mostly involved with this. The hospitals came in neutral, but that also means they're not supportive and they have concerns about losing the market for surg techs that they need if you make it more restrictive. The physicians came in and they have the one section they're concerned about but they're neutral on the regulation of surg techs. The ASCs who employ great number of surg techs are very opposed to this and the nurses who work as part of that team are very opposed to this. I don't see the case for adopting this legislation and I say that reluctantly because I have great respect for Senator Kolterman. It's his birthday and I... (laughter)...this is hard to do for me. I will say one aspect of the bill that was brought up by the medical association that page 7, Section 21, we've looked at that and we're not sure what it does. We don't know what it accomplishes, good or bad. The only thing I'd ask you to do on that, we do need to address this State v. Paul case. This has been a problem, so we need to do it. You might want to ask for an AG opinion or something about what would that section accomplish. What would it do, how would it affect, because that whole situation is, you don't want to just say the Doc can pick somebody and say, you can do...and delegate. There's a reason that that case was decided that way. You don't want that. On the other hand, you don't want this overregulation right now restricting physicians from being able to work with other health professionals. So we do have to figure it out. I'm not sure that language is the right language, but it may be and so we're kind of neutral on that, the nurses are. But we need some legal advice on that particular paragraph and I'd ask for your help with that. That's it. That's all I have. [LB360]

SENATOR RIEPE: Okay, thank you. Are there questions? Hearing none, thank you very much. [LB360]

DON WESELY: Thank you. [LB360]

SENATOR RIEPE: Are there additional opponents? Any more opponents? Any opposed? Seeing none, is there any testifying in a neutral capacity? [LB360]

ROGER MEYER: I'm Roger Meyer, R-o-g-e-r M-e-y-e-r. I really am not...I've heard both sides and I see some merits both ways. I just think that if this does become a bill that passes, that there should be some way to grandfather and maybe this was in the bill, I'm...if it was, I'm sorry, I missed it, but should...there should be some way to grandfather people who have been acting as

surgical techs, you know, for five, ten years, whatever amount of time you want to put on that, that they should be able to be grandfathered in so that they could be registered surgery techs by taking a short course and passing a test or just passing a test or just grandfathered in. I realize it's up to the hospitals to decide whether they need to have registered surgery techs or not, which would lend itself probably to the larger hospitals being more inclined to do that than the smaller hospitals. And I can see that when this is created, eventually this is going to become part of a hospital certification. So again, it's going to be tougher for the smaller hospitals possibly to reach their certification levels than it would be the larger hospitals. When I think of my own experiences out at the Seward Hospital, an appendectomy at two in the morning, you know they're going to call the nurses off the floor to come in and help with the operation, all of which have done it before. They're probably not as proficient as registered surgery tech, but as I understand...I mean if a hospital is only going to have registered certified techs, that wouldn't happen and wouldn't be able to happen. And I guess on the same token, the larger hospitals that have surgery techs they've had for a long time, it would seem like that it would be very important that these surgery techs have a way to be grandfathered in either by a short course of education or passing a test or just being grandfathered in. So like I say, I don't think I have any real positive or negative, but those were just thoughts I had. [LB360]

SENATOR RIEPE: Okay. Sir, did you spell your name when you started? He did, okay, thank you. I apologize. Very good. Questions? Senator Williams. [LB360]

SENATOR WILLIAMS: Thank you, Dr. Meyer for being here. I just have one question because you've been practicing medicine for a lot of years. Did you happen to deliver Mark Kolterman's brother (laughter)? [LB360]

ROGER MEYER: I'm not quite that old (laughter). [LB360]

SENATOR RIEPE: You're not under oath. [LB360]

SENATOR WILLIAMS: Since it's been his birthday all day. [LB360]

SENATOR RIEPE: Thank you, sir. Any more in a neutral capacity? Seeing none, Senator Kolterman, you are welcome to close if you'd like. [LB360]

SENATOR KOLTERMAN: Thank you, Senator Riepe, and members of the committee. And even though he didn't deliver my brother, he's taken care of my brother and I at times, so. Anyway, interesting hearing. For those of you, there's three of you here that weren't here last year. Last year, we dealt with surgical assist and the rationale behind that, I believe there was

eleven or twelve surgical assist people in the state. They got a cease and desist order out in rural Nebraska simply because HHS decided they were going to clamp down on that. So we passed legislation allowing them to be registered and become certified. On the heels of that, the surgical techs came along with them. They went through the same 407. They did not get their 407 approved, but they did come out of the 407 with the idea of a registry and minimum competencies. And if you go back and read the 407, you'll find that that's the case. We are not asking for licensure here. We're asking that a minimum standard registry be established so that we can make sure that people that go into a surgery center or a hospital for a surgery are going to know that the people in there have been vetted. Minimum competency is vital. To me it would be vital to have people with minimum competencies in a surgery room. You know, we wrote...we changed this bill around considerably from last year to accommodate surgery centers and hospitals because we did listen to them. They came to us and said, we train our own in many cases and we want the ability to continue to train our own. So we put in there, you know, that they can train their own and after they've been employed 180 days, they can go through a competency check and become registered. I see that happen. I don't know why anybody would be against that but we did that at the request of the hospitals, and at the time they said, that's fine, we'll agree to that. You've done your work on this and so they came in neutral because a couple of their administrators didn't think it went far enough. What you have here today is plain and simple. You've got a turf war. You've got a turf war between nurses, you've got it between surgical centers, you've got it between hospitals. Doctors, in my opinion, is where it stops. If I'm in a surgery, I would hope that the doctor is in control of that surgery. These young people that are getting registered that want to be registered have gone through 18 months of training. They've passed competency classes, taken tests. In a minimum, we ought to give them a registry so that people can go to that registry and say, you know, they're registered with the state, they've been vetted by the state because they've been fingerprinted. They've had background checks and it just strengthens our ability. Are we building more regulation? Sure, we are. But wouldn't you rather have the regulation knowing that somebody is safe in that emergency room or surgery room than to have one person in there that's not? And quite honestly, they talked about the janitors. I think that's nonsense. It's making a mockery out of what we're trying to do here. Let's give these people credit for what they're trying to do. I haven't said one negative thing about the nurses. The nurses play an important role as well but, at the end of the day, everybody needs to learn to get together in this situation. I don't see where this is going to hurt rural hospitals. If you think this is going to hurt them, they've got a lot more problems than they...than you think they have. So, I hope, you know, I thought about pulling this bill. In fact, we changed the hearing date to today. It was scheduled early on and we moved it for palliative care so we'd talk about and try and get more consensus. The department came in, said, hey, we're okay with it the way it is now. And the more I thought about it, there's some things you're never going to cure. It took ten years to get the dental people to all come together. I'm not going to wait ten years. It's important to do it now. We don't want HHS to come in and say, we're going to have a cease and desist because we've got people in our surgery rooms that aren't credentialed. Registry is all we're asking for

and minimum competencies. So with that, I'd ask if you have any questions and, if you're willing, to move this forward. I'd appreciate it. [LB360]

SENATOR RIEPE: Are there questions? Senator Linehan. [LB360]

SENATOR LINEHAN: Thank you very much, Mr. Chairman. Thank you, birthday Senator. [LB360]

SENATOR KOLTERMAN: Yeah, you're welcome. [LB360]

SENATOR LINEHAN: So the bill would still allow hospitals to train their own and they could be credentialed. It doesn't force anybody to go... [LB360]

SENATOR KOLTERMAN: Absolutely. They can train their own and the other thing is, nurses can continue to be in the operating room. They don't have to use a surgical tech. [LB360]

SENATOR LINEHAN: So it wouldn't be...we're not going down a path where everybody...they all have to go to college to get this job? [LB360]

SENATOR KOLTERMAN: No, they do not. They do not. [LB360]

SENATOR LINEHAN: Okay. All right. Thank you very much. [LB360]

SENATOR RIEPE: Are there other questions, if not I have a question, sir. Oh, I'm sorry, is there a question here? [LB360]

SENATOR CRAWFORD: I will. Go ahead. [LB360]

SENATOR RIEPE: My question is this is...earlier a witness said, talked, that said the hospitals do not support this bill. Do you know whether that's in fact true? [LB360]

SENATOR KOLTERMAN: Well, you should have a letter that says it came in in a neutral position. They aren't opposed to it and they're not supportive of it. They're neutral. [LB360]

SENATOR RIEPE: Okay. Is that sort of a rural-urban turf war or what? You're not going to go there? [LB360]

SENATOR KOLTERMAN: I can't speak for the Hospital Association, other than they told me that if we put the rules in there, they said they would support it. [LB360]

SENATOR RIEPE: Personally, I'm disappointed with some of these professional organizations that don't want something but they refuse to take a position on it. I find that difficult to deal with. [LB360]

SENATOR KOLTERMAN: I can give you a copy of their letter. You should have a copy of the letter of Nebraska Hospital Association. [LB360]

SENATOR RIEPE: Okay. Senator Crawford, do you have a question? [LB360]

SENATOR CRAWFORD: Thank you, Chairman Riepe, and thank you, Senator Kolterman. I appreciate your work on this issue over multiple years and working with the stakeholders as well. I...as I read the bill language, I'm still just trying to understand the role the registry plays in terms of safety or screening other than I see that it would give a...the record of the people and their address. Their own documentation looks like self-reported of if they have convictions and then it does then have them document whether they have schooling or any training...from a...some kind of training that's...excuse me, competency and I appreciate that that's in the bill. I think that's important. So, but you just mentioned and someone else has mentioned a background check or the state providing a background check and so, I just wanted to make sure that we were clear. It doesn't look like that's in the bill. [LB360]

SENATOR KOLTERMAN: And if that's not in there, we can get that corrected. But I was under the... [LB360]

SENATOR CRAWFORD: I wasn't necessarily pushing for it, I just want us to be clear about what the intention is. [LB360]

SENATOR KOLTERMAN: I was under the impression that the people that register would have to go through a background check and that would be part of the registration process. [LB360]

SENATOR CRAWFORD: Okay. I think we could have that conversation. I don't know that that would be an added cost and added background check which we've also had an issue with some of our other registries, so I guess I assume that the... [LB360]

SENATOR KOLTERMAN: I'll check on that for you, Senator. [LB360]

SENATOR CRAWFORD: ...people hiring would be concerned about doing that as opposed to the state having that as part of what we're asking people to do given of the language. So I'm not sure I would support that. I'm just wanting to be very clear. It's not what it currently says and, if it is going to say that, I think that's another conversation for us to have about that cost and level and whether the state appropriate place or entity to do that background check. [LB360]

SENATOR KOLTERMAN: I will look at that for you and get back to you on that. [LB360]

SENATOR RIEPE: Okay. Other questions? Before we close on it, ask Tyler if there are any letters that we have to submit. [LB360]

TYLER MAHOOD: (Exhibits 9-11) Yes, I have a letter signed by Diane Jackson of the State Board of Health in opposition; a letter signed by Danielle Glover of the Association of periOperative Registered Nurses in the neutral; and Andy Hale and Elisabeth Hurst of the Nebraska Hospital Association in the neutral. [LB360]

SENATOR RIEPE: I'm sorry, how did the Hospital Association come in? [LB360]

TYLER MAHOOD: Neutral. [LB360]

SENATOR RIEPE: Neutral...okay. Okay, thank you, sir. This concludes the public hearing of HHS Committee on LB360. [LB360]

SENATOR KOLTERMAN: Thank you. [LB360]

SENATOR RIEPE: Thank you. Happy birthday. That concludes our hearings for the day. [LB360]