M. HANSEN: All right. All right. With that, we'll go ahead and get our-- get our introduction started for Business and Labor. Good afternoon, and welcome to the Business and Labor Committee. My name is Senator Matt Hansen. I represent the 26th Legislative District in northeast Lincoln. I serve as Chair of this committee and we'll start off by having the members of the committee that are here doing self-introductions, starting with Senator Chambers.

CHAMBERS: Ernie Chambers, 11th Legislative District in Omaha.

M. HANSEN: And committee staff.

KEENAN ROBERSON: Committee clerk, Keenan Roberson.

TOM GREEN: Tom Green, legal counsel.

HALLORAN: Steve Halloran, District 33, Adams and part of Hall County.

SLAMA: Julie Slama, District 1, Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

M. HANSEN: And also assisting us today is our committee pages, Kaci and Hunter. And I will note that we'll be joined by other senators. Senator Hansen is arriving, and Senator Crawford is presenting a bill in another committee and will be here shortly. We'd like you to do your introduction.

B. HANSEN: Senator Ben Hansen, District 16, Washington, Burt, and Cuming Counties. It just rolls off the tongue.

M. HANSEN: Perfect. All right. This afternoon we'll be hearing six bills, and we will be taking them in the order listed outside the room. On each of the tables in the back of the room, you'll find testifier sheets. And actually the table is now in the hallway, so on the table in the hallway, you'll find testifier sheets. If you are planning to testify today, please fill one out and hand it, and we will have a page go up and retrieve the form to bring it to Keenan when you come up. This will help us keep an accurate record of the hearing. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during that bill's hearing. If you do not wish to testify, but would like your rec-- to record your position on a bill, please fill out the sheet in the back of the room. Also, I will note the Legislature's policy that all letters for the committee-- for the

record must be received by the committee by 5:00 p.m. the business day prior to the hearing. Any handouts submitted by testifiers will be included as part of the record as exhibits. We would ask that if you do have any handouts that you please bring nine copies and give them to the page when you come up. If you don't have nine copies, the page can help you make more. Testimony for each bill will begin with the introducer's opening statement. After each opening statement, we will hear from supporters of the bill, then from opposition, followed by those speaking in a neutral capacity. The introducer of a bill will then be given an opportunity to make closing statements if they wish to do so. I will ask that you begin your testimony by giving us your first and last name and spelling them for the record for our transcribers. We'll be using a five-minute light system today. When you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning. And the red light comes on we'll ask you to wrap up your final thoughts. With that, I would also like to remind everybody to please, including senators, to please turn off or silence your cell phones. And I will note we're kind of at capacity today, so if you would like to give up your seat and are not interested in a particular bill, by all means I'm sure there are others who would like it. And we'll also try and be accommodating to people spacewise if anybody steps out in the hallway if you could give us an indication or something, we'll make sure to get-- flag you down before the end of the hearing. With that, we invite Senator Cavanaugh to open up with our first bill of the day, LB418.

CAVANAUGH: Thank you, Chairman Hansen and members of the Business and Labor Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I am here today to represent District 6 in the Nebraska Legislature. I am introducing LB418, and I feel like this is a bit of freshman hazing in that I had no idea where I was going and had to be directed here by security. But I found my way. LB418 attempts to give some peace of mind to employees going through work and-- workers' compensation proceedings. It is a stressful time for the employee and their family. There is a lack of income to the household. The extent of the injury may not be known. Medical bills start to pile up, and calls from debt collectors are coming with no end in sight and with no way to pay them because of all this is happening before the claim was made-- has made its way through the workers' compensation system. The bill would prohibit debt collectors from attempting to collect debt for medical, surgical, and hospital services arising out of the injury that is the subject of the workers' compensation claim. It does not prevent the eventual collection of the

debt-- of the debt or the bill, and it does not lower the amount of the bill. LB418 would only delay the collection of the debt until the claim is resolved. I will be bringing an amendment to this bill and working with the debt collectors on clarifying language, and we hope to have something submitted to the committee soon. And I just urge the committee to vote the amended bill out of committee once we have it. Thank you.

M. HANSEN: All right. Thank you, Senator Cavanaugh. Any questions from committee members? All right. Seeing none, thank you for finding us here in our new room.

CAVANAUGH: Thank you.

M. HANSEN: All right. With that, we'll take our first proponent on LB418.

TODD BENNETT: I just have a few handouts. Good afternoon. Todd Bennett on behalf of the Nebraska Association of Trial Attorneys, and it's B-e-n-n-e-t-t. And I come to you in support of this bill for many reasons. And one of the-- the biggest thing I want to say is what I've handed out to you is ProPublica's last article. It also deals with the bill that Senator Adam Morfeld provided last year, LB526. That bill dealt with several issues across the board with debt collectors, garnishment, etcetera. What I want to talk to you about is what they call the doctrine of jurisdictional priority. What that means is-- is when you get two courts with the same jurisdiction at the same time, the first one to the court is generally given preference to proceed. And they-- and that doctrine essentially allows them to retain that jurisdiction because they don't want to have conflicting opinions, confusion in which case is going to control, and so forth. That is still the law today. And one of the reasons I provided this handout is to show just in 2013 there was 80,000 collection lawsuits. Where we see this is on behalf of injured workers and which is the most important. There are many things that are not controlled once a worker gets hurt and there's bills in court. And what those are is-- is essentially there's a medical fee schedule. So a lot of times these collectors when they're seeking a bill that should be paid pursuant to the comp schedule but because that claim is denied, they're seeking an amount higher than what they're entitled to. In the court of the Workers' Compensation Court, we can't recover that payment that a worker would have to make in the collection suit. Then you have attorneys fees, court costs, and interest. The Workers' Compensation Court doesn't have jurisdiction to award them in terms of just a

payment on-- on a fairly disputed claim. They can't reimburse them, and they certainly can't pay the worker's attorney to defend them in a collection action. So a lot of times these injured workers have to pay those costs. The second thing is-- is then you lead to judgments. A lot of time injured workers don't know how to defend a collection suit. If they fail to answer or they fail to show up, they get a default judgment. That default judgment is then turned into a garnishment. If they are lucky enough when they're hurt to get back to work, what wages they do earn are subject to garnishments. The second part of that is-- is if they miss a debtor's-- debtor's exam. So, in other words, there's a judgment, and they're called into court to go over their assets and liabilities. If they miss that, they can be held in contempt of court. In one of the horror stories in one of those ProPublica articles that I presented to you, you can be jailed for-- for contempt, and that simply defeats the purpose. What this bill is designed to do is create a solution. This solution gives priority to the Compensation Court where it should be. It also sets forth that it can determine what the amount of the bill is. And again, a lot of times the workers' compensation fee schedule is going to be lower than what a collection agency has actually sought to recover. Then you--it'll stop the race to the court. That's the main thing. It would stay all litigation filed in these collection suits so there's not a race to the court and then we have a fight because many a times when I represent someone for free on these actions, I have to either dismiss the case, and if the judge wants to continue, I implead the employer, and I implead the workers' compensation care. And we're talking hundreds of dollars of bills. We're not talking tho usands a lot of these times. And then that creates more litigation, more time and effort. The proper court is the Workers' Compensation Court where it should be dealt with. Simple. There's no other solution around. What this also would do is keep ruining somebody's credit report, getting a judgment when they shouldn't have to pay, paying a higher amount when they should-- should be paying a lower amount. There are amendments that is circling around, and hopefully we can reach an agreement on those amendments, dealing with notice. What is that proper notice to a state court? But-- but on the face of this, this bill is pretty simple. Stop the collection suits in a rightful workers' compensation claim and let the court of-- the Compensation Court decide what these rights and benefits are. They're the proper people. And again, I don't want to bla-- beat a dead horse, but you can't get your fees, you can't get your court costs, you can't get interest. And if you are subject to paying a higher bill that's not according to the fee schedule, we can't recover that at trial. And many of these folks that

may want to come in and oppose this, they can't deny this bill is needed. They can't deny it. They can argue about technical refinements of what the form and content are, but the need for it, cannot. The last thing I'll leave you with is everybody knows that the Compensation Court is for the beneficent purposes of the worker. That beneficent purpose, specifically by the Nebraska Supreme Court, talks about to provide the worker with prompt relief from the adverse economic effects caused by an accident injury. I'm asking you to support this bill on behalf of all Nebraskans and provide them economic relief which is needed and fixed. Thank you. I'll be happy to take any questions.

M. HANSEN: All right. Thank you for your testimony. Are there questions from the committee? All right. Seeing none, thank you. All right. We'll take our next proponent to LB418. Hi. Welcome.

SCHUYLER GEERY-ZINK: Good afternoon, Senator Hansen, committee members. My name is Schuyler Geery-Zink, S-c-h-u-y-l-e-r G-e-e-r-y hyphen Z-i-n-k, and I'm a staff attorney with the Nebraska Appleseed. We support protecting injured workers from medical debt collection while their cases are pending in Workers' Comp Court. The workers' compensation system is designed to serve the public interest by ensuring that Nebraskans can recuperate and get back to work when they're injured on the job. Workers' compensation creates an important incentive to employers to maintain safe workplaces and bear the cost of an unsafe workplace rather than society, taxpayers, and individual families. LB418 is a commonsense bill that would ensure injured Nebraskans do not face the pressures and ripple effects of medical debt collection for care that in most cases will eventually be paid by the workers' comp system. Nebraskans should not be financially punished for a workplace injury. When hospitals turn medical debt over to collection agencies, these agencies start reporting to credit bureaus which immediately negatively affects workers' credit scores. One collection account can cause a good credit score to drop by 50 to 100 points, and medical debt collections may remain on a credit report for 7 years from the date of the original delinquency. Finally, enduring financial anxiety while trying to recover from an injury does not serve the fundamental purpose of supporting people in getting back to work. Dealing with personal finance for a debt one cannot afford which is meant to be paid through the Workers' Compensation Court system in the future creates intense stress which runs counter to recuperation and health. In fact, economic insecurity through unemployment has been found to predict consumption of over-the-counter

painkillers. So injured workers are already struggling with physical pain as they try to recover and return to work or reinvent their lives after a life-changing injury. Nebraska workers deserve better when it comes to their physical, emotional, and financial well-being. LB418 simply keeps the initial burden of payment focused on the entity that is likely responsible for that payment until the workers' comp case is complete. The bill would alleviate financial stress on Nebraskan families trying to make ends meet and recover from workplace injuries. Please support Nebraskans and their families by advancing LB418. Thank you.

M. HANSEN: Thank you. Any questions from the committee? All right, seeing none, thank you for your testimony. All right. Are there any other proponents to LB418? Seeing none, we'll take our first opponent to LB418.

TESSA STEVENS: Good afternoon, Chairman Hansen, members of the committee. My name is Tessa Stevens, T-e-s-s-a -S-t-e-v-e-n-s. I'm an attorney in Grand Island, Nebraska, and I'm here today on behalf of the Nebraska-- Nebraska Collectors Association. And we're testifying in opposition of LB418. I would like to start by saying that the NCA does not oppose the concept of the bill. That is, we don't oppose this stay of the debt collection process for accounts that are involved in a workers' compensation case. We only have concerns with how the bill is written. Earlier this month, I had a great meeting with Senator Cavanaugh about our concerns, and last week another member of the NCA did speak with the Nebraska trial attorneys. And we are working together, and I've been very encouraged by these conversations of coming up with a mutual amendment that will, I guess, appease everyone involved. I did hand out to you today the proposed amendment that I had given to Senator Cavanaugh. And I will just outline quickly for the committee's consideration the concerns that we have with the current version of LB418. First, the bill stays collection actions only by collection agencies, not by all creditors. We feel that if the stay is going to be in place, it should apply equally to all creditors. Second, LB418 does not provide a mechanism for notice to be given to creditors of the pending workers' compensation case or the stay that would be in place. So while we can and are happy to discuss how that notice should be given, we do think some notice should be provided that would limit our liability of violating the statute or other regulations that we have to follow. And the notice should be specific to the debts that are involved in the workers' compensation case because there may also exist debts that aren't part of the

workers' compensation case. Third, LB418 does not toll the statute of limitations on the collection of that debt. The neighboring states that have similar laws do provide a toll for that statute of limitation. So in the event it is not resolved through the workers' compensation case in a way that's favorable to the injured party, the debt collectors could continue to collect it without being, you know, time-barred by the statute of limitations. And finally, we believe that LB418 is in the wrong statutory section. It's currently in Chapter 45 of the Nebraska statutes, which is the Nebraska Collection Agency Licensing Act and it should be probably in Chapter 48, the Workers Compensation Act. There's a couple of reasons this change is necessary. The bill obviously doesn't have anything to do with the licensing of collection agencies. There are some consequences under the licensing provision that we wouldn't want to apply here. And again, putting it in this act would not equally apply to all creditors, which we believe that it should. I have nothing further, but I'm certainly happy to answer questions.

M. HANSEN: Thank you. Are there questions from the committee? Seeing none, thank you for your testimony.

TESSA STEVENS: Thank you.

M. HANSEN: All right. Is there anybody wishing to testify in opposition to LB418? Seeing none, is there anybody who wishes to testify neutral on LB418? Seeing none, Senator Cavanaugh, would you like to close?

CAVANAUGH: Thank you, Chairman Hansen. I just want to reiterate again that we will continue to work on the language to make sure that it is agreeable. And I think that we can get there fairly easily. So I appreciate your time today. I welcome any questions.

M. HANSEN: Perfect. Thank you. Are there other questions? Senator Hansen.

B. HANSEN: What do you think about the amendments that are put forward?

CAVANAUGH: I think they're pretty reasonable. I am going to continue working with them and the trial lawyers to make sure everybody-- we can get to an agreeable place for everyone. But I-- the reason that I had the meeting, and as was stated, because a good meeting was to make sure that we could get this to be something that is positive for those

that are engaged in workmen's comp so, not to be a obstacle to people getting their bills collected, just making it easier on the people that are in those situations.

B. HANSEN: Thank you.

M. HANSEN: Thank you, Senator Hansen. Any other questions? All right. Seeing none, thank you, Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for your time.

M. HANSEN: I will note for the record, we had one letter of support from Sue Martin of the Nebraska AFL-CIO. With that, we will close our hearing on LB418. And we will-- wow, from the side door. And we will welcome-- we will welcome Senator McDonnell.

McDONNELL: Thank you, Chairperson Hansen and members of the committee. My name is Mike McDonnell, M-c-D-o-n-n-e-l-l, I represent LD5, south Omaha. You're all receiving a handout of my-- my testimony. LB526 proposes to address a problem that individuals receiving workers' compensation benefits are facing. There is a lapse of time between when temporary disability benefits and-- and when permanent disability benefits begin, leaving the worker with no source of revenue to their household for a window of time. Currently an individual who qualifies for workers' compensation temporary disability benefits is only eligible for these benefits until the individual reaches maximum medical improvement. In theory, this is when permanent disability benefits would kick in. However, in reality there is a gap of time before these benefits kick in as the worker's loss of earning capacity must first be determined. LB526 will fill in this gap by authorizing temporary disability benefits payments to continue until the later of the following three actions occur: permanent disability has been determined; loss of earning capacity has been determined; or, 30 days after receiving notice that temporary disability benefit payments will cease. It is good policy for our state that our workers' compensation system is fair and that it's exactly what LB-- this is exactly what LB526 would accomplish. Encourage the committee to support LB526, and I'm here to try to answer any of your questions.

M. HANSEN: Thank you, Senator McDonnell. Senator Slama for a question.

SLAMA: Could you just kind of quanti-- quantify for me the gap of time between the temporary disability benefits and the permanent disability benefits kicking in? What's the typical window there?

McDONNELL: On the average?

SLAMA: Sure.

McDONNELL: Within-- I believe and I'll confirm this for you. I believe within the 30-- 30 days and that's what we're trying to also put in there, 30 days after notice. But you hit it right on the head. It's a gap coverage between the temporary disability and the permanent disability, whatever time that might be.

SLAMA: Got it. Thank you.

M. HANSEN: Thank you, Senator Slama. Any other questions? All right. Seeing none, thank you, Senator McConnell.

McDONNELL: Thank you.

M. HANSEN: All right. With that, we will move to proponents in LB526.

BRODY OCKANDER: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. I'm Brody Ockander, B-r-o-d-y O-c-k-a-n-d-e-r. I'm a lawyer practicing in Lincoln, and I'm here on behalf of the Nebraska Association of Trial Attorneys. First, I'd like to thank Senator McDonnell for bringing this bill to protect injured workers. As he stated, this bill amends Section 48-121 under the work comp act and the purpose of the bill is twofold actually. It closes that gap of this what we call indemnity purgatory between TDD and PPD. But it also if in-- indemnity benefits are cut off by the employer, it allows the injured worker an opportunity to have 30 days' notice and get a doctor's opinion of his or her choosing paid by the employer who cut off the benefits. Now to help understand what I mean, let me give you a quick rundown on how work comp benefits are actually paid. If a work-- if a worker has a work comp claim and has restrictions-- she has restrictions preventing her from returning to work, she can receive temporary disability payments during that time. And if she-- that-- those will last until she either returns to work or is placed at what's called maximum medical improvement or MMI. Then once she's placed in MMI, she may have a permanent disability, for which she can get paid as well, as a result of that injury. And that's that gap that we're talking about. Now the amount is going to depend on the body

part, but it also depends-- the amount of time is going to depend on the body part as well. Now this can be-- this is especially a problem when the injured worker is entitled to a loss of earning capacity evaluation. Those are usually reserved for like neck and back type of injuries because those evaluations can actually take a long time, more than 30 days we're talking about here because they get placed at maximum medical improvement, then get permanent restrictions, then need the treating doctor to sign off on those restrictions. Then we need to apply to the court for a voc rehab counselor to be appointed, then wait for that appointment to be made, and then for the voc rehab counselor to issue the report. And we could talk about maybe up to three or four months or something before-- of this gap between payments of TDD and PPD. So this fixes the first part of that-- of the amendment to say that the employer must pay that TDD up until this-- this report is issued for the loss of earning capacity, and doesn't-- they can't just cut off benefits as soon as the doc says MMI. Now the second part of the bill addresses when the employer goes out-- say he spends $3,000 or something like that to hire a doctor to give an adverse opinion, to say maybe that it's not related to the work accident, that-- the injury that they're suffering or perhaps that they don't need these work restrictions so they can come back to work, that injured worker. Well, this says that if they do that, then the employer has to give the employee, the injured worker, notice, 30 days' notice, before they cut those benefits off and give him some time to do something. And also that that employer since they already paid for an opinion of their-- of their own, that they would have to pay for an independent medical examination for the injured worker's choosing. Now this-- this helps bridge a different gap. This is bridging the gap to allow access to justice for the injured worker because these employers usually have an insurance-- work comp insurance carriers usually have a lot deeper pockets. Now often the 30 days' notice can be super helpful because then once the-- they're aware that there's going to be indemnity benefits that are going to be cut off, they can start calling to get help. And that way they still have income during this time. And oftentimes clients come to us, and their benefits have already ceased. And they're in a panic mode without any income, and they're injured and unable to work. In sum, we ask that the committee support this bill to ensure that injured workers are able to even the playing field and gap that income. Thank you.

M. HANSEN: All right. Thank you for your testimony. Any questions from committee members? Seeing none, thank you. All right. Is there any

other proponent testimony on LB526? All right. Seeing none, if you guys are going to stand up, you've got to like wave me off or something. All right. Seeing none, we'll move on to opponent testimony to LB526.

PAUL BARTA: Chairman, members of the Business and Labor Committee, my name is Paul Barta, that's P-a-u-l B-a-r-t-a, and I appear before you today on behalf of Nebraskans for Workers' Compensation Equity and Fairness. I'm here in opposition to LB526. Generally-- and I, of course, have not spoken with the senator who introduced this, but this appears to be a mix of a couple of concepts that are used in Iowa under different statutes, Iowa workers' compensation law. So there's really two concepts. There's one, the issue of temporary total disability benefits and when those are going to be paid and when they should be paid.

M. HANSEN: Um-hum.

PAUL BARTA: The other issue, of course, relates to what's referred to in this as independent medical examinations. As to the temporary disability benefits-- and if I say TDD, that's kind of what I'm talking about. One of the concerns here is this bill does not-- what-- what it does not take from the Iowa law is there's not a carveout for those circumstances when somebody has returned to work. I have not seen any statistics presented before the committee, and obviously, I don't have everything that you do. But I-- what the committee doesn't understand is there-- in most circumstances when individuals are receiving temporary total disability, well, they're receiving that because they've been taken off of work because of doctors' restrictions while they're convalescing. But what this bill doesn't address is what about those situations when someone has been placed at maximum medical improvement, and they've been returned-- they've been receiving TDD, they've been placed at maximum medical improvement, and then they're returned to work? Well, what happens in that situation? Under this bill, at least the way I read it is, in addition to returning to work in an accommodated fashion or even if you're redu-- even if you're returned entirely, you'd be receiving wages and TDD at the same time because of the 30-day requirement. I don't think-- I mean I understand the beneficent purposes of the act, but the way I read this, there's no carveout for that. What Iowa does-- Iowa says is you essentially have those benefits until you've either returned to work or if you're not returning to work, you're going to have 30-- you'll have those 30 days of benefits. Second, as indicated, at least

as to this portion of the bill, I-- I don't see this occur that often. And granted, I'm not Mr. Ockander. I don't have injured workers coming to my office. I represent employers largely, but I don't see this as an issue, frankly, that is-- that's overly pressing. A lot of times what you see-- now I will agree it's not required by law, but what you will see is some employers will say, we anticipate there will be some permanency involved. You'll have situations where someone has surgery, so it looks like there will be a permanent impairment-- permanent impairment rate. Those employers will just go ahead and pay that permanent impairment or keep paying those weeks until they hit that rating. So from this perspective, I don't see the need for this. And I think that it creates-- I don't think anybody on the Business and Labor Committee wants a situation where if in the vast majority of cases these people are going back to work immediately after they've been placed in MMI, you're automatically guaranteeing them 30 days of benefits on top of their wages. It doesn't serve the purpose. As to the second provision, the issue regarding independent medical examinations, once again, I did not speak to the senator who introduced this, but independent medical examinations under the Nebraska Workers' Compensation Act, I believe that's a term of art. Typically an independent medical examination is one in which the court-- someone will petition the court, and the court will appoint a truly independent examiner. So I-- I-- I have some concerns with the verbiage in this because what this essentially says is if that individual has this right, that worker gets to select an independent medical examiner. So from a purely logistical standpoint, I have some questions about that. There may be other terms. Finally, as to the issue of when this is allowable, it essentially says when-- when the basis of termination is for a reason other than a provider's opinions. Well, what if it's something completely unrelated to medical care? What if video shows up of this person not even working that day? Where is the policy in automatically guaranteeing an IME or medical examination in that context? So I just think this is painted with far too broad of a brush.

M. HANSEN: All right. Thank you for your testimony. Questions, committee members? All right. I would have a question though. So-- so-- and I'm trying to work this out. So are there situations where somebody goes from-- that does not return to work? So they're going from the temporary disability designation to a permanent disability designation?

PAUL BARTA: There can be.

M. HANSEN: OK.

PAUL BARTA: There can be.

M. HANSEN: And in that time line, is there a gap-- sometimes a gap in coverage when they transition from temporary to permanent?

PAUL BARTA: There can be, yes.

M. HANSEN: OK. If we-- if the bill was tailored to those situations, would that be something you could support?

PAUL BARTA: Well, the only problem on that is, it depends on-- on the gap. There are reasons sometimes when people will come back. For example, Senator, there will be people who may have been returned to work without restrictions or with restrictions the employer could have accommodated. But what if that individual decided they don't want to work that job anymore, and they just left? I mean, the point is, if-- if the-- if part of the act is to encourage employers to get people back to work, even injured employers, there are those circumstances-- there are the circumstances where frankly I still think it goes against that policy.

M. HANSEN: OK. Thank you for your testimony. Any other questions? Seeing none, thank you.

PAUL BARTA: Thank you, Senator.

M. HANSEN: Hi. Welcome.

BOB HALLSTROM: Chairman Hansen, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the National Federation of Independent Business. I've also signed on-- in with-- on behalf of the Nebraskans for Workers' Compensation Equity and Fairness and the Nebraska Chamber of Commerce and Industry. To save some time, I won't belabor all of my written comments. Mr. Barta has touched on all of the policy arguments that are contained within my written comments. But just to summarize, we have concerns from a policy perspective if you have an automatic 30-day extension of benefits that's based upon having to give notice in situations in which the employee may have in fact come back to work, reached maximum medical improvement, and with or without work restrictions, is earning a full or a partial wage at that time. As Mr. Barta indicated, we also

have concerns over the imposition of the expense of a second opinion or second in-- independent medical examination on the employer in those types of situations as well. In looking at a similar provision in Iowa, we can't just lift Iowa law and put it on to Nebraska in many situations because the laws are particularly different. In this case, we have Iowa as an employee-- an employer-choice-of-physician state compared to Nebraska where the employee has the right to utilize their treating family physician. With regard to the issue on the loss of earning capacity and the gap that Chairman Hansen referenced most recently, I think again, as Mr. Barta suggested, there are certainly a number of circumstances where that would be unfair where the employee has control over (a) how quickly the loss of earning capacity evaluation comes back; secondly, in situations where they may be adjudged by the doctor to be able and capable of going back to return to work having reached maximum medical improvement, that they choose not to. And that would seem to be unfair and inappropriate for them to receive additional benefits during that time when they're not mitigating the damage, if you will, or earning that wage that they could by returning to work. With that, I'd be happy to address any questions that the committee may have.

M. HANSEN: Thank you, Mr. Hallstrom. And are there any questions? Seeing none, thank you for your testimony.

BOB HALLSTROM: Thank you.

M. HANSEN: All right. Are there any other opponents to LB526? Seeing none, does anybody wish to testify in a neutral capacity?

JEFFREY BLOOM: Chairman, members of the committee, my name is Jeffrey Bloom. I'm an assistant city attorney for the city of Omaha. And I'm here-- come here today to testify on behalf of the city of Omaha in a neutral capacity on LB526. While the city of Omaha has officially a neutral stance on this bill, we'd like to express our concerns with certain provisions and the estimated costs of the bill. The Nebraska Supreme Court has consistently held that a workers' compensation claimant should not receive temporary disability benefits upon reaching maximum medical improvement. This bill changes that. And the reasoning that they said that is that a condition cannot at the same time be both temporary and permanent. It's the intent of the Nebraska Workers' Compensation Act that the employer pay permanent disability as determined, if any, as soon as possible after maximum medical improvement has been reached, not continue to pay temporary disability. I'm quoting Rodriguez v. Hirschbach Motor Lines, the 2005

Supreme Court case that relies on Yarns v. Leon Plastics, Gibson v. Kurt Manufacturing. In other words, it's been well-accepted law. In this case-- in Rodriguez, the Supreme Court pondered simultaneous temporary and permanent disability payouts from the same accident and injury. The court said that that is inconsistent with established precedent; now in our view that LB526 is inconsistent with established president-- precedent. Under this bill, simultaneous payment of permanent and temporary disability can result based on our reading of the bill. Further, simultaneous payment of temporary disability and regular pay can result once a claimant is back to work. This certainly seems inconsistent with what the courts have long ruled. Now looking at LB526, page 2, line 29, it states that "temporary disability shall continue until the later of," and then it gives two choices. One choice would be disability is determined through an impairment rating for a scheduled injury or a loss of earning capacity analysis for a "body as a whole" injury; or, the second choice would be 30 days have passed since the employee was given notice of the discontinuation of the temporary disability. So in cases where the temporary disability is issued, an employer must extend the temporary disability by our rating by at least 30 days. It may be longer than that. So let's talk numbers. The city of Omaha is self-insured for workers' compensation purposes. The city had its consultant do additional analysis since we submitted our fiscal note for this bill. Between 2014 and 2018, five-year period, city of Omaha paid out approximately $4.7 million in temporary disability or about $934,000 per year. An additional 30 days of temporary disability for each claim would cost the city on average $77,816 per year. That is a minimum. If it's longer than this, that will cost more. Further, if an independent medical exam is used by the city to determine its decision to discontinue temporary benefits, under this bill the city must provide an additional IME by a doctor of an employee's choice. Now independent medical exams cost the city on average between $2,200 and $2,500. The city gets an IME for somebody who is receiving temporary benefits on average about ten times per year. So at a minimum the requirement would cost the city an extra $22,000 per year. So in summary, the cost of this bill at a minimum would cost the city approximately $100,000 per year. And that's a minimum. And that's certainly a concern for the city. But the bigger concern is the opening of the Workers' Compensation Act up for new interpretations by the Supreme Court. Per page 2, lines 29 through 31 of the bill: temporary disability shall continue until later of (a) permanent disability, as measured by permanent impairment for a scheduled member injury, has been determined. What if no impairment rating is warranted as there is no permanent disability? Must an

employer pay for an impairment rating to be done in all circumstances to stop ten-- temporary benefits? We're unsure by this. Per page 2, line 31, page 3, line 2: in the event the claim is payable under the loss of earning capacity until a loss of earning capacity has been issued. To be entitled to a loss of earning capacity, the court has found that one must show that they must have a "body as a whole" injury and permanent restriction to be a good prima facie case. Now, loss of earning capacity opinions must be paid for by the employer. To stop payment of temporary benefits, must employers now pay for LOEC in every situation a "body as a whole" injury is claimed, even when a prima facie case has not been made? Again, we go back to the phrase "the later of." If an impairment rating or an LOEC-- LOEC report is not reported, must the employer pay temporary disability indefinitely? Unlike other states, there is not a cap in Nebraska on the length temporary total disability must be paid. So I've thought of ways in which indemnity and workers' compensation is a three-legged stool: temporary disability, maximum medical improvement, and then permanent disability. If MMI is stopped-- is stopping the ending point for temporary disability, that stool falls. Now with this, temporary disability has been defined as a period during which somebody is submitting to treatment, convalescing, or is unable to work because of an accident. This bill seems to create a new class of benefits, temporary benefits when one is not temporarily disabled. So we have a lot of questions with this. If an employee returns to work, employers are generally allowed to take credit for pay earned vis-a-vis temporary benefits. If an employee is back to work full time but has not been there at least 30 days since the ending of temporary benefits, could this result in double pay or the employer not putting the employee back to work as soon as possible? So anyway these questions are what's coming up. We have a neutral stance on this bill, and we'd like to see where it goes. However, we'd just like to point out that the many the costs and our concerns with this.

M. HANSEN: All right. Thank you for your testimony. First and foremost, can I get you to spell your name for the record?

JEFFREY BLOOM: Sure. It's Jeffrey, J-e-f-f-r-e-y, Bloom, B-l-o-o-m.

M. HANSEN: All right, and then let's see if there's questions from committee members. Senator Hansen.

B. HANSEN: Thanks for coming. So you're neutral to this bill?

JEFFREY BLOOM: Well, let's-- let's put it this way. We-- we're officially taking a neutral stance as far as that's concerned. We understand that it is within the province of the Legislature as far as to increase or add additional benefits and we just want to point out the costs. However, we'd like to have some of our concerns and questions addressed as far as if you would choose to go forward with this bill.

B. HANSEN: OK. All right. And you say it's going to cost you guys-- the city of Omaha about $100,000?

JEFFREY BLOOM: At a minimum, yes, per year.

B. HANSEN: OK. Thank you.

JEFFREY BLOOM: Thanks.

M. HANSEN: Thank you, Senator Hansen. And related to that, I had a follow-up question, Mr. Bloom. So-- so hearing your testimony coming in and saying there's an expense for the city of Omaha, yet your fiscal note says no minimal impact for this bill.

JEFFREY BLOOM: Yes.

M. HANSEN: Can you walk me through what has changed in the 48 hours or so since you've turned in the fiscal note?

JEFFREY BLOOM: Well, the fiscal note was turned in back on January 30. Since that time, we have had our vendor or our consultant, as far as that's concerned, on the SilverStone run numbers and do an analysis basically based on all the information that was taken here.

M. HANSEN: OK.

JEFFREY BLOOM: So at-- after the analysis was done, we realized that there's a bigger fiscal impact than was originally pointed there. We certainly don't want to make light of $100,000 as far as being little or no impact.

M. HANSEN: Sure.

JEFFREY BLOOM: But as far as we've received additional information, we wanted to point that out.

M. HANSEN: Sure. No, I-- I appreciate you coming in. I appreciate you clarifying that. I was just kind of approaching it from the perspective of, you know, when it comes to our Legislature, our Fiscal Office, we put high weight on the fiscal notes. Then to have somebody come in and add to their own fiscal note, I just wanted to make sure that was clear and probably not an oncoming tradition.

JEFFREY BLOOM: Certainly. And let's put it this way. The fiscal note was submitted prior to the full analysis, and we're making sure that that situation does not happen again in the future.

M. HANSEN: Thank you very much. Any other questions from the committee? All right. Seeing none, thank you for your testimony. All right. Anybody else wishing to testify neutral?

KORBY GILBERTSON: Mr. Chairman, members of the committee, I'm going to ask for forgiveness and allow me to testify in opposition. I was--

M. HANSEN: Were you in the hallway?

KORBY GILBERTSON: -- watching on my phone in the hallway and did not realize there was a time delay and walked in as soon as Mr. Hallstrom was done testifying and, obviously, there was a delay. So with that, my name is Korby Gilbertson, it's K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurers Association, Tyson Foods, and Lincoln Public Schools in opposition to LB526. And I was listening to the-- all the previous testifiers, and so I won't report-- or won't repeat what Mr. Barta and Mr. Hallstrom said because my testimony is very similar to theirs. But the bottom line is that when PCI looked at this legislation specifically, generally they don't take positions on changes and overall policy. Their questions with this bill is that it's kind of open-ended as to what the real intent is and whether or not the real intention is to just slap on an additional 30 days for everyone. The other concern was the ability for what we would call doctor shopping in that in Nebraska the employee already has a choice of physician. This is my understanding. It was based off of Iowa law which was employer choice. That would seem to make more sense in that state, but in Nebraska you would then be opening up the door for an extra bite at the apple. And we just don't think that that is what the policy of Nebraska is. With that, I'd be happy to answer any questions.

M. HANSEN: Thank you, Ms. Gilbertson. Are there questions? Seeing none, thank you.

KORBY GILBERTSON: Thank you.

M. HANSEN: Yes. And just kind of-- I would appreciate people making space in this crowded room, so we'll be accommodating as people come in and out. Any other testimony, neutral or opposed or proponent, I guess, if we're opening it up? All right. Seeing no other testimony, we'll invite Senator McDonnell to close.

McDONNELL: Thank you, Chairperson Hansen. Thank you also, Senator Hansen, for asking the question about Senator [SIC] Bloom, if he was testifying in the neutral position. I'd hate to see if he was opposed to my bill. What we're talking about here is-- and for everyone that testified, for Mr. Barta, Mr. Hallstrom, and anybody else out there that has questions, you know, I'd appreciate if you have suggestions, if you have concerns, that you try to meet with me prior to a public hearing. But here's where we're at. You've got people out there that have been injured, all right? We have a gap problem. We have-- we have a temporary disability and a permanent disability. And if there's ways to improve this, no one is trying to allow someone to double-dip. That's not the goal of this bill. The idea of making sure that someone that's been injured is still able to feed their families, that's the goal of this bill. And there should be nobody in the state of Nebraska opposed to that because we're not changing the benefits. We're just trying to make sure that there is no gap in between the benefits. And at that point where we're going through it and you have a medical examination-- medical examination and then the idea that possibly you have to go to a independent outside. And as the bill states if you-- if you look at the last page of the bill, within those 30 days what we're trying to do is make sure all the evidence that-- the employee has all the evidence. At that point the employee gets all the evidence. Then they have a chance to go to that independent medical examiner, and it is paid by the employer. But that's-- that's the end result. That's the result if things don't go right earlier on when they have the treating physician and things aren't worked out. Now Senator Slama had a great question, and I'll get the average of how many days we're talking about. But if it's-- if it's 1 day or 100 days, I don't know. But it should not be. There should not be a gap of 1 day or 100 days. We'll find out what the average would be. But also, it should be all of our goal to make sure that this person that's been injured-- first of all, anyone that's injured wants to get back to

work. They don't-- they were injured at work. They-- this wasn't-- they didn't do this on purpose. At that point we want to get him back to work, but there's going to be certain situations where they can't. And they're going to have a disability. But we want to make sure they're being paid and they're treated fairly. And if it has to come down to having an independent medical examination outside of the system, they should have that opportunity. I'm here to answer any of your questions. And also, I will meet with every one of the people that testified in opposition and also neutral.

M. HANSEN: All right. Thank you, Senator. Questions from the committee? Senator Halloran.

HALLORAN: Thank you, Chairman Hansen. I don't think anyone would argue the need to-- to fill the gap. But there's been some question about the other end of it being an overlap, right, and double dipping, as you might call it. Is there some way we can resolve those two issues so that they're compatible?

McDONNELL: Yeah. My intent is not to allow any double-dipping. So if there's language in amendments that we can work on together, I am open to any of those ideas to make sure that there is no double dipping.

HALLORAN: OK.

M. HANSEN: Thank you, Senator Halloran. Any other questions? Seeing none, all right. Thank you, Senator McDonnell. Before we close the hearing, we have two letters. We have a letter from Sue Martin in the AFL-CIO in support and a letter from Shannon Anderson from the city of Lincoln in opposition. And with that, we'll close LB526 and move on to our next hearing, LB448.

McDONNELL: Thank you, Chairperson Hansen, members of the committee. My name's Mike McDonnell spelled M-c-D-o-n-n-e-l-l. I represent LD5, south Omaha. LB448 proposes to amend the Nebraska Workers' Compensation Act by increasing the death benefit for burial expenses from a maximum of $10,000 to amount not to exceed 14 times the state average weekly wage. In 2019, the Workers' Compensation Court adjusted the weekly income benefit to $855 which would make the maximum burial benefit $11,970. Should this legislation be enacted? This benefit has not been increased since 2012 when it was adjusted from $6,000 to $10,000. Here we are 6.5 years later with no adjustments to this benefit, yet the incremental costs of living as well as burial expenses continue to rise. The handout provided to you is from the Web

site of the Workers' Compensation Court. It outlines increases to the maximum compensation benefits over the years and provides the burial benefit history. According to the burial benefit chart on the top right, death occurs-- death occurring on 7-18-2012 resort-- resulted in a benefit of $6,000, whereas death occurring the next day, on 7-19-2012, resulted in a benefit of $10,000. It makes absolutely no-- it absolutely makes sense as I see it to make an adjustment to the burial benefit that runs parallel to the cost-of-living expenses. I provided you with the bit-- the business aspect of this legislation, but let's talk about the people this bill truly affects. The loved ones who endure such absolute tragedy, have their lives turned upside down in an instant without any notice, say goodbye in the morning before work not knowing it will be the last time, they are the ones affected by this legislation. They are the ones who suddenly and unexpectedly are experiencing one of the worst tragedies in their lives, having to make difficult decisions and arrangements that most of us don't want to even think about. Now let us add to the scenario. They do not have the means to cover the expenses of burying their loved one. It is a situation we would wish upon no one, yet it happens. We as legislators can do something about this. We can amend our law to align the cost of living with the detrimental cost of dying. That is exactly what LB448 proposes to do. I am sure some of you are wondering why 14 times the wage. It is a number that increases the current maximum benefit by approximately $2,000, half the amount of the previous increases, after going more than 6.5 years without-- without any adjustment. Let me be clear. LB448 was introduced to parallel the cost of living with the cost of dying. If this committee prefers 13 times at $11,115 or even 12 times at $10,206, I would remain supportive of that-- of this measure as it would ultimately align burial expenses with the cost-of-living adjustment on an incremental and continual basis. Each of us can relate to an increase in expenses, bills, groceries, services, etcetera over the past 6.5 years. LB448 simply proposes to make a similar adjustment to the burial benefit that pays for these expect-- unexpected expenses. Tonya Ford is here today to share her personal experience with the members of the committee, and there will also be representative-- representation on behalf of the trial attorneys to add additional perspective with regard to the importance of this legislation. I'm here to try to answer your questions.

M. HANSEN: Thank you, Senator. Are there questions from the committee members? Senator Hansen.

B. HANSEN: So thank you, Chairperson. So have-- have the costs of burial-- OK. So man, I'm just kind of trying to get these numbers right. So when you say burial, does that mean like the burial or does that involve like the viewing, the whole aspects of--

McDONNELL: Well, when we-- when we had this discussion last year, no, it does not. For example, if you're talking about flowers, you're talking about opening the grave, you're talking about closing the grave, no, it does not. And in your handout if you look at the burial expenses from 1981, it was $1,000. In 1997, it went up to $2,000. And then in 2009-- or then 2012 it went up to-- I'm sorry, it was $6,000 from '97 to 2012. Then in 2012, it went up to $10,000. But also, yeah, for-- for those other expenses, it does not cover flowers if that's what you're asking.

B. HANSEN: Yeah, I think it's just because-- I think-- I thought the growing trend, especially in the last like five to six years, that burials, in fact, have been getting cheaper because more people are getting cremated now because people are finding it more cost-effective. And I think actually, a lot of funeral homes are having issues now sometimes with their income levels. And so I didn't know like we're seeing this huge spike in burials and how it would make sense for some of the legislation and I just didn't know. If we had some more kind of current numbers about what burials cost now, that's mainly kind of what I was just curious about, I guess.

McDONNELL: And I'll get you some more information on the cremation side of it.

B. HANSEN: That's fine. Thanks, appreciate it.

M. HANSEN: Senator Hansen. Any other questions? All right. Seeing none, thank you for your opening, Senator McDonnell. And with that, we'll move to proponents of LB448. And I'll also note for the record that Senator Crawford has joined us. Welcome.

TONYA FORD: Thank you very much for having me and allowing us to speak in regards to the importance of this. My name is Tonya Ford, and it's T-o-n-y-a F-o-r-d. Again, I'm grateful for having the opportunity to speak on the importance of LB448. I'm the executive director of a national nonprofit organization called United Support and Memorial for Workplace Fatalities and a resident of District 21 here. We all know and understand that going to work should not be a grave mistake. However, approximately 55 workers were fatally injured in Nebraska in

2018 due to a work-related incident. And over the last ten years, approximately 497 workers have been fatally injured here in Nebraska. Each work-- worker left behind their families with the heartache, grief, and financial concerns. After such an unexpected tragic work incident, family-member victims are left with the unforeseen financial burden and funeral expenses. Currently, Nebraska has a $10,000 burial benefit. The average funeral cost in Nebraska is anywhere between almost $5,000 to over $10,000. Sounds like we as Nebraskans got this bill right. You may be wondering why we should increase this. Well, the price is dependent on the funeral home as $10,000 average may only pay for the professional services: embalming, other preparation, funeral ceremony and visitation, transfer car to funeral home, hearse, casket, concrete outer burial container. However, it does not include the cemetery items and other outside expenses as that would be additional costs. Also, there would be additional fees if the travel for transfer, burial, church services, etcetera were exceeding the current $10,000 benefits. So I guess it does sound like we need to increase this the more we look at all the fees that are assessed for a funeral. Also through my research, I have found that if a worker resides in the western part of Nebraska, that it may cost more to cremate them there than it would here in the eastern part of Nebraska because they have to transfer the deceased to Colorado for the cremation and then transfer him or her back to Nebraska's funeral home. Every funeral is different. However, I will be honest. Over the last ten years, I have never heard of a family member victim not having to pay some out-of-pocket expenses to lay their loved one to rest. Last year I testified in support of a similar bill where I heard other individuals opposing the bill giving the impression that it is the fault of the fallen worker for not having life insurance. This should not be held on the shoulders of the workers. They did not slip and fall in the shower. They did not have a heart attack or any other sort of death. They were killed in a workplace, and this should not be absorbed by workers' compensation. After all, that is what it is intended for-- or sorry, should be, sorry. The truth is our loved one went to work and was killed during a preventable work incident. Show me a young adult that knows and understand that tomorrow is not promised. Show me a young worker that is financially stable to purchase such insurance. It is important to know that current-- currently in the state of Nebraska, we as family member victims do not have the right to sue an employer after work-related injury or death because we have workers' compensation. Therefore, it is our duty to make sure that workers' compensation benefits are adequate and up to date. We as family member victims know and understand that there is no

benefit that can bring our loved ones back. We sit here and testify today because we know and understand firsthand the everlasting pain, suffering, and inconvenience one endures after such an unexpected tragic loss. This bill can at least give the family member victims the ability to mourn their loss without the additional stress and concerns of how they will come up with the funds that exceed the $10,000 benefit. Today we ask for your support in LB448 in memory and honor of fallen worker Raven Cole who was 19 years old when she was fatally injured near Norfolk, Nebraska, in 2010, who in 2014 because of the kind donation of many was able to receive her last gift, her headstone. In memory of all of our fallen workers today and our future, we ask that you increase the burial amount and support this bill. Again, thank you very much for your time and your consideration. I'm happy to answer any questions.

M. HANSEN: Thank you, Ms. Ford. Are there questions from the committee? All right. Seeing none--

TONYA FORD: Thanks.

M. HANSEN: -- thank you for your testimony. All right. We'll take our next proponent for LB448. Hi. Welcome.

GENE CARY: Chairman, Senators, my name is Gene Cary, G-e-n-e C-a-r-y. I told this story before in front of you, and we're going to go through it again. My son was 30 years old, not married, no children, was working at Bene's Heating and Air in Raymond, Nebraska, as a new employee working for less than 30 days, not yet on benefits or insurance, was put in a dangerous work area that took his life on June 15, 2010. Neil was toward-- told to store parts in an unfish-- unfinished, raised storage area with no safety railing, hardhat, or safety harnesses. He fell ten feet and died on the shop floor. The last paragraph of Benes Heating and Air human resources handbook on March of 2009, 800 Safety Statement: As a condition of your employment, you are accountable for the policies and procedures outlined in the Injury Prevention Program Handbook. The employ-- the employees of this company are to be held accountable for their actions. But the owner of the company that personally directed Neil to work in an unfinished, unsafe area was not held accountable. It is not possible to pursue action against the employer because the Nebraska Supreme Court has determined that the Nebraska Workmen's Comp Act provides exclusive remedy for your son's estate against the employer. Your exclusive remedy falls short of reality. In 2010 at Lincoln Memorial, Neil's funeral cost nearly $18,000. It was not an elaborate

funeral-- funeral. It was a small funeral with family and a few friends. We had a meal, hoagie sandwiches and sodas. Everything was done at the funeral home. In 2010 Nebraska Workmen's Compensation paid $6,000 to the funeral home. In 2012 the death benefit was raised to $10,000, way short of the funeral cost in 2010. What does a funeral cost in 2019? I did not raise a disposable son. If the Nebraska Workmen's Compensation, you know, does not give the people enough to take care of their expenses in a time of need like this, why do they take away the person's right to take legal action against the employer himself? That's all I have.

M. HANSEN: Thank you for your testimony, Mr. Cary. Other questions from the committee? Seeing none, thank you for coming down to testify.

GENE CARY: Thank you.

KRISTY WEDDINGTON: Hello. My name is Kristy Weddington, K-r-i-s-t-y W-e-d-d-i-n-g-t-o-n. I am the daughter of John E. Bennett. He was killed in a work-related accident on March 20, 2014. My father was unloading anhydrous in a plant in Tecumseh, Nebraska, when the vel-- valve that he was working with began to leak, and the equipment failed. He inhaled anhydrous. He was taken to Johnson County Hospital in Tecumseh, Nebraska, where he was unable-- where they were unable to incubate [SIC] him, and he died of cardiac arrest due to asphyxiation. When my father died he was preparing to retire from his second full-time job. John Bennett was an extremely hard worker and lived a pretty simple life with money in the bank. My mother had passed away several-- several years prior, and had-- he had also invested her retirement savings. But as I'm finding out, this is not the case with many of the families we work with in the USMWF. Many of the families are living paycheck to paycheck, and the person that has passed away is their breadwinner. My sister and I were adults, still are, as my-- when my father passed away, and we-- after paying my father's bills and settling his account, we financially benefited from his estate. However, a lot of the families we work with, that is not the situation. The first day of planning his funeral, we had to pay a check of $6,000 and to put-- in order to proceed with the funeral. I have included a printout from that-- from 2014. And then the funeral home was gracious to give me five years as to what that has changed. Also note that because my mom passed away, the plot and the headstone had already been paid for. So those-- that is just a typical funeral. My husband and I paid that amount that day from money from our savings account that we had inherited two years prior when my mother-in-law

passed away. Again, not a typical situation at my age. We-- we also had to pay out for means to clean out the property, lunch for the family as we had-- did not yet have access to his account for the money that he had. And the $10,000 benefit that we got did not come until a week and a half after we had to first start that funeral arrangements. Just again, a reminder that this is not typical, my situation with my father, and that most of the families we work with live paycheck to paycheck. I've also included a couple articles from when my father's accident occurred. Again, my name is Kristy Weddington. My dad is John E. Bennett. He passed away on March 20, 2014. And I just remind you that the fate of these accidents not only result in death for these funeral-- families, but financial burden. Thank you for your time. Do you have any questions?

M. HANSEN: Thank you, Ms. Weddington. Are there any questions from the committee? All right. Seeing none, thank you for sharing.

KRISTY WEDDINGTON: Thank you.

M. HANSEN: All right. Are there any other proponents on LB448? Hi. Welcome.

MARCELLA SCHWARTZ: Good afternoon. First of all, I want to thank you for your time and allowing me to be here today. My name is Marcella Schwartz, M-a-r-c-e-l-l-a S-c-h-w-a-r-t-z, and I'm here asking for your support of LB488 [SIC] which would increase the workers' compensation burial expense benefit from the current $10,000 to an amount equal to 14 times the state average weekly wage determined pursuant to Section 48-121.02 for the calendar year in which the death occurred. In today's economy it's nearly impossible to make funeral arrangements for $10,000. We need to make sure that the families have enough money to provide proper-- proper burial for their loved ones. The families should not be burdened with having to struggle to come up with the funds to bury their-- their loved one after all they are going through. Their loved one died in a work-related incident and no fault of their own. And they should not have to bear the burden for the final arrangements. Their loved one went to work and never came home. I'm here today as I've experienced such a loss. I'm sorry. On 4-14-15 all my hopes and dreams were shattered, future plans left forever unfulfilled. My fiancee, the love of my life, the man I was supposed to marry, Adrian LaPour was killed on the job in a senseless, preventable oil tanker explosion while working for Nebraska Railcar Cleaning Service, LLC in Omaha, Nebraska. At 1:10, Adrian and two partners were sent to clean this oil tanker out despite the fact that

the levels were at 22 percent and OSHA's guideline is to not permit entry if the levels are above 10 percent. They were not in the tanker very long and were on their way out when the fumes were unbearable. When the tanker exploded, Adrian's partner was halfway up-- up the ladder when the explosion occurred and was thrown up and out of the tanker along with the ladder. He died a short time later. Adrian was blown back into the-- was thrown back into the tank-- the burning tanker with no way out. Coworkers could hear Adrian yelling, there's no ladder. Where's the ladder? There were no visible fire extinguishers, and they had no rescue plan. And no one was trained in first aid. The firefighters could not safely enter the tanker for six hours because the levels were so high. When they were able to enter the tanker and recover Adrian's body, he was pronounced dead at the scene. OSHA investigated and proposed the $963,000 penalty for 20 serious, 10 willful, and 2 repeat, and 1 other-than-serious violation, inspection number 1055463.015-Nebraska Railcar Cleaning Services. On August 23, 2018, Nebraska Railcar Cleaning Service, its president and vice president and co-owner were charged in a 22-count indictment with conspiracy, violating of worker safety standards resulting in workers' death, violating the Resource conversation-- converse-- Conservation and Recovery Act, and submitting false documents. My fiance's incident, as all work incidents, are preventable, and the financial concerns and burdens should not fall on the family members' or victims' shoulders. Next month it will be four years since I lost the man of my dream, my soul mate, my future husband. We have so many plans. Adrian will never see his son marry or his grandsons grow up, and I will never get to hear him say I do. Workers should not die trying to pursue the American dream, and family should-- and loved ones should not be burdened with the financial respondent-- responsibility of burying their loved ones. Today I look at you and ask for your support for LB448 to increase the workers' compensation burial benefits not for my loved ones, but for the men and women who will lose all because they went to work that day. Thank you.

M. HANSEN: Thank you for your testimony. Questions from committee members? Seeing none, thank you for coming down. All right. Are there any other proponents for LB448? Seeing none, we'll move to opposition testimony for LB448.

BOB HALLSTROM: Chairman Hansen, members of the Business and Labor Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness, the National Federation of

Independent Business, and I'm also signing in on behalf of the Nebraska Chamber of Commerce and Industry in opposition to LB448. My written testimony is brief. My comments, hopefully, will be equally short. We believe that the current level of funeral expense is reasonable and set at a fair level. We were part of having the increase from $6,000 to $10,000 a number of years ago. We may actually have set the funeral expenses at a level higher than the average or median level at that time. I have noted in my testimony that, according to the National Funeral Home Directors, the median cost of a funeral with viewing and burial including vault in 2017 was in the amount of $8,755. I would note for the record, that did not account for cemetery, monument or marker cost, or miscellaneous cash advance charges. And the median cost for an obituary, according to that same source, was approximately $2,500 left-- last week, excuse me, without including the cost of the vault. With that, I'd be happy to address any questions of the committee.

M. HANSEN: Thank you, Mr. Hallstrom. Are there questions from the committee members? Seeing none--

BOB HALLSTROM: Thank you.

M. HANSEN: --thank you. All right. Any other opponents LB448? Seeing none, is there anybody who wishes to testify in a neutral capacity on LB448? All right. Seeing none, Senator McDonnell, we'll invite you back up.

McDONNELL: Thank you, Chairperson Hansen. So it's 2012, and there's senators that gather. And they say $6,000 is not a fair amount to bury someone that has died in the workplace. So they raise it to $10,000. Here we are in 2019. As far as I know there's never been any legislation brought since 2012 to today that said $10,000 was too much, not one time. Now we look at trying to look at that $10,000 and put a cost-of-living adjustment on it for a cost of dying. That's as simple as this is. And with technology, if we want to build into the bill that for some reason the burial of our loved ones is reduced in the state of Nebraska, throughout the country, for whatever reason, then we can put that in here. But that's not the case. It continues to go up and up like the cost of living goes up. So the cost of dying goes up. If we want to get this to $10,000 exactly and figure that out at this point, but knowing that that 14 percent, 13 percent, 12 percent is going to keep up with the idea of the cost of burying someone in our state that went to work and died at the workplace, I am wide open to any kind of amendments this committee wants to look at or

anyone else that wants to bring them to me. The goal of this bill is simple: make sure that the cost of living is equal with the cost of dying in the state of Nebraska. I'll take any questions.

M. HANSEN: Thank you, Senator. Are there questions from committee members? Senator Crawford.

CRAWFORD: Thank you. Thank you, Chairman Hansen. And thank you, Senator McDonnell. I'm just wondering, hearing the conversations about the costs, including the cost of burial, if you feel that it needs to be increased even further.

McDONNELL: Well, and what-- that was just mentioned. If you do look at the statistics and the-- Bob, Mr. Hallstrom mentioned, the $8,508. He did mention, that cost does not take into the account the cemetery, monument or marker costs, or miscellaneous cash advance charges, such as flowers and other things like the obituary notice. If we want to define what exactly goes into a burial, if we want to say that a-- as was also one of the testifiers in their situation, yes, there was already a marker that was purchased, but they had to open and close the grave. There's going to be some people that are going to be in a situation where they have no marker. Do we want to actually make sure the marker is included? I do. Do we want to make sure that they actually have their obituary in the paper? I do. Do we want to make sure that we have enough money to where it's a respectable burial and honor that individual? I do. But to say that I know exactly what that is? I think I have a good concept of it, but would I say then also does the state of Nebraska-- are we going to spend X number of dollars on flowers? I don't think so. But at a certain point we have to be respectful of the family that was left behind. And in one morning at 7 a.m., their loved one left and said goodbye, and they didn't come home. And then that next day, now they're saying, OK, how do we bury them? And this was a workplace tragedy. So how do we bury them? We don't have the money to bury them if the average is $8,500, if the average is $10,300. Some of them don't have $1,000. Some of them don't have $500. So the only thing I'm saying is if back in 2012 and the agreement came for moving it from $6,000 to $10,000, let's at least here now in 2019 figure out what a COLA, a cost-of-living adjustment, would be on that $10,000. What would be fair to continue so then in five, six years, senators that are sitting here aren't having the same conversation we are because it has-- the burial cost has increased with the cost of living?

CRAWFORD: Thank you.

M. HANSEN: All right. Thank you, Senator Crawford. Any other questions? All right. Seeing none, thank you Senator McDonnell.

McDONNELL: Thank you.

M. HANSEN: And before we close the hearing, we had two letters for the record. We had a letter of support from Sue Martin in the Nebraska AFL-CIO and the letter of opposition from Kathy Siefken in the Nebraska Grocery Industry Association.

McDONNELL: Thank you.

M. HANSEN: All right, thank you. And with that, we'll close the hearing on LB448. We 'll move on to LB487 and welcome. Senator La Grone was not able to be here today, so he had asked for his staff to open on this bill.

DAYTON MURTY: And are we ready?

M. HANSEN: When you're ready.

DAYTON MURTY: Good afternoon, Chairman Hansen and members of the Business and Labor Committee. I am Dayton Murty, D-a-y-t-o-n M-u-r-t-y, legislative aide to State Senator Andrew La Grone of District 49. Senator La Grone apologizes that he could not be here to present LB487 today; he is sick. LB487 is a bill to adopt an evidence-based drug formulary for prescription drugs. The formulary would apply to those Schedule II, III, IV, and V drugs prescribed and dispensed for workers' compensation claims for the date of injury on or after January 1, 2020. Drug formularies are designed to ensure that medication prescribed for an injured worker are appropriate for the injury that the worker has sustained. Several states have already adopted and implemented an evidence-based workers' compensation drug formulary. The system will establish safeguards and improve the way opioids are prescribed to ensure patients have access to safer, more effective chronic pain treatment while reducing the number of injured workers who misuse, abuse, or overdose from these powerful drugs. Thank you for your time. And Bob Hallstrom will be testifying after me to answer any technical questions.

M. HANSEN: All right. Thank you for your opening. Tradition is we don't ask staff questions when they have to introduce for a senator.

DAYTON MURTY: Thank you. Thank you for your time.

M. HANSEN: All right. So we'll take our first proponent.

BOB HALLSTROM: Chairman Hansen, members of the Business and Labor Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraskans for Workers' Compensation Equity and Fairness, the National Federation of Independent Business, and I'm also signing in on behalf of the Nebraska Chamber of Commerce and insurance-- and Industry, excuse me, on behalf of-- support of LB487. I did prep Dayton for about a half an hour for the questions that the committee might be asking him so he was well prepared. Would like to indicate to the committee that in looking at the drug formulary, we're not going down a unique path. There's been at least a dozen states that have adopted drug formularies for their workers' compensation programs. Many other states have more formal utilization treatment guidelines that go into greater detail. The law proposed under LB487 would be among the most narrow of those states that have adopted drug formularies in basically going to Schedule II through V controlled substances. Primarily, what we're interested in is looking at the issue of the overprescribing of opioids, painkillers that lead to problems with regard to addiction and dependency of injured workers, delaying their ability to return to work, causing problems for both the employers, the employees, and their families because of those situations. Drug formularies are not uncommon in the industry. We may see the medical association if they follow suit in what they've done prior times when this bill has been introduced, suggests that they don't want to have this legislation adopted. But they are certainly familiar with drug formularies that are-- abound in the health insurance industry, so it should be nothing new to them in that regard. My written testimony has gone through. On page 2, the states-- the other states have adopted workers' compensation drug formularies. On page 3, I talk about the significant results that have occurred in the state of Texas with regard to the nonapproved or nonrecommended drugs and the reduction in those, particularly in the area of opioids again that have resulted. What we're looking at under LB487 is to have a drug formulary-- evidence-based drug formulary adopted by the Workers' Compensation Court and to look to the industry for input both before the Administrative Procedures Act to required hearing. That's one of the things that the industry has-- has asked for in the past is some involvement, so we've put that provision in which is different than what we've had in prior years. But just by way of explanation when you

look at the drug formulary, while the depart-- while the Workers' Compensation Court could-- could create a new drug formulary from whole cloth, they also have evidence-based guidelines that are out there in the industry. ODG and ACOEM are the two most likely ones to be looked at. But by way of example, you look at a situation where a drug is recommended. It's a yes drug, a Y drug. If that's the case, there's no hurdles, there's no hoops for the provider. They get paid, no questions asked. If it's a no drug, that doesn't end the discussion. They can come forward and request prior authorization. If prior authorization is granted, there should be no difficulties as well. Only if prior authorization is not granted do they then fall back on what I understand is the current process or system which is to go into the Workers' Compensation Court to request a determination of that particular issue. I've got a number of facts and factoids. I know the members of the Legislature are intimately aware of what's happened in the area of opioid limitations in this very Legislature. We have a problem that exists in Nebraska and across the country, and we believe that this bill would go a long ways towards addressing that particular problem. I'd be happy to address any questions that the committee might have.

M. HANSEN: Thank you, Mr. Hallstrom. Are there questions from committee members? I would have a question. So procedurally, as the bill is written, it's the Workers' Compensation Court that would create this?

BOB HALLSTROM: Yes. They would either create or adopt something that's out there in terms of evidence-based guidelines that are out. Different states have taken different approaches. Some of the earlier states, Senator Hansen, probably because of those ODG and ACOEM were not in existence some 20, 25 years ago, created their own drug formularies. Those states have indicated to us in following up that if they had to do it all again, they probably wouldn't have gone to all that trouble if there was already a ready-made, evidence-based guideline tool out there. Some more of the more recent states have been prone to adopt one of the existing formularies that are out there for ease, I think that-- that would be, hopefully, the-- the path of least resistance that the Workers' Compensation Court would choose to take as well.

M. HANSEN: Got you. I just asked because I'm sure you've seen the fiscal note. The Workers' Compensation Court felt unclear in kind of

their role where they're not and selecting, developing kind of the different avenues we're going to look at fiscally with this.

BOB HALLSTROM: Yes. And we've talked with the Workers' Compensation Court in regard to that two years ago when this legislation was introduced. There was not a concern with regard to the fiscal note and I think the fiscal note probably points out, Senator, that if they were to have to create one from whole cloth, as I've indicated, that there would be more involvement and engagement and perhaps more cost involved. I would certainly hope that if they're choosing to adopt one of the existing drug formularies that the cost would be-- would be minimal.

M. HANSEN: All right. Thank you. Any other questions? Senator Crawford.

CRAWFORD: Thank you, Chairman Hansen. So I assume the formularies that you're talking about with alphabet O-T-E something--

BOB HALLSTROM: ODG and ACOEM, yes.

CRAWFORD: Yes. So that those are formularies created by private entities. So wouldn't there be charges that would be paid to them for using those formularies and keeping them up to date?

BOB HALLSTROM: Senator, following behind me are Mr. Brian Allen and Mr. Ken Eichler who appeared at the interim study hearing. I think they will be able to address what their companies have done. My understanding is that in some states there may be a fee that is charged to the providers, but in many of the states they are allowed access to the drug event-- the evidence drug-- evidence-based drug formularies without charge. Again, I would note these are also updated on a continual basis to keep up with the most recent changes in what is the proper or appropriate prescription drug to use for a particular injury.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator Crawford. Any other questions? Seeing none, thank you for your testimony.

BOB HALLSTROM: Thank you.

M. HANSEN: Hi. Welcome.

BRIAN ALLEN: Thank you. Good afternoon. Chair Hansen and members of the committee. I appreciate the opportunity to be here. My name is Brian Allen, that's B-r-i-a-n A-l-l-e-n. I am the vice president of government affairs for Mitre-- Mitchell International Pharmacy Solutions. Mitchell is one of the leading providers of a full line of services in workers' compensation systems across the country. Our services range across processing first reports of injury, electronic billing, managed pharmacy and medical care, utilization review, bill review and claim-handling support. I have personally been involved in the development of state mandated drug formulary programs for Texas, Arkansas, Tennessee, Kentucky, Montana, California and coming soon in New York. When the idea of a drug formulary was first talked about in Texas in 2005, I had concerns the state-mandated drug formulary may make it more difficult to deliver the right pharmacy care to injured workers. I was concerned that the formulary might supplant what we do in our managed care program to help ensure injured workers have access to quality and efficacious care. But as we worked with Texas in the development of their drug formulary and worked with it as it was implemented, I concluded that my fears were unfounded. Texas adopted the ODG formulary for their system in 2011. This formulary includes Y or preferred medications and also lists N or nonpreferred drugs. It should be noted that N drugs include opioids like fentanyl that have proven to be more addictive and includes high-cost brand drugs with proven, lower-cost generic or over-the-counter-- counter alternatives. The Texas Research and Evaluation Group has rigor-- rigorously studied the impact of the drug formulary in Texas, and the results are impressive. The number of N or nonpreferred drugs fell by over 80 percent. Since the implementation of the formulary, the research group found more generic drugs were being prescribed in place of brands and the total number of drugs being prescribed decreased by 14 percent. At the same time claim duration has decreased, injured workers-- injured worker satisfaction survey scores have remained constant. These results have been sustained over the seven years since the drug formulary was first implemented. Ohio took a different approach with their drug formulary. As a monopolistic system, they decided to develop a proprietary formulary uniquely designed for Ohio injured workers. The results in Ohio are as impressive as those in Texas. In February of 2018, the Ohio Bureau of Workers' Compensation reported that a number-- the number of injured workers who met or exceeded the threshold of being clinically dependent on opioids has fallen by 59 percent since 2011. Just within the last couple of weeks, the Ohio BWC announced they were removing OxyContin from the drug formulary. This is significant news since OxyContin was the central figure in the

opioid crisis in this country, and Ohio was ground zero in that crisis. California took yet another approach, adopting the Reed Group drug formulary last year. Early resort-- early results there indicate similar success to Texas and Ohio. In our experience, drug formularies have been very helpful in curbing the overprescribing of nonessential medications and the use of unproven, high-cost medications including topical creams that are billed for as much as several thousand dollars for a month's supply. Finally, we found that implementation of a drug formulary, rather than supplant our services, actually enhance what we do as a pharmacy benefit manager. A major portion of the services we offer is a screening of medications prior to dispensing to help ensure that the drug prescribed is related to the workplace injury and is appropriate for the injury or sickness sustained. We also help facilitate the delivery of the most appropriate care to the injured worker. The state-mandated drug formulary becomes a validation point for our services, and it empowers adjusters with critical information about medical evidence supporting the use or nonuse of particular drugs. Finally, when a position-- physician prescribes drugs with the Y or preferred status on a formulary, it makes the delivery of care to the injured worker at the pharmacy much simpler and hassle-free. In those limited cases where a Y or a preferred drug may not meet the needs of the injured worker, the physician may preauthorize a medication by providing sufficient medical evidence or seeking a deviation from the formulary. As Mitchell has managed formularies in several states, we have found that the formulary helps guide better prescribing, outcomes improve, system friction is minimized, and fewer drugs are prescribed resulting in resist-- reduced prescription drug costs. I strongly urge your support for LB487. Thank you.

M. HANSEN: Thank you, Mr. Allen. Are there questions from committee members? Senator Hansen.

B. HANSEN: Thank you, Chairman Hansen. And thank you for coming.

BRIAN ALLEN: You bet.

B. HANSEN: Just a couple quick questions, maybe quick, hopefully. So who then-- so you-- say we pass this law then. Who determines what drugs are going to be on what-- Y or N?

BRIAN ALLEN: Well, that would ultimately be up to your Workers' Compensation Court if they're the ones charged with developing the formulary. They would either have to develop one like Arkansas did, Arkansas actually used one of their schools of pharmacy to do theirs,

or you could do like Texas and some of the other states and adopt a-- a commercially available formulary. That-- there are-- there are two systems out there: ODG, the Official Disability Guidelines; and, ACOEM. And both of those are evidence-based guidelines, and both of them have-- are proven to be, you know, efficacious formularies. And they could adopt one of those. Then they'll have to recreate-- create it themselves. And we have found that both of those work well in the states that they've been adopted in. And we've-- we-- we can handle both of those and do handle both of those. But we also have worked with states when they've developed their own formulary, and that can work for a state if they have the resources to do it. Most states pick something commercially available because it's easier to do, and a lot of states don't have the internal resource to do that-- and clinical staff to create their own formulary.

B. HANSEN: And so far there hasn't been any-- any-- hasn't been shown to be any-- trying to get a word. Not-- not partisan but, you know, there might be certain drugs. Maybe somebody is deciding which kind of medications to use. Is somebody going to make money off this, you know? That's my-- one of my concerns. We have a group of people determining what drugs [INAUDIBLE] to dispense.

BRIAN ALLEN: Well, the one interesting thing about workers' comp drug formulary that-- it's unique to the workers' comp system is the drug formulas are developed-- are developed with the-- with the idea in mind that we're trying to deliver the best care to the injured worker. They're not looking at the costs of medications. They're not looking at-- you know, there's no way to really lobby to get something on a formulary. They're really looking at all the medical evidence that's out there, all of the treatment that's been given historically, and they look at what's working best for these injured workers. And that's really how they come about developing the treatment guidelines and ultimately the drug formularies that support those treatment guidelines. So there's not-- a lot of times formularies in-- and I've seen it in state Medicaid systems and I've also seen it in commercial health systems where they get very political. There's people lobbying to get drugs on a formulary, and that does not happen at Workers' Comp.

B. HANSEN: That's my concern, right there.

BRIAN ALLEN: It's evidence-based medications, and there's not a way to lobby that I'm aware of. We make recommendations sometimes, and

they'll investigate it, but it's clearly clinically based. It has nothing to do with, you know, who's your favorite brand of the week.

B. HANSEN: Sure. I'm just making sure. OK, well, with generics versus brand and all of a sudden the brand name drug companies [INAUDIBLE] if there's just kind of-- kind of curb any kind of, you know, [INAUDIBLE] my concern with that one.

BRIAN ALLEN: Yeah. So I'll tell you, in our-- in our book of business, we have a 90 percent generic take-up rate. And that means that in every sit-- in any situation where a generic is available and allowed, 90 percent of the time, we can get a generic in there even though a doctor may have prescribed a brand unless the doctor insists on a brand. And we've been pretty successful in working with doctors to have them convert to generics. But we-- 90 percent of time, we're prescribing generics because they're just as efficacious and they're a lot less expensive.

B. HANSEN: OK. And then a couple of other questions. So how do the medical doctors feel about this?

BRIAN ALLEN: Well, you know, it varies. In some states, the medical association has been supportive of drug formularies. And in other states, they are ambivalent or neutral. And in some cases, they're opposed. What-- we were very concerned about it when it first happened in Texas because it was the first time in a non-- nonmonopolistic state where a drug formulary was adopted, and it took a long time to get it done. I mean the bill passed in 2005, and it didn't actually launch till 2011 so six years of study and conversation. And during that time, we had a lot of conversation with physicians and they were-- they were concerned, but they decided that they would try to work with it as best they could. And we really staffed up for a lot of complaints and a lot of deviation from the formulary. We expected a lot of doctors wouldn't want to follow the formulary. And as it turns out, they did. I mean Texas had an interlocutory process where if a doctor wasn't happy with the decision the insurance company made, they could get an emergency order to have the commission review the drug request. And we thought there'd be a lot of those. In the first year, there were less than 25. So the doctors-- and the adherence, the take-up rate by the doctors was much, much higher than we expected. They actually, I think-- and I think because they're not foreign to formularies, there's formularies in Medicaid, there's formularies in commercial health systems, this is not a new concept for them. And I think, at least in Texas and some of the other states we've worked in,

we found that the take-up rate by the doctors or physicians has actually been very, very high and they've been actually fantastic to work with. We have found really good success working with them.

B. HANSEN: OK. And maybe no one here is-- do you-- and this has been a concern of mine. Maybe just give me your opinion. Do you see this as a possible government overreach in the name of safety?

BRIAN ALLEN: Well, you know, I come from-- I come from Utah which is a pretty conservative state when it comes to government regulation, and being a former legislator there, we were always loathe to try to impose the will of the legislature on-- on private enterprise. In this particular instance as it-- in regards to the opioid crisis, it has become a-- it is a national crisis, and it is become a huge, huge cost to taxpayers. It's become a huge, huge cost to families. And I think it's-- there-- there comes a point in time where the government has to reach across a boundary that has not been crossed before to facilitate public safety and to protect the public. And I don't fault the doctors. I think there is a lot of misinformation that was given in years past about what opioids did and didn't do. They were a miracle drug when they first came out, and they were given away like candy. And I think we've come to realize that there were a lot that we didn't know. There was a lot of information we didn't know, and it's-- it's hurt a lot of families. I lost a sister to an opioid overdose. And I can tell you the emotional toll on the family, and th-- the-- just the toll of-- I mean I had to raise her kids. I mean it disrupts lives. It disrupts people's lives, and it costs a lot of money. The cost to taxpayers for the opioid crisis is-- is well-documented. And-- and all you have to do is look around at what's happening in your law-- with law enforcement and homelessness and lots of other societal problems that we face every day. Some of that's directly related to the opioid crisis and there's a cost to that. And I think in that instance, where there is a societal cost that's being borne by taxpayers, government has a responsibility to reach across that boundary and do what it can to help minimize that cost with citizens and minimize the pain and suffering that is coming to families in your state.

B. HANSEN: I think that was maybe just part of my question when I asked that because there was that line, sometimes it's a blurry line, on where the government should start stepping in because they're starting to see a crisis happening or a concern among public safety. And that's kind of one of the questions I asked, and we would like to

get your opinion on that. And I just have one more-- I'm sorry, one more question.

M. HANSEN: OK.

B. HANSEN: In your testimony saying-- I think this one happened in Ohio. The-- the threshold of being clinically dependent on opioids has fallen by 59 percent since 2011 because of the medical doctors' inability-- or not inability, but they're just prescribing different medications. Are there anything else that they're prescribing, recommending, besides medications that might cause some of that decrease in the use of medications?

BRIAN ALLEN: Well, they are shifting. In some cases, they're shifting to other types of medications. We're seeing, you know, in some cases, they're-- they're shifting to, you know, NSAIDs and other-- other types of drugs. We're actually having-- seeing some companies have success with physical therapy modalities that seem to be working. We've seen some states-- states experimented with acupuncture. We've seen-- what we're finding that worked best in our experience and our medical management program is really a good and conscientious physical therapy program coupled with some better nutrition and managing some of the core morbidity issues that help-- that sometimes contribute to the increase of pain. But really-- the-- what we're finding is the best thing for pain is to just get up and move around and work it out. I mean it's a strange thing. It's-- it's kind of like the old days when, you know, you're dad said, get up and rub some dirt on it and go on and go back out in the field and play. There's a lot of-- there's a little bit of truth to that in some cases. It doesn't work for everybody. But in a lot of cases, where you see acute pain going beyond what would normally just be an acute injury and it becomes a chronic problem, it's because there's a lack of physical movement, physical improvement. And really I've talked to a lot of doctors about this. And they say, you know, sometimes the best thing you can do is just get off the couch and move around, and it will help you a ton when you can. I mean not-- that doesn't always happen, and not everyone is capable of doing that. But we're finding that more and more people are more capable than we thought they were when we first started down this path, you know, 10 or 15 years ago.

B. HANSEN: Thank you.

M. HANSEN: Thank you, Senator Hansen. Senator Halloran for a question?

HALLORAN: Thank you, Chairman Hansen. Just to make it clear, dirt isn't on the formulary?

BRIAN ALLEN: No, dirt is not on the formulary. We actually took that off for some strange reason. I don't know why. [LAUGHTER]

HALLORAN: But based on your experience with states that have adopted the drug formularies, has it-- has it made it more difficult for injured workers to obtain medication for their injuries?

BRIAN ALLEN: What we have found in our experience is that it's actually easier if the drug fits-- if the doctor prescribes off the formulary. It makes that process a whole lot more-- you know, it's more friction-free because it's an approved drug, we know it's right for the injury, and it's just going to process through. If a doctor is willing, when they need to make a deviation, to make the phone call and have a conversation about, this is why I want to deviate from the formulary and they preauthorize it, that process works extremely well also. Where we run into trouble is where we get a drug that comes into the pharmacy that requires preauthorization, and nobody met-- bothered to make that phone call and get it preauthorized. Then it creates a little more friction. But we actually have a process in place where we will help reach out to the physician and figure out if they want to prescribe something that's on the formulary or if they want to preauthorize it. Most of the time when we reach out to the physicians, they didn't realize the drug they prescribed wasn't on the formulary, and they'll prescribe something that's on the formulary, and that breezes right through. And other times then, we just-- we work with them to have a conversation with the-- with the person at the insurance company you need to have a conversation with to get the drug approved or figure out some other protocol that's going to work for that patient. And it hasn't-- from our perspective it has not been-- I mean we really expected a lot of pushback. We just haven't seen nearly as much as we expected to get. And the doctors have been really great to work with, and they've been very responsive. And look, I don't think there's any doctor out there that wants to have a patient addicted to opioids. I think that they want to do everything they can to help eliminate that. And in most of the cases that we've seen in the situation where we've worked with doctors, they've been very appreciative of our support and our input and it's-- it's worked out quite well.

HALLORAN: Thank you.

M. HANSEN: Thank you, Senator Halloran. Senator Crawford.

CRAWFORD: Thank you, Chairman Hansen. And thank you for being here. So how would a doctor know what's on the formulary in just an office visit?

BRIAN ALLEN: Well, the formulary-- the formulary is published. So I'll tell you one thing they did in Texas that I thought was really helpful is they had a-- they had a-- a very aggressive education campaign with doctors who work a lot in the workers' comp system. And so they went out and educated the doctors on here's how this formulary is going to work. And I think that helped a lot. Other states have done that, and that seems to be very successful. It's a little tougher when you get into rural areas where you have a family practice physician-- physician that's working with someone that-- like it's-- they have one work comp case. But what we have found is once we have a phone conversation with them and point them to the resource that's out there that they can get to, that seems to work. They-- they're-- they're familiar with formularies because they're using them in other parts of their practice. So when you just point them to a resource and they know where to go look, for the most part that's worked out pretty well. We rarely-- we rarely have trouble with doctors just ignoring the formulary. Once they understand it and learn about it, they-- they're-- most the time they're really good about it. And we do get doctors who ask for deviations, and we do approve a lot of those. I mean there are legitimate reasons when someone-- when someone has to deviate from the formulary. But when they do, we just want to have that conversation and make sure that it's really correct. And oftentimes we'll find that when we talk with a doctor, they'll say, oh, you know what, maybe this formulary drug actually is better, and they'll put them on that. And so there's-- it kind of goes both ways, but I think having a conversation sometimes about what's the best care isn't necessarily a bad thing.

CRAWFORD: OK.

M. HANSEN: Thank you, Senator Crawford. Senator Halloran.

HALLORAN: Thank you, Chairman Hansen. Essentially what it does, it creates a conversation for a second opinion at times, right?

BRIAN ALLEN: In a sense. It's like-- it's like-- it's like getting a second opinion, and oftentimes it validates what the doctor wants to do. And sometimes the doctor gets new information they didn't have

before. And, you know, I mean doctors are only as good as the information they have. And they get a lot of good information, but there's a lot of information out there that they may or may not have access to. And I think the more we can-- we can have these conversations, the better care we're going to ultimately give to the injured workers.

HALLORAN: Thank you.

M. HANSEN: Thank you, Senator Halloran. Thank you, Mr. Allen. I would have a question. So you're testifying here on behalf of Mitchell which-- in your experience in other states, is that as a contractor that those states have hired to help implement their formularies?

BRIAN ALLEN: Well, we-- we are actually hired by insurance carriers to help manage the-- the prescription drug portion of the medical care for-- and in this instance, we actually do all of it, but I'm speaking about the pharmacy management side. And so we're hired by insurance carriers or self-insured employers to help them manage their drug programs.

M. HANSEN: OK. So-- so I guess you're-- you're testifying-- I was trying to just kind of [INAUDIBLE]. So you kept saying, you know, I guess just being specific on the roles here. You kept saying "we," you know, when the doctor would call us for deviation, "we" would talk to them. So who's the "we" in that scenario?

BRIAN ALLEN: Well, the" we" would be us and/or our customer. So we have clinical pharmacists on staff that oftentimes will field some of the calls if they're fairly simple. If they get more complex, then we have to pass it off to a doctor that works either for the claims administrator or the insurance carrier.

M. HANSEN: OK. I guess I'm just trying to walk through this through. So there's a doctor in like in Ohio who has a work comp patient who wants to deviate from the formulary. Who is that doctor then speaking to? Is it someone from your organization?

BRIAN ALLEN: So-- well, in-- and it's going to vary a little bit by state. In Ohio, they would probably go directly to the Workers' Comp Bureau because it's the only payer unless it's a self-insured employer. They'll typically go directly to the bureau because the bureau is going to have the answer for them. In other states where we manage the pharmacy care, it oftentimes comes to us first. And then if

we can work with the adjuster and get it approved, then we do that. If it needs further study or a peer-to-peer kind of conversation, then we make sure they get connected with the doc-- the physician that's on staff on the payer side to have that conversation.

M. HANSEN: OK. So-- so-- so I guess I'm trying to figure out, so who has this appro-- this right of approval?

BRIAN ALLEN: The ultimate right of approval-- well, the ultimate right of approval would rest, in your case, with the Workers' Compensation Court because they're the final arbiter. The initial approval would be done by the payer, the employer, or the self-insured-- or the insurance carrier.

M. HANSEN: OK. So there would be somebody at the insurance agency, the doctor would be calling the insurance carrier--

BRIAN ALLEN: Right.

M. HANSEN: --and they would be the ones who can approve or deny medication.

BRIAN ALLEN: Ultimately, yeah. If it gets to that level, it would be. And we can sometimes help facilitate an approval on our end without-- or a switch to a formulary drug. If it has to go to a conversation with a peer physician, it's going to go to the payer.

M. HANSEN: OK. Thank you, that helps.

BRIAN ALLEN: You bet.

M. HANSEN: Any other questions? All right. Seeing none, thank you for your testimony, Mr. Allen.

BRIAN ALLEN: All right. Thank you very much.

M. HANSEN: All right. We'll take our next proponent for LB487. Hi. Welcome.

KENNETH EICHLER: Thank you, Senators. Thank you, members of the committee, Chairman. A picture's worth a thousand words so we're certainly-- circulating now is a printout of excerpts of a drug for-- of the ODG formulary which has been used in other states. I found myself sitting back there wanting to jump to fill you in a little bit more. I'm Kenneth Eichler, E-i-c-h-l-e-r. I'm vice president of

government affairs for MCG Health. We publish the ODG drug formulary treatment guidelines as well as we publish other guidelines that are used in group health, Medicare and Medicaid, commercial health. My sister companies, which are part of the Hearst Health Corporation, collectively impact over 60 percent of the healthcare decisions across this country utilized across all lines of healthcare delivery, including workers' comp. I would love for Senator B. Hansen to ask me the same questions that were asked and for you, Chairman, to ask the questions as well so I won't eat up my whole five minutes. A quick point I have to make, a point of reference and I know it's distracting that I gave you printouts here. But reality versus perception, formularies are being used in this state. Reality: formularies are not being regulated in this state. This committee can either choose to ignore the fact that formularies are being used behind closed doors and not being level handedly applied to every injured worker in the state or you can take this as an opportunity to regulate the use of formerly-- formularies in workers' compensation, make sure everybody's getting the same access, that the protocols are the same, the process is the same, and everybody has the same protection. The goal of a formulary is to get the right medication to the right patient for the right symptoms and right conditions at the right time for the right duration and the right access to the medications. So it's about doing the right thing and expediting the process. Benefits of formularies: Folks have discussed a number of states have gone with formularies. Three states have rolled out formularies already this year alone. Indiana did it by regulation, smoothly. Kentucky, formulary has been rolled out. Montana, formulary has been rolled out. So we've got three states that went with new formularies this year, all very successful. In none of these was fiscal cost the driving factor. It was ensuring a proper treatment for injured workers. What does a formulary result in? Improved outcomes with an open playbook instead of things going on behind the scenes; everything is aboveboard; everybody knows the rules; expedited delivery of medications to the patients; an identified framework for processing of claims with decreased transactional processes and decreased transactional costs; ease of use; decreased disability durations; increased functions for patients; decreased addiction; increased physician satisfaction. Texas has more doctors in the workers' comp system now, with formulary and guidelines, than they ever have. Other states' docs are joining, not dropping out when things are made easier for them. Would decrease hassle factors; decrease dispute resolution post initial training. Anytime you have initial, new programs there's a slight learning curve, but the dispute resolutions drop off very quickly thereafter.

At former hearings-- or former meetings, there were various questions that were put out there. And I tossed some questions out to folks quickly. Backtrack for a second, NCOIL, your fellow legislators across the country, the National Council of Insurance Legislators is currently undertaking the program of creating model legislation for formulary across the country. Senator Matt Hammes [SIC]-- representative Matt Lou Hanson [SIC] from Indiana will be running-- that bill as well as other bills from across the country will also be introduced through NCOIL. Going over a couple of questions that have raised in the past. Medical professionals make up the formulary. It's evidence-based, and it's constantly updated. Drugs not listed in the formulary in most states require authorization. Authorization processes can be quick. Formularies are updated live, real time, and monthly as new drugs come to the market and as new studies come out. Prescription drug monitoring programs were raised as a question and is this duplication? No, prescription drug monitoring quest-- programs work in tandem with formularies. And it's just a way to cross-check what other prescribers are ordering, but there are no controls over it. A question was asked about prescribing frequency and whatnot. There are certain prescribing rules in your state which will apply. This drug formulary does not impact any of the prescribing rules, example, on opioid levels, frequency of fill, and whatnot. So docs are controlling. Same thing with the generics. I believe your state requires generics to be filled across the board before nongeneric brands. As you see, the formulary itself is a list of drugs. And it's almost shameful to have these wonderful screens here but not be able to use technology during presentations because if you could look at the formulary on-line-- and by the way the formulary-- how formulary is used which has been used in most of the states, it is free to the state agency, and it is free to all stakeholders on-line. I encourage members of the committee to go on-line. We'll provide you with the Web page. It's an open access Web page, and in less than four minutes, an individual can be trained in how to properly use the formulary. I know the red light is on. I could go on for 15, 20 minutes since I've been involved in every state adoption in the last 12 years. And whether-- regardless of what formulary you choose to go with if you go with one, we will be available to assist the agency as well as you as legislators in making a decision by hooking you up and connecting you with your counterparts across the country as well as stakeholders who have experienced formulary.

M. HANSEN: Thank you for your testimony. Let's see if there are questions today. Senator Hansen.

B. HANSEN: OK. Without talking for 15 minutes--

KENNETH EICHLER: No, I'll go quick.

B. HANSEN: Thank you, Chairman Hansen, appreciate it. So you say medical doctors make up the formulary, right, typically, and it's evidence-based? I understand the whole evidence-based part about making sure we're, you know, putting the right kinds of drugs in the formulary. How do you-- is there any kind of control you might have for bias--

KENNETH EICHLER: Oh, 100 percent.

B. HANSEN: --that-- that they might have? So if certain medical doctors perhaps might have bias towards a certain medication that they have either-- for whatever reasons, is there any kind of control you might have that might account for that?

KENNETH EICHLER: Yes, and that's a great point. And that's one of the reasons-- it's one of the many reasons that many states have gone with a commercially developed formulary versus give-- having just a state-developed formulary with stakeholders who aren't skilled in reviewing/ranking evidence and looking at the transparency of the evidence. Depending upon which company you go with, both have both medical doctors, medical providers, some of whom may not be MDs, pharmacists, and the like reviewing the research, reviewing the FDA documents, reviewing the studies that come out, and determine whether or not a drug should be ranked as preferred or nonpreferred or not listed on the formulary based upon the evidence. Some of the not listed are not listed because in workers' comp, it's a subset of the overall population. The majority of the injuries are musculoskeletal in nature. The majority of the medications are musculoskeletal in nature. For example, the formulary we do has 350 medications listed by name. That translates to 46,000 different NDC codes. Those are the different manufacturers and mixtures of the medications. So there are plenty of drugs there, but you've got to stay on top of it. You've got to review it. You've got to make sure that you're not using studies necessarily from the drug companies who are trying to sell the drug per se.

B. HANSEN: Um-hum.

KENNETH EICHLER: You're looking at the FDA indications. You're looking at the objectivity, and then you're going forward. But you're limiting the drugs to those drugs that are significant in workers' comp. You just can't cover them all.

B. HANSEN: OK. And then I might get different opinions with different testimony because I might ask this question again later.

KENNETH EICHLER: Please, feel free.

B. HANSEN: Why do you think medical doctors need this in the first place if they should know which medications to prescribe?

KENNETH EICHLER: Good question. It's the business of practicing medicine. It's the business of trying to stay current. If you ask any doctor, they're going to have about a handful of medications they provide-- that they tend to prescribe within the class of those medications. So if you take opioids, most docs-- let's use an orthopedist or a physiatrist, physical medicine, most of them are going to use opioids or let's say narcotics, nonsteroidal anti-inflammatories, a muscle relaxer, and maybe one other class. And within each of those, they're going to have three medications that they usually use. Doctors tend to find certain medications that they like, and they tend to use those. Those are generally covered. If you take an example of the opioids page that I gave out, on the opioids that are listed there are 71 different opioids listed: 19 of them are preferred, 52 are non-- and 52 are nonpreferred. The 52 that are nonpreferred are the more dangerous, more addictive, extended-release ones. If somebody needs one of those extended-release, nonpreferred medications, there are significant options of preferred drugs that can get them through that approval process so that they've got 19 different short-acting drugs. And if you-- if the regs are properly written, and authorization-- and to get authorization, one-- a physician simply needs to give medical substantiation of the need. The majority of denials across this country are because of garbage in, garbage out. A physician will take the "I said so" approach rather than documenting why, and it gets rejected. That's the majority of cases. If they can substantiate it and if you age-- if you go forward and the agency gives some progressive processes, the peer review, a phone-to-phone call like Kentucky just did, you're going to see things fly through very quickly, but there are options on the Y verses the N.

B. HANSEN: OK. Thank you.

KENNETH EICHLER: Sure.

M. HANSEN: Thank you, Senator Hansen. Senator Crawford.

CRAWFORD: Thank you, Chairman Hansen. And thank you. I was just wondered who pays for formularies?

KENNETH EICHLER: Who pays for formularies? That's a good question because we're giving it away free to the state and to the stakeholders. It-- we're going into business model now per se. In our particular business model, as well as the other option that's a commercial option, our option, we don't make our money from the docs, from the state, from the stakeholders. It's the big payers in the system. It's the big players in the system. It's the PBMs who want standardization. The PBMs are buying data files from us, subscribing to data files. That 46,000 list-- the list of 46,000 drugs, that's a database that the PBMs acquire from us, subscribe to, and gets built into their systems. Big stakeholders, national insurance carriers, they will bear the burden-- they will bear the cost of formularies and treatment guidelines because if treatment is-- if it's normalized and they're not kind of all over the place, it's better for the system and it's better for them. They would rather us give it free to the state and to the doctors and for them to pay it. Because if it's gotten right up front, then it decreased transactional delays, it decreased disability durations, decreased costs associated with it. Give it it. Put it in the hands of the doc. Let them get it right the first time, and you've got to provide the docs with extensive training. And the training is easy. As I mentioned, on our site, you can be trained in how to use the formulary in under four minutes.

CRAWFORD: So it's the PBMs that pay and the insurers that pay?

KENNETH EICHLER: The PBMs, the insurers, the utilization review companies, the lawyers, the stake-- the member-- the stakeholders. The same way the question could be asked is who pays for CPT codes and ICD codes. There the doctors have to share in the cost of it and that's used in medical, but it's the industry that basically pays for that. Who pays for the impairment guidelines, the AMA impairment guidelines? Same thing, the industry-- the industry pays for that.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator Crawford. I would have a question similar to what I asked Mr. Allen.

KENNETH EICHLER: Please.

M. HANSEN: So, you know, there's a doctor who strongly believes in one of your No medicines-- one of your N medicines and wants to go to that. Who is actually the one issuing approval or denial on that?

KENNETH EICHLER: Great question, and I hope to qualify. Let me qualify also why it's N and Y. And I've tried to change this, but we can't change it because it's baked into the--

M. HANSEN: I remember in the interim study that the N is not necessarily no.

KENNETH EICHLER: Yes. Thank you. N doesn't mean no. The reason N came up originally was Texas was the first one to do a formulary, and the question that was being answered was this is this drug appropriate as a first-line drug? And it was yes, it is appropriate, or no, it's not appropriate. The N and Y applied to first-line uses. But who makes the decision? And that's a perfect question. What happens is if a doctor is requesting a nonapproved drug or nonpreferred drug, the doctor will fill out a form or whatever method the agency sets up. That would go to the adjuster per se to seek the authorization for the medication. The adjuster might choose to run it through their PBM, who may be managing the pharmacy program that may have a utilization review component to it. They may review it internally. But most states require it to be externally reviewed by a medical professional before a drug is denied so that you have an external, independent agency or individual determining whether or not an N drug should be approved or not approved. What other states have done is they've required those independent agencies or agents to be URAC accredited. URAC is U-R-A-C. It's a national organization. They set standards for reviews that are pretty stringent, and one has to recertify I think it's every one to two or three years. So it's doctors who are independent of the company, although they are compensated by the company to make those decisions. And one may think, well, the doctor's being compensated for this independent review by the payer. Well, you know what? They have to-- they should be and have to be impartial, otherwise their decisions are going to get overturned and they're not going to continue to be able to hold that impartial opinion. Does that make sense?

M. HANSEN: Yes, but so if they're not impartial or there's concerns, you said they're overturned. Overturned by who?

KENNETH EICHLER: Overturned if it-- let me take you through that. So let's go back for a second to what happens when a doctor writes a prescription because I think folks-- from what I'm hearing, folks aren't visualizing what happens. Doctor writes a script, and I'm not sure in your state if it's a paper script or if it's electronically submitted to the pharmacy. In either case, it gets into the hands of the pharmacy. The pharmacist will go to fill this prescription either when it's zapped in electronically or when the patient brings it in. The pharmacist-- a pharmacist--retail pharmacist generally is not going to fill a prescription unless they know where it's being paid. You know, like we used to say in New York from the Chinese laundry, no ticket, no shirt. If it's not being paid for, they're not dispensing the drug. So that they're going to want to-- they're going to turn to the PBM who's managing-- we all have PBMs listed on our health insurance cards. They're going to contact the PBM electronically to see if that drug is going to be covered or not, the same way they would in group health. This is done in milliseconds. An electronic call goes out from their system to the PBM system. The PBM system runs that drug through the formulary of the 46,000 in the database they have if they're using ours. And it either comes up as an N or a Y drug. If it's a Y drug, it gets filled immediately. If it's an N drug, there's usually a dialogue between the retail pharmacist and possibly the PBM to see what the problem is because the PBM is going to want to try and get that drug authorized. Why? Because you don't want the patient leaving frustrated and agitated. You want it to be a smooth process. But if it's denied, the pharmacist will then inform the patient and, depending upon the pharmacist, the doctor. Again, there's no regulatory requirement that we've seen anywhere for the pharmacist to call the doctor, but to tell the patient this is-- but-- it's not covered the same way we've all had that happen in group health. The treating physician then is notified by the carrier or by the PBM, depending upon how the process is, that they may need to file a request for authorization. And then it goes through the request for authorization process. So but all this happens in milliseconds. It's pretty amazing. We've all stood at the counter and had our-- one of our prescriptions processed and either approved or denied in group health. One of the benefits of a formulary is every time you have a negative touchpoint with an injured worker, that case is going to go south. And I'm not talking about Florida and Phoenix. I'm talking about you're going to have a problem on the case so that you want to

try and reduce those negative touch points. And you can do that by having less Noes when the doctor knows what medications are going to be authorized. And it also gives the doc-- the same way I gave you the list? Imagine your doctor sitting with you, as they do with Medicare patients, and saying, look, here are drugs. These are the safer drugs that I can give you today, or as they do with the Medicare and Medicaid patient, or these are the drugs that are not authorized that are going to require authorization. And to have the visual tool create-- breaks down that barrier between the doctor and the patient and takes the doc out of the hot seat and doesn't end up in a 20-minute battle in the office which the doc doesn't want and neither does the patient.

M. HANSEN: OK. Thank you.

KENNETH EICHLER: Anyone else?

M. HANSEN: Any other questions? Senator Halloran.

HALLORAN: Thank you, Chairman Hansen. Not a question, but a comment. You gave me a whole new definition with the no ticket, no shirt, how I can lose my shirt. [LAUGHTER] Thank you for being here.

M. HANSEN: All right. Thank you. Thank you for your testimony.

KENNETH EICHLER: Thank you, folks.

M. HANSEN: All right. Any other proponents for LB487?

KORBY GILBERTSON: Good afternoon, Chairman Hansen, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association, Tyson Foods, and Lincoln Public Schools. I'm going to try not to repeat a lot of things, so I'm going to skip around here a little bit. But I wanted to talk a little bit-- Mr. Eichler-- Eichler, I always butcher it, anyway, talked a little bit about what NCOIL, which is the National Council of Insurance Legislators and then another group called the International Association of Industrial Accident Boards and Commissions. I refer to that one as alphabet soup. Very few people can say that without skipping over it. But that is a lot-- where different commissioners and mem-- people that work in either commissions or courts for workers' compensation, they get together and work on these issues. Back in 2012, NCOIL started looking

at the issue of opiate-- opioid addiction and the problems across the United States and did this study on what different things could be done to combat the problem. And this year they will be discussing legislation that they have already drafted, and it was by Representative Matt Lehman from Indiana. They will be discussing it on March 16, 2019. That's an NCOIL model that IAIABC also has done a report on doing drug formularies. And both have come to the conclusion that they recommend that states adopt them because of not only cost savings, but also the improved outcomes for the employees actually getting them back to work faster and making sure that their recovery is not delayed because of the dependency. I wanted to talk about two things that Senator Hansen talked about because these issues have come up ever since this bill was first-- or this issue was first introduced in the Legislature. One was how, what do you do if a physician is very adamant about something that they want to prescribe and they want to make sure that that patient can get it? There are restrictions in the NCOIL model that require a fast turnaround, within five days, to answer whether or not drugs will be approved. And then there's also legislation-- or language in that model act that includes presenting that-- has a carveout for emergency situations. So if your concern is that they're going to be waiting five days to get the medication that they need to have, there's a carveout for them to be able to get the N drugs for that period of time while they review what would be a more appropriate drug for that situation. And with that, I'd be happy to try to answer any questions.

M. HANSEN: All right. Thank you for your testimony. Are there questions? Seeing none, thank you.

KORBY GILBERTSON: Thank you.

M. HANSEN: All right. Any other proponents for LB487? Seeing none, we will move to opponents.

ROD REHM: I've been sitting a long time. [LAUGHTER] You just about witnessed a workers' comp injury here a few seconds ago. My name is Rod, R-o-d, Rehm, R-e-h-m, I appear on behalf of the Nebraska Association of Trial Attorneys in opposition to LB487. I want-- I'm handing out two things. First one is a review of Nebras-- of workers' comp laws around the United States and how they do their function. And Nebraska now, for the 25th or so year in a row, is the number-one state. There's 19 factors were identified as what makes up a good comp-- comp law by a commission in 1972, and we've been the leader almost all the way through. And I'm proud to be here for our Trial

Lawyers Association which represents injured people, thousands and thousands of injured people, defending this law from attack that's going to limit their benefits. And I'm going to-- I can show you how it limits their benefits. But I want to start with something. If I understand the lengthy testimony of the two out-of-state lobbyists, there's a computer program that's in-- that's the heart of a formulary, that people can either get free or they have to pay for, that essentially was created to do something. And it was created by the same people that fund Mr. Eichler's organization, big pharma, big insurance. That's who created ODG. That's who created ACOEM. And they wrote a computer program. And computer programs are written with something called, I have to-- I always want to mispronounce this word, algorithms. So I looked up what does an algorithm mean on Google. And I got this simple meaning back for Google: To make a computer do anything you have to write a computer program. To write a program you have to tell the computer step by step exactly what you want it to do. The computer-- the computer can execute the programs, following each step mechanically to accomplish the end goal. When you're telling a computer what to do, you also get to choose how it's going to do it. That's where a computer at-- algorithms come in. The algorithm is the basic technique to use to get the job done. We don't know what the goals were exactly of these people at ODG or ACOEM-- excuse me, ODG or ACOEM some 15, 20 years ago when they first developed this computer program or computer programs, apparently competing programs. But we know that it was done by the insurance industry and big pharma. And they can tell me all day long that they're interested in my clients, but they're not sitting across the way from me, people crying when they're in pain, people crying because they can't get their medication paid. They're not dealing with those problems. They're dealing with way bigger issues, systematic things that, you know, are kind of like big city talk. Drug formularies are-- are-- are no more science than the input they got from whoever wrote the algorithms and told the computer how they wanted to solve it. Define what a successful outcome is. What is-- what is addiction? What is this? What is that? All those factors get in for them to pull out the answers that you can claim. The bill requires us to do that here in the state of Nebraska. Either that or trust these huge businesses to take care of it because it's-- if the bill wants the Workers' Compensation Court to write a bill, I don't think the court's got the personnel to write a bill. We don't have "guygant"-- gigantic computer programs to plug in this, that, and the other thing. We don't have even a medical director. But the second input-- the second thing I gave was a-- was a report from a-- a-- a-- a Pennsylvania pharmacy company that evaluated drug formularies versus

health insurance formularies in Pennsylvania at a time when Pennsylvania had passed a formulary that was vetoed by their governor less than a year ago. And I've handed you that out. The comparison of the ODGM model, which is what they were using, and a variety of health insurance plans showed that ODG only relied on 20 therapeutic classes of drugs. Medicare, when you compare Medicare, used 165 different categories of drugs. And private insurance used between 99 and 172 categories of drugs. Those are some of the things that go into the algorithms. I don't understand how to do all that, but those numbers if you winnow down and you-- and you-- and you-- and you have a small number of choices, you're going to get a small number of Ys because you-- there just isn't going to be the-- the-- the-- the availability of coverage. The study also points out that the number of drugs-- and I guess that I heard was 350 drugs which kind of is different than this study shows with 350 drugs. You've got the 46,000 drugs that Mr. Eichler was talking about. These private plans average 2,057 which must give all kinds of choices to doctors. Some of the things that weren't covered were pain patches, very common for work injuries. Antidepressants weren't covered. Antinausea medicine wasn't covered.

M. HANSEN: Mr. Rehm, your red light's on if you want to give us your final thoughts.

ROD REHM: Well, the final thought is there's been no talk about a crisis in terms of what workers are receiving for medical care. There's been talk about an opioid crisis, and I feel terrible about that. But the workers' compensation law is designed to give services to workers. And I don't think we want a workers' comp law that treats workers with fewer choices, fewer treatment options than every other citizen. I don't think we want a workers compensation law that turns over the first decision on medication to a computer program rather than judges. I don't think we want a workers' compensation system that values a computer program that's developed by who knows who, when, and how did they modify it over doctors because that's our evidence-based system right now. We have evidence from doctors. And judges review it and they decide it. And there's no proof that there's any crisis that people are-- are-- that-- that-- that needs to be dramatically improved.

M. HANSEN: All right. Well, thank you for your testimony. I'll see if there's questions from the committee members. All right. I don't see any. Thank you. Any other opponents for LB487? Hi, and welcome.

SCHUYLER GEERY-ZINK: Good afternoon, Senator Hansen, committee members. My name is Schuyler Gerry-Zink, S-c-h-u-y-l-e-r G-e-e-r-y hyphen Z-i-n-k, and I'm a staff attorney with Nebraska Appleseed. They work with hundreds of workers across Nebraska each year, and we know the importance of maintaining a stronger worker-- or a strong workers' compensation system in Nebraska which serves the public interest by ensuring injured workers are able to receive the care they need to recover and get back to work. Unfortunately, studies document a national trend in which state workers' comp systems are being eroded to the detriment of injured workers, their families, and ultimately whole communities. At the same time, employers are paying the lowest rates for workers' compensation insurance than at any time in the past 25 years, even as the costs of healthcare have increased dramatically. The medical profession should be regulated with extreme care, balancing the safety of the patient with the importance of a doctor's discretion and providing the best individualized care they can for their patient. Regulation should not be so overwhelming that it undermines the quality of care provided. In addition to interfering with the patient-doctor relationship, this bill, by curbing the type of care and benefits allowable, would ultimately shift costs to injured workers themselves, their families, and taxpayers. Prior authorization for drugs can take up to several weeks during which an injured worker is not receiving the care they need and may be suffering pain until they can get approval for the medication their doctor thinks is best. Unfortunately, I heard this happened to a worker. He'd worked in Texas and was subject to a workers' comp drug formulary. His doctor recommended treatments individualized for his health condition. However, they were not on the formulary. He suffered severe pain for two weeks until he could obtain a prescription, an authorization for acute physical therapy, which prevented him from recovering and returning to work sooner. Proper care and recovery should never be delayed for an injured worker simply because a treatment does not exist on a formulary. The American College of Occupational and Environmental Medicine takes the position that more research is needed on drug formularies. Additionally, physicians should not be discouraged to pursue clinical trials or other treatment options which would benefit their patients. The workers' compensation system and its original purpose must be protected as it provides an important incentive to employers to maintain safe workplaces that bear the costs of an unsafe workplace rather than society, taxpayers, and individual families. We have a public interest in making certain that injured workers receive the medical care and support they need to get back to work. If injured Nebraskan workers do not receive prompt and

quality care upfront, this could have devastating effects on their overall health and raise healthcare costs. I urge you to honor the doctor-patient relationship and support quality medical care to injured Nebraskans by not advancing LB487. Thank you.

M. HANSEN: Thank you. Are there questions, committee members? Seeing none, thank you for your testimony. All right. We'll take our next testier.

ROBERT RENTFRO: Hello.

M. HANSEN: Hello.

ROBERT RENTFRO: My name is Dr. Robert Rentfro, and I'm here to test [SIC] in opposition of LB487. I'm a physiatrist who works in Lincoln Orthopedic Center. I do pain management. I've done it for almost 15 years now, work with pain patients and workmen's comp. I'm unsure of the necessity of LB487. Last year our Legislature passed a number of opioid-related bills. LB931 created a seven-day cap for minors, patient notification of risks, and photo ID requirements. LB733 included CME requirements for each physician prescribing opioids in Nebraska, 5 CME credit hours, so we do extensive training. We've done a wonderful job of getting up a very nice prescription drug monitoring program in our state which is-- you know, and thanks to-- and thanks to this Legislature as well. That's been a wonderful addition to practicing physicians and safety of our Nebraska citizens. Proponents of this formulary are saying that this would be a-- a very good way of decreasing opioid addiction, and I don't really see how that's going to happen. The way that-- that physicians can prevent physical dependence and an addiction is by using physician drug motoring programs, by using opioid risk tools, which we're well-trained in doing and which we continue to get CME credits for, that are already in place, that are certainly used with workmen's comp patients. It's really important to note that abuse throughout the country has been an epidemic, and it's fantastic that we're reacting to that epidemic. Nebraska, fortunately, has been one of the lowest rates of opioid addiction in the United States and has one of the lowest rates of opioid deaths. But even one death is too many. So it's a-- it is certainly on every physician's mind when they're prescribing opioids. So we've-- Nebraska Medical Association is also, with the aid of many physicians in the state, has come forth with the pain management guidance document. And it's been released. And every provider has access to that, and that's also a valuable asset. So all of these things have helped us in-- in responsible opioid prescribing. We-- I

feel that, you know, that this formulary would possibly interfere with-- with the access of care. And some of the other opponents have talked about-- one of the other proponent testifiers was saying how if there was a need for a medication that wasn't approved, we could get a peer review. If you've ever been a physician at work and you're seeing a good number of patients a day and having to deal with a good number of peer reviews, you see that it doesn't go as smoothly and seamlessly as you would think it would. It makes for a long day, and many times it makes for a frustrated patient because they don't get the medication approved, even-- even with what we feel is appropriate justification for those medications. A little bit of a fear of the administrative burden of this bill, we have some of these companies if they are going to come out with these formularies, sometimes the physicians are going to be, you know, prodded with that cost. And let's say that-- I know that some of these formularies in other states have cost as much as $600 per year, per medical license. Four thousand licensed physicians here in the state of Nebraska, that's about $2.5 million. You're going to limit the number of providers that are going to want to offer work compensation to their patients. And so those are some of my main points. I just think it should be carefully considered when-- when we're adding more layers of regulation to opioid prescribing because I think that there's good processes that are in place that are being used currently.

M. HANSEN: Thank you. First-- first of all, can I have you spell your name for the record?

ROBERT RENTFRO: Yeah, it's R-e-n-t-f-r-o. First name's Robert.

M. HANSEN: All right. Thank you. Let's see if there's questions from the committee. Senator Crawford.

CRAWFORD: Thank you, Chairman. And thank you, Mr. Reftro [PHONETIC]?

ROBERT RENTFRO: Rentfro--

CRAWFORD: Rentfro, sorry.

ROBERT RENTFRO: --like you rent a fro. There you go.

CRAWFORD: Could you tell me just a little bit more about this, the pain management guidance? Is that something that was created by doctors in Nebraska?

ROBERT RENTFRO: Yes, it actually was. The-- the Nebraska Medical Association knew that we wanted to get a opioid guideline and so probably the last, I can't tell you exactly, but over the last two or three years, many physicians, including myself, were on boards and committees that came up with a guideline, and we based it-- I mean we looked at what other states had done. And then we came out with a responsible opioid prescribing guideline which is not a cookbook, but it gives folks guidelines when they're prescribing opioids to any patient. You know, what are safe doses? When should these things be prescribed? When should they not? You know, what are the risk factors for addiction, physical dependence? All those things are included in there. So it's a great resource at our fingertips as well as our prescription drug monitoring program where we can see what providers in our state and our country are-- are prescribing opioids to these patients. And we can see when there's misuse and diversion, etcetera.

CRAWFORD: Thank you.

ROBERT RENTFRO: Yeah.

M. HANSEN: Thank you, Senator Crawford. Any other questions? All right. Seeing none, thank you for your testimony.

ROBERT RENTFRO: Thanks for your time. Do I need this?

M. HANSEN: Is there anybody else wishing to testify in opposition to LB487? Seeing none, anybody wishing to testify in a neutral capacity?

JILL SCHROEDER: Members of the Business and Labor Committee, I'm Jill, J-i-l-l, Schroeder, S-c-h-r-o-e-d-e-r, and I am currently the administrator of the Nebraska Workers' Compensation Court. There has been some discussion already this afternoon about what neutral testimony is, and I'll let you know that we are testifying from a neutral position because it is the role of this committee to weigh the essential interests that have been discussed and make a policy decision. On the one hand, you have people who say keep the same system that is in place now. Let doctors treat patients in individual situations and if there are problems, go to the Workers' Compensation Court and on an individual basis discuss what is reasonable and necessary. That is one interest versus the question of whether, in fact, you create a drug formulary that would have presumptions built into it as to what is reasonable. The court leaves to this group those policy decisions as to how you weigh those interests. As to the fiscal note issue, those who research the position the court has taken in the

past will see that although past fiscal notes have said no fiscal impact, the administrators have in fact testified, tell us what it is that you want us to do so that we can assess the fiscal impact. In the fiscal note that we filed this year, we tried to bridge that gap between the statute and the, you know, different options and to say to you, please help us understand what it is that you are asking us to do so that we can assess the impact that that would have upon the court. For example, the formulary would involve a great deal of medical decision-making in terms of what would comprise the formulary, how it would be executed, what would be included, what wouldn't, and frankly how it would be updated. We don't have a medical director. We do not have a pharmacist on staff. I'm told that we have people who could render first aid if I slip or trip or fall in the hallway, but beyond that we don't have medical expertise. We would have to have someone who could help us work through issues like, does the existing PEMP address the issues that need to be handled or would we need to go out? This assumes that we would be the decision-makers. We would have to have help in working through whether we want to come up with our own proprietary formula or adopt one of the commercially available products. Frankly, we would prefer that this body does as you do with fee schedules. As to the fee schedules, you tell us exactly what the system is that you want us to adopt. And by our rule-making, we do then bring that into our court rules of procedure. That would involve all of the policy decisions being made here. It would involve us only having to adopt that, not to educate providers, not to be the ones who are updating it, any of those things. If we are the ones who are to be making all of these decisions, as I said, please give us a fair opportunity to analyze the fiscal impact. I can tell you today, it will involve a medical director and it will involve staff to support the medical director, the education process, and the ongoing questions from the public, from pharmacists, from physicians, from the pharmacy benefit managers that have been discussed, insurers, employers, employees, and attorneys on both sides of things. We-- currently our independent medical examiner process takes approximately two months. That is the process that is in place. So if a separate and speedier independent medical examiner process is needed, be aware that we may need to staff that up. We may need money for that as well. We are funded through assessments against insurers. We do not have funds to employ a medical director or staff, so please be aware that we would need funding for whatever it is that this proposes. Additionally, I want to make sure that you understand our role as a court. We attempt to remain neutral. We attempt to remain unbiased, and the provision that we would meet and consult with particular interests is of

potential concern to us. We would need to understand what that means, have specific direction. We would prefer that the--those who consider themselves to be stakeholders would be included. That, to us, would be the public as opposed to a particular board of people. Particularly, we don't want to have to select that group because we want to remain impartial. So with those thoughts, I just would close by saying, please, if this is something that you decide as a policy matter to adopt, please be as specific, please be as clear, and please fund whatever it is that you are intending to do because we don't have the money to pay for it.

M. HANSEN: Thank you for your testimony. Questions from committee members? Senator Halloran.

HALLORAN: Thank you, Chairman Hansen. Well, you're asking an awful lot of us, you know, to be clear. So you mentioned medical examiner process. That happens currently now when there's workmen's comp cases in front of you.

JILL SCHROEDER: Correct. So--

HALLORAN: OK. Go ahead.

JILL SCHROEDER: --if-- currently under the system, you have to have competing medical opinions. So if an injured worker has an opinion that says I need this treatment and the employer or insurer denies it, then there is a specific process within our court rules as to how you have a-- an independent doctor then issue a report as to the medical issues that are involved.

HALLORAN: So do some of those cases get down to the specific medications that are being used?

JILL SCHROEDER: Not very often. Generally, frankly, they're broader issues. There may be specific questions as to whether surgeries are needed, whether it's-- maybe the better way to put it is not in isolation. That-- if-- to the extent there are issues as to whether a particular medication is reasonable and necessary, it would be combined with other issues as to generally other ongoing treatment, as to questions as to how badly the person is injured, whether the injury was caused by this accident, and other issues. It would be rare for an issue solely as to whether a prescription medication is reasonable and necessary to go through the process.

HALLORAN: OK. Thank you.

M. HANSEN: Thank you, Senator Halloran. Any other questions? Senator Crawford.

CRAWFORD: Thank you, Chairman. And thank you, Ms. Schroeder, for being here. So I just want to clarify. If a formulary is adopted, what do you see as your court's role in-- in administering that?

JILL SCHROEDER: Someone would need to educate people as to why-- this assumes we've developed. We would have to educate people. We would have to on an ongoing basis update that. You've heard testimony that these formularies are updated on a monthly basis. That does pose some issues as with fee schedules. We only-- we only update the fee schedules once a year because of the issue as to who updates, whether this body can delegate the authority to update or not. But we would have to educate providers. We would have to continue to update materials and respond to questions from the general public as to all of-- as to how the formulary worked.

CRAWFORD: And if there was a dispute, then it would still come to your court and when there-- and go through the process of an independent medical adviser.

JILL SCHROEDER: It could go through the process of an independent medical examiner, or it could go to one of our judges directly for-- to be decided in-- you know, from a judicial standpoint what was reasonable and necessary in certain circumstances.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator Crawford. Senator Hansen.

B. HANSEN: Thank you, Chairman Hansen. Thank you for coming. So I think maybe one of the purposes of this whole bill is to maybe kind of stem an opioid crisis or overuse of opioids. I'm assuming that's one of the main purposes behind this bill. That's what it sounds like from people that have come up here today. But I think from my understanding, Nebraska has done relatively well compared with all the other states when it comes to opioid crisis. And so is there any opinion that you might have within the workmen's comp world or people who-- people who need workmen's comp? Is there some kind of opioid crisis going on that you know of?

JILL SCHROEDER: I-- I wouldn't have an independent opinion about that. Certainly there are a lot of people who are being treated for workers' compensation cases who are taking opioid medications. It gets a little bit complicated because so many people are treated for general health conditions and workers' compensation issues as well. You were pointing out like which factors really do effect the opioid crisis. The CDC issued its-- one of its big reports as to this in March of 2016. So how do we really know whether, to the extent there's a nationwide opioid crisis, whether it stems from that report, the awareness, the physician monitoring programs that have taken place? How much of that is stemming the issue and helping it, and how much is because of drug formularies that have been adopted in these states? I think it's very difficult to know what the different factors are. So I-- I would be able to gather statistics as to what various groups have said about whether there's an opioid crisis and whether there's a crisis in Nebraska, and if there is a crisis, whether that stems from people who are being treated for work-related injuries or people who are being treated for other situations, unrelated car accidents or other situations. So were we charged with this to come back to it, one of the things that we would have to look at is whether the current PDMP is addressing the evil that is being sought to be curbed in this case or whether there truly is a separate issue as to workers' compensation claims.

B. HANSEN: I think this is maybe because we're trying to-- if we're trying to get a baseline to try to get an idea so in case this bill-- OK, we do get this bill through, it passes, like how do we know? That's-- that's why I was asking is how do we know if it's even working or if it's doing what it's intended to do? There is some kind of baseline or some kind of numerics that tell us, OK, this is how many people are addicted to opioids. This is a problem we're having. We pass this bill and, oh, it's getting a lot better. Like I-- that's maybe kind of why I asked. I was just trying to figure out where we're at now and if we pass this bill, where are we going to be five years down the road?

JILL SCHROEDER: Yeah. And currently we wouldn't have those metrics, frankly.

B. HANSEN: That's fine. This is good. I thought you might know. Thank you. Appreciate it though.

JILL SCHROEDER: I should have said that the first time, right? Currently we don't have those metrics.

M. HANSEN: Thank you, Senator Hansen. Any other questions? All right. Seeing none, thank you for your testimony. All right. Are there any others wishing to testify in neutral? All right. Seeing none, that will close our testimony.

JILL SCHROEDER: Thank you.

M. HANSEN: Since Senator La Grone is here, Dayton, did you have a close? Or I presume he waives closing.

DAYTON MURTY: Senator.

M. HANSEN: Based on that reaction I would-- you're waiving closing. All right.

DAYTON MURTY: I was told that whenever an LA presents a bill they don't have an opportunity to close.

M. HANSEN: That was my understanding, too. But I didn't want to-- we hadn't talked about it before. All right. And with that, we have a letter in support from Joni Cover and the Nebraska Pharmacists Association and a letter of opposition from Sue Martin and the Nebraska AFL-CIO. And with that, we will close the hearing on LB487. We're waiting for Senator Quick for the next two bills, so we're going to stand at ease for five minutes until 4:20 to give the staff a break. And we'll come back to our next hearing, LB364.

[BREAK]

M. HANSEN: All right, everyone. We're back on pursuant to our five-minute break. So if I could have you sit down and-- you ready? Yeah, I need a gavel. All right. I appreciate everyone and their patience in these close quarters. We're ready to move on to our next bill. Senator Quick is closing in another committee, so we're going to invite his legislative aide up to open for him on LB364. Hi. Welcome.

SARAH WAGELIE: Hi. Good afternoon, Chairman Hansen and members of the Business and Labor Committee. My name is Sarah Wagelie, S-a-r-a-h W-a-g-e-l-i-e, Senator Dan Quick's legislative aide, and I'm here on his behalf to read his introduction statement on LB364. LB364 would give the Nebraska Workers' Compensation Court the authority to create a fee schedule for doctors' reports and opinions that are used in

workers' compensations proceedings to determine the cause and extent of the injury. Nebraska statutes currently give the court the authority to create fee schedules for medical, surgical, and hospital services. I think the committee has AM475 which is the white-copy amendment intended to replace LB364. The amendment does not add to the bill or change the intent of the bill in any way. It only further clarifies that the Workers' Compensation Court has the authority to create the fee schedule and aligns language with current statutory provisions. LB364 addresses the trend of rising and arbitrary costs of reports and opinions provided by physicians in the workers' compensation arena. The consequences of allowing these costs to continue to rise negatively affects the workers who are already in a tough situation. The costs get passed down which diminishes their net takeaway, and finding representation to take on smaller claims, where the award barely covers the costs of the reports, is becoming increasingly difficult. I don't think this is something that workers who are going through a workplace injury should have to navigate, and I think LB364 would help solve this problem. I encourage the committee to adopt AM475 and move LB364 out of the committee. Thank you for your time.

M. HANSEN: All right. Thank you, Ms. Wagelie. As is our tradition, we do not ask staff questions when they open for their introducer. So with that, we will move on for proponent testimony fo LB364.

BRODY OCKANDER: Good afternoon Chairman Hansen and members of the Business and Labor Committee. I'm Brody Ockander, B-r-o-d-y O-c-k-a-n-d-e-r, and I'm here on behalf of Nebraska Association of Trial Attorneys. First, I'd like to thank Senators Quick and McDonnell for bringing this bill to help protect injured workers. LB364 requires doctors to limit charges for reports produced in connection with workers' compensation claims. Now in work comp cases, a doctor's opinion often is needed to determine whether an injury arises out of and in the course and scope of their employment. Often there's three main issues that a doctor needs to issue an opinion for: one, the causation, whether it arises in and out of-- in the course and scope of their employment; two, the need for medical treatment; and three, an impairment rating or a disability rating to determine whether or not there's a disability and whether there's any work restrictions that are necessary from the work injury. Now the problem is that there are currently no limits on the amount that doctors can charge for these opinions which are necessary for nearly all workers' compensation clients. And as a result of no limits, the doctors are

allowed to charge however much they want. And a lot of these-- these costs then are usually passed down to the injured worker. An example would be say an injured worker hurt his arm at work or shoulder, for example. The medical records aren't necessarily clear enough for the work comp insurance carrier to necessarily accept that claim and so there has to be some clarification from the treating doctor. And as a result that doctor is going to say, OK, well, I can give you that opinion, but that's going to cost you $700, $800, maybe $1,000 or something, just whatever the doctor decides. And that injured worker needs that opinion in order for it to be accepted as a work comp claim. Then for example, let's say the doctor issues that report and the claim is accepted by the work comp carrier. They start paying benefits. Well, they get to a point where the injured worker has finally reached maximum medical improvement and they're going to be entitled to some disability rating. Now the doctor again will ask, you know, I can provide this disability rating but it's going to cost money again for this report and I'll charge, you know, $1,000. So it's really arbitrary how much they charge. And some of it goes into it-- the amount of work that goes into it. I understand that, but at times, for example, the-- the one that I handed out, I redacted some names here. This was for an impairment rating and we were charged $1,327 just for an impairment rating. And usually these things can be completed relatively quickly. So what this bill does is limit the amount that they can charge, similar to the way that medical providers are already limited in what they can collect for treatment pursuant to the fee schedule that's already out there. Specifically, that statute is Section 48-120(e) where the court establishes what kind of treatment and it was going to cost the carrier how much. An example of that would be let's say a worker has surgery that is billed out at $10,000. Well, the work comp fee schedule says you can only collect $8,000 for this particular surgery. Further, the court already allows for court-appointed, independent, medical examinations under Rule 62. And the court has a list of approved doctors and can assign one to a case. Under Rule 65, the court actually limits what they, the doctors can charge in those IME appointments, and that's $400 per hour with a max of four hours. Now oftentimes, these reports, with regard to impairment rating or causation, can be completed within an hour, I would imagine. And so you know, we'd be looking at hopefully a maximum of $400 for a report like this and not $1,300, again, because that gets passed on down to the employee-- the injured worker. Now for providers to charge anything for a report that they know-- and this is often for an injured worker that they know they need that report in order to continue and be accepted as a work comp claim. So a

counterargument might be some that might dissuade doctors from getting involved in work comp claims, and that shouldn't be true because most of these doctors have already agreed to be on the court-appointed IME list, that we were just talking about, established by the court. And that has that maximum of $400 per hour already. Also the doctors treating for work comp claims are already getting paid more for treatment than what they'd receive say out of private health insurance carrier or Medicare or Medicaid. You know, going back to the example I used before, a $10,000 surgery bill might be $8,000 in work comp, maybe $6,000 from Blue Cross-Blue Shield or a private health insurance carrier, or maybe $3,000 from Medicare and Medicaid. So, again, they're already getting more money. The point is they're-- they're already getting more, and I don't think it's going to have a chilling effect. In sum, we ask this committee to support the bill and ensure that injured workers aren't overcharged just to proceed with a work comp case and get what they're legally entitled to. Thank you.

M. HANSEN: Thank you. Are there questions from the committee? All right. Seeing none, thank you for your testimony.

BRODY OCKANDER: Thank you.

M. HANSEN: All right. We'll take our next proponent for LB364. Seeing none, we'll move to opponents of LB364.

DONNA HEUSINKVELT: Good afternoon, Chairman Hansen, members of the committee. My name is Donna Maria Heusinkvelt, that's spelled H-e-u-s-i-n-k-v-e-l-t and I am testifying on behalf of the Nebraska Medical Association in opposition of LB364. I am a work comp specialist at a clinic here in Lincoln that treats high volume of workers' compensation patients. I have been with the medical office for 13 years and a work comp claims adjuster prior to that for 6. On a daily basis we receive requests for narratives, reports from the work comp adjusters, case managers, as well as defendant and plaintiff attorneys. We review each request and assess what charges should be charged based on the number of questions. In addition, if additional records or videos needs to be reviewed, an approximate time it will take the provider. New injury questions can be easier or faster to respond to, but some do require quite a bit of time to provide the appropriate response. Some requesters will ask what is already documented in the office notes, and these notes always go to the adjuster and to the case manager as well as others that request the notes. Some questions relate to causation of the injury which is sometimes needed to sort out who is responsible. The workers'

compensation carrier is usually the first to question, then their attorney or the patient's attorney. Many times a response creates more questions being asked. This can go on until the claim is settled or goes to court. In some instances, we are made aware of the patient having second opinions, IMEs, being noncompliant with treatment, second jobs, second injuries, preexisting injuries, age, weight, change in jobs. Thus more letters come. Even if the physician notes in his office notes that the injury was caused by the work accident described, letters will come. The NMA has concerns about how this bill will practically be implemented and how the Workers' Compensation Court would be tasked with establishing a fee schedule for medical reports of various sorts. For example, would the fee schedule be based on the volume of medical records, the complexity of the diagnosis? What if the patient has multiple injuries that are to be included in the report? We are concerned with the blanket fee schedule may not account for the fact that the patient-- each patient is different. Each medical report requires various levels of detail. Additionally, we currently struggle with workers' compensations claims not always being paid timely or correctly. If LB364 were to pass, placing a fee schedule on these reports creates another administrative burden to pursue payment for these reports while we are already busy in-- ensuring we are paid for treatment and services rendered. Depending on what is proposed for a fee schedule, there is a possibility that physicians might limit what they are willing to address outside the scope of treatment for the patient. In the grand scheme of the entire process of treating the patient and returning the injured employee back to work, the physician-- the physician charges for medical reports is truly a very small piece of the entire cost of these patients' full and total care. Thank you.

M. HANSEN: Thank you for your testimony. Are there questions from committee members? Senator Hansen.

B. HANSEN: Thank you, Senator Hansen. So how long-- thank you for coming and testifying. Sorry. How long do you think it takes a medical doctor to render an opinion or do an impairment rating on like an average workmen's comp patient, you know, sprain, strain [INAUDIBLE].

DONNA HEUSINKVELT: You mean their actual time after they sit down, open everything up--

B. HANSEN: Yeah, just what it says, what's your opinion on Jane Doe? How long do you think it takes them, an hour?

DONNA HEUSINKVELT: It could be up to an hour, could be a little less.

B. HANSEN: OK. OK, do-- do you think it's right they charge $1,300 an hour to do that?

DONNA HEUSINKVELT: I don't think we charge $1,300.

B. HANSEN: Somebody is.

DONNA HEUSINKVELT: Somebody is. I--

B. HANSEN: I think that's kind of maybe the purpose behind the bill a little bit there. And I don't think it's really going to have, like one of the testifiers said, before a chilling effect, like you're going to take less workmen's comp if there is a fee schedule attached to this.

DONNA HEUSINKVELT: Right.

B. HANSEN: There's a lot of fee schedules, I know, attached to many things doctors have to do: you know, render their opinion or other kinds of-- you know, making copies or-- and so I think that was kind of mainly what I had. And I think that's the purpose behind this is to kind of see maybe the time and the effort that the doctors have put into rendering an opinion or impairment rating and making sure that we're at least being fair to-- to the workmen's comp or the people who are paying the bill, too, and that person-- whoever got injured as well. So thank you.

DONNA HEUSINKVELT: Thank you.

M. HANSEN: Thank you, Senator Hansen. Any other questions? Seeing none, thank you for coming down.

DONNA HEUSINKVELT: Thank you.

M. HANSEN: All right. We'll take our next opponent. Hi. Welcome.

KEVIN CONWAY: Good afternoon, Chairman, members of the committee. My name is Kevin Conway, K-e-v-i-n C-o-n-w-a-y. I'm vice president, health information for Nebraska Hospital Association, and on the 44,000 members and the 10,000 patients we serve a day, I'm here to present opposition to LB364. Without going through my entire written testimony, really capsulated in two components, one is the Workers' Compensation Court has a process, a public hearing process, to modify

the rules and set Medicare-- Medi-- excuse me, medical fee schedules. And also we heard-- prior testimony talked about maybe limiting access to care because of the-- the physician participating in the workers' compensation system. The way that I interpret this bill being written, the court could take a single case and determine what an appropriate reimbursement for that single case is. And it takes it out of the fee schedule process. It takes it out of the public hearing process. It puts it in the court's hands at that point. Providers, hospitals, and physicians do not have standing in the court, so they're not part of that particular case and that particular hearing. So there's no way for the providers to get their voice in on what the reimbursement for that case should be. So with that, I would like to take any of your questions.

M. HANSEN: Yes. Are there questions from the committee? I would have one. Have you guys seen a copy of this amendment, AM475?

KEVIN CONWAY: Yes.

M. HANSEN: OK. And from my understanding, that kind of restructures and clarifies which-- among other things, it looks like it is putting it under kind of the standard process for establishing fee schedules.

KEVIN CONWAY: All right. I did see that and-- and not a 100 percent sure on my part. I missed-- it needs more clarifications because it used the term report. And in Nebraska workers' compensation, the claim is considered a report. So it could set a fee-- an individual reimbursement for an individual report which is also part of the claim process that-- that we're used to. So I think there could be some additional clarification on that side.

M. HANSEN: OK. But I guess more broadly is, if Senator Quick and his office were able to structure this such that it was under kind of the standard hearing process for the fee schedule, would that remove your opposition?

KEVIN CONWAY: Yes.

M. HANSEN: OK. Thank you very much.

KEVIN CONWAY: OK.

M. HANSEN: Any other questions from committee members? Seeing none, thank you for your testimony.

KEVIN CONWAY: Um-hum.

M. HANSEN: Anybody else wishing to testify in opposition to LB364? All right. Seeing none, anybody wishing to testify neutral?

BOB HALLSTROM: Chairman Hansen, members of the Business and Labor Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, here before you today on behalf of the National Federation of Independent Business and the Nebraskans for Workers' Compensation Equity and Fairness. We appear in a neutral capacity based on some conversations which-- which we have had with Mr. Lindsay representing the trial attorneys, in that he has indicated that the intent of the amendment to LB364 filed by Senator Quick is-- is to address the reports by the treating physician. We think that there are significant distinctions between setting a fee schedule for a treating physician who has started from inception with the claim, knows, understands the-- the nature of the injuries, is better positioned to provide a medical record or opinion, as opposed to a third party that has to come in cold to the case, look at the file, familiarize themselves with the file, and so forth. And so we would pledge to work with Senator Quick and the trial attorneys in terms of clarifying that issue. And with that, I'd be happy to address any questions of the committee.

M. HANSEN: Thank you, Mr. Hallstrom. Are there questions from committee members? Senator Hansen.

B. HANSEN: Thank you, Chairman Hansen. So when you say clarify, like the fee schedule, do you mean like-- like medical doctors might get paid somewhat different than a lawyer would because a lawyer has to spend more time famil-- familiarizing himself with the-- with the case?

BOB HALLSTROM: No, Senator. It's with regard to the-- to the individual or the provider that's providing the report or the opinion, that if it were limited simply to the treating physician, I think that's what-- what I've understood is the intent to say, I've selected my physician or I've gone to a physician. That physician has been treating me, and now, for whatever reason, I have to get a more complete report regarding causation, permanency, etcetera, and that if they are arguably, not my words, if they're arguably overcharging for that and some type of cap or fee schedule needs to be put on that type of report, that's one thing. But then to-- to also have medical fee schedules that would apply in a similar nature to someone that has to come in on behalf of the employer, for example, review the case anew,

start from scratch, there's going to be significant differences between what would be appropriate for the fees on one side versus the other.

B. HANSEN: OK. That makes sense. Thanks.

BOB HALLSTROM: One size doesn't fit all, I guess it would be. Thank you.

M. HANSEN: Thank you. I-- Senator Crawford for a question.

CRAWFORD: Thank you. So-- thank you, Chairman Hansen. And thank you for being here, Mr. Hallstrom. So if it's-- your concern is that it's limited to treating physician?

BOB HALLSTROM: That it should be treated to limit-- limited to treating physicians if that's the-- the evil or the ill that they're trying to address. It should be clear that those are the reports that they're interested in having this committee determine whether or not there should be a medical fee schedule imposed for those types of reports or opinions.

CRAWFORD: Thank you.

BOB HALLSTROM: Thank you.

M. HANSEN: Thank you, Senator Crawford. Any other questions?

BOB HALLSTROM: Thank you.

M. HANSEN: Seeing none, thank you, Mr. Hallstrom. All right. Any further neutral testimony? Yes.

JILL SCHROEDER: Thank you, members of the Business and Labor Committee. I'm Jill, J-i-l-l, Schroeder, S-c-h-r--o-e-d-e-r, and I'm the administrator of the Nebraska Workers' Compensation Court. Our fee schedule currently does contain three codes for medical reports, and those codes address either specifically reports in workers' compensation cases or special reports, reports by a treating doctor or reports by an examining doctor. And generally a fee schedule would work, as people have told you about today, that there is a certain service that's provided, and the charge for that is capped at a certain level. The fee schedule currently provides that as to reports, it is quote: by report because of the variations in all of the factors that people have told you about. There may be a questionnaire-style

report where a doctor has to check a box as to a specific issue, or it might be a ten-page narrative report. There may be no medical records that need to be reviewed in order for the physician to express an opinion, or there may be two boxes of medical records or four boxes of medical records needed. You also have to factor in the-- or in cases it would be traditional to factor in perhaps the level of expertise that was required. So in some cases, it may be a specific-- I mean, the question of causation may be a relatively routine one for a medical examiner to be able to address or for a treating physician to address. And in other cases you may need to have a world renowned expert with a very specific area of expertise where it still is an opinion as to what caused a particular condition, but it would require a very specific level of expertise for which somebody had a lot of training. Those are some of the factors that weigh into these analyses as worded. We also have questions as to whether this applies solely to written reports or whether one might express a medical opinion or report in a verbal way through either a telephone conference or through testimony that would be provided. I'm not sure that that is clear in terms of what this means. Frankly, ordinary office notations would contain the type of information potentially that's described in this. So does the system do more than it intends then and allow physicians to start charging up to a certain level for what we-- what one might consider to be an ordinary office notation? So some of those sorts of issues are what have factored into the reasoning behind the fact that currently the fee schedule simply says by report. As to these issues, there are all of these different factors. There are all of these different ways that physicians can express opinions or other medical providers can express opinions, and so that is how it has shaken out to date. And I thought that might be helpful for you to understand.

M. HANSEN: Yes. Thank you for your testimony. Questions from committee members? Senator Crawford.

CRAWFORD: Thank you. Thank you, Chairman Hansen. And thank you, Ms. Schroeder, for being here. Are there any doctors' reports in the process that you do have fee schedules for?

JILL SCHROEDER: As Mr. Ockander said, when we have an independent medical examination where the court assigns a physician, there is a $400-per-hour fee. One could argue that that is controlled because the court knows what information is being sent to the physician. They know what questions are being asked, and they know that that is going to be

a narrative report asking certain questions. So it's a bit more controlled in terms of the information going into the physician and the work product that the physician is going to have to issue. That is also a list on which physicians have agreed to be on that list in order to play by those rules. And so other than that, there is no specific provision either in the statute-- statutes or in the rules that would say under this circumstance you're limited to this amount. Paying for copies of medical records, there is a-- but that doesn't require expressing any additional opinion, just a copy of a medical record, there is currently a fee that would be capped. Other than that, no.

CRAWFORD: Thank you.

M. HANSEN: Thank you, Senator Crawford. Any other questions? All right. Seeing none, thank you for your testimony.

JILL SCHROEDER: Thank you.

M. HANSEN: Any other neutral testifiers on LB364? Seeing none, Senator Quick, now that you're here, would you like to close?

QUICK: Thank you, Chairman Hansen and members of the committee. Sorry I wasn't here earlier. The other bill took just a little bit longer than I thought. But one of the things-- you know, we're willing to work with everyone, the committee, and also with interested parties to make sure this bill does what it is supposed to do. You know, I understand from the medical side that they just want to make sure they get paid for their costs. But we want to make sure that they are maybe reasonable costs as well because that affects the employer. As well, it also affects the injured employee. So-- and I won't go into it, but if you ever want to talk to me about work comp injury, I've had one myself, and I can tell you what it's all like for an-- from an employee-- from the employee's side. So with that, I'll take any questions.

M. HANSEN: Great. Thank you. Are there questions? All right. Seeing none, I'll read into the record we have one neutral letter from Sue Martin in the AFL-CIO. And with that, we'll close the hearing on LB364 and move on to our final hearing today, LB408, also by Senator Quick.

QUICK: Thank you, Chairman Hansen and members of the Business and Labor Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I-- I'm here today to introduce LB408. LB408 is a simple bill that will

provide a lot of support to families who are going through a tragic-- tragedy. Currently in the tragic event of a worker-- worker losing their life as a result of a workplace accident, their dependents are eligible for monetary benefits under the work-- Workers' Compensation Act. However, if the worker does not have any dependents, they are not eligible for these benefits. LB408 would add a $25,000 benefit to the personal representative of the estate of the deceased. What we've found is the law does not reflect the experiences families are having. If, for example, an adult who does not have dependent children is killed on the job, there would be no benefit to their parents who-- who would maybe have to pay off their debts, move their things out of their apartment, like-- like that-- things like that. In another situation, if there were potentially stepchildren, they might not be eligible for any benefits but under LB408, would be entitled to a little bit of assistance. When families are experiencing a tragedy like that-- like this, trying to settle other debts, move things out of an apartment, or handle other important matters right away, can be really hard. And having that $25,000 could be a real benefit and a real peace of mind to these families to not have to worry about so-- to have to worry about-- so much about these things. What we really need to do is prevent workplace accidents and tragedies, but the least we can do is make sure we're providing this assistance evenly to all families. I appreciate your time on this important issue and would be happy to answer any questions you may have.

M. HANSEN: Thank you, Senator Quick. Are there questions from the committee? Seeing none, thank you for your opening. All right. With that, we'll move to proponent testimony on LB408. Welcome

TONYA FORD: Thank you very much again for having me and allowing me to speak about this important topic. My name is Tonya Ford, and it's T-o-n-y-a F-o-r-d. And I-- again, I'm the executive director of a national nonprofit organization called United Support and Memorial for Workplace Fatalities, and we offer support, guidance, and resources to families that have been affected by work-related "incidences." In 2009, my Uncle Bobby was fatally injured after falling off-- falling 80 feet off of a belltop rated manlift device in a local grain elevator company here in Lincoln. Since my family's loss, I've had the opportunity to meet amazing family member victims from across Nebraska that have been directly affected by work-related "incidences." I've listened to their concerns and their frustrations they endured after their loss, and I sit here today on behalf of all of our family member victims and ask for your support of LB408. I know everyone has endured

the loss of a loved one, whether it be from an illness or an auto accident or natural causes. The fact of the matter is, going to work should not be a grave mistake. In 2018, there was approximately 55 reported work fatalities in Nebraska. Each fatality was different. Each fallen worker had a different story in their book of life. We have fallen workers that were married with children and then we have fallen workers that were not married or had no dependents. However, that does not mean that they had an empty book. Besides a loss of companionship support, they lived their life and had bills that they will need to be paid. There are also costs of estate attorneys, and at the very least, a family should not be left with the basic costs while mourning a loss that could and should have been prevented. I ask you to step back for a few seconds and stand in our shoes and the shoes of our future family member victims. Imagine being a young adult right out of college. You receive a call that your single parent was killed due to a preventable work incident. You have now gained the responsibilities of planning a funeral. And sadly within days of your final goodbyes, you must pack your parent's belongings up because rent is due and you do not have the financial means to pay for additional cost and time to mourn your loved one. Should the victim have had life insurance? Maybe. But two main reasons an individual purchases life insurance is to cover children's expenses and replace spouse expenses after such a loss. The statistics-- statistics show that workplace fatalities happen to all age of workers. From January 1, 2017, to February 2, 2019, there have been approximately 20 reported fallen workers in Nebraska that did not have a spouse and a dependent. Additionally, there were approximately 28 fallen workers that marital status and dependent is unknown, leaving those family member victims with the financial burden to tend to the affairs of their loved ones. Why? All because they went to work that day? Our loved ones are not the only victims due to workplace "incidences," as we as their families have become the victims and deal with the everlasting devastation which takes place in the mind, body, and soul, and many a time in the financial burden. I ask you to support LB408 for those that are here with me today and also for those, unfortunately, that we will lose in our future. Thank you.

M. HANSEN: Thank you for your testimony. Do we have questions from committee members? All right. Seeing none, thank you. All right. We'll take our next proponent.

GENE CARY: My name is Gene Cary, G-e-n-e C-a-r-y. I belong to the same group as Tonya, with USMWF. And the $25,000 to the family, what it's

going to do-- earlier I testified. I let you know that my son was killed in 2010, so it's been a while. This is going to be no help for me, but hopefully, by doing it, other families won't have to go through this. In a time of grief after the loss of a family member, my son Neil, you're hit with the expenses. You have your funeral expenses and everything. You don't bury a person on payments. They want their money right now, so you drain your bank accounts, your savings accounts, and part of it was on credit cards. That's before the money comes in from the other places, you know, for the funeral home from the $6,000 at that time that was for the death benefit. You have the expenses of opening up an estate, paying for lawyers. Once again, lawyers are right there to jump at you to say, yes, this is a wrongful death. We're going to take care of you. You got this coming. You got that coming. Then they find out the law's where you don't have any rights at all. It's going to be up to somebody else to decide what comes to you. Taking care of his home and his property, travel expenses-- I lived in Columbus, Nebraska, at the time. So we drove back and forth from Lincoln several times. We stayed in motels. We were eating out. You have time off work. You burn your vacation time which, hopefully, you had. We did have plans to do something else. So you burn through that, and you have extra time. Being completely out of your normal routine, you have your normal bills, and now you have your son's bills. Like a lot-- a lot of young single people, Neil did not have life insurance. If he had had it, it would probably have been through work. You remember? I-- I-- I told you that he was at his workplace for less than 30 days. At the time when a company should be looking after a new employee and showing him the ropes, the right ropes, he's put into a dinner-- did-- dangerous situation and lost his life over it. The $25,000 which this bill would provide for the families would have helped me and my family tremendously. I know it will help others no matter how old they are, their children are, or their parents are. Your children are always your children. And your parents are always your parents. At no age should they be said, he's not living under your roof. He wasn't part of your income. You shouldn't-- you shouldn't get anything for it. And that's all I have.

M. HANSEN: Thank you for your testimony. Do we have questions, committee members? All right. Seeing none, thank you. All right. We'll take our next proponent on LB408. Seeing no other proponents, we'll move on to opponents of LB408.

KORBY GILBERTSON: Good afternoon, Chairman Hansen, members of the committee. For the record, my name is Korby Gilbertson, it's spelled

K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association, Tyson Foods, and Lincoln Public Schools in opposition to LB408. I want to start by saying that I'm not in any way trying to minimize the loss that families feel and that the proponents talked about in dealing with the death of a loved one. I think many of us have been there, and it upends your life. And you spend months dealing with things you never thought you would have to do. But this legislation doesn't just say that that money goes to the family. It says it goes to the personal representative of the estate. So they could have no-- no one that-- that's left behind that needs that money. Secondly-- and right now, adults are not responsible for their adult children's debts. They are-- you aren't right now. And so I think there was some testimony that kind of alluded to that fact-- or that alluded oppositely to that fact, and so I wanted to clear that up. Two years ago there was a piece of legislation that was introduced and I think combined the bill that you heard earlier that would have increased the burial benefits. This bill does not do anything to take away those burial benefits. Those would still be there. This bill would be on top of that. And that's why we oppose it. Thank you very much.

M. HANSEN: Thank you, Ms. Gilbertson. Any questions from committee members? All right. Seeing none, thank you.

KORBY GILBERTSON: Thank you.

M. HANSEN: Hi. Welcome back.

BOB HALLSTROM: Chairman Hansen, members the Business and Labor Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the National Federation of Independent Business and Nebraskans for Workers' Compensation Equity and Fairness to testify in opposition to LB408. My arguments and positions would be the same as Ms. Gilbertson's. And we just would suggest that the policy of the state-- longstanding policy of the state has been only to provide benefits in these types of situations when there are immediate family members and dependents and spouses that are involved and this would extend that policy unduly. And we would request that the bill be indefinitely postponed. Be happy to address any questions of the committee.

M. HANSEN: Thank you. Are there questions from the committee? All right. Seeing none, thank you for your testimony.

BOB HALLSTROM: Thank you.

M. HANSEN: All right. Any other opponents to LB408?

JEFFREY BLOOM: Mr. Chairman, members of the committee, my name is Jeffrey, it's J-e-f-f-r-e-y, Bloom, B-l-o-o-m, and as mentioned before, I'm an assistant city attorney with the city of Omaha. I've come here today on behalf of the city of Omaha to testify in opposition to LB408. I'd like to first of all say that, thankfully, the death of an employee in the city of Omaha is a rare occurrence. We're in no way seeking to minimize this horrible situation. And no sum of money is going to make up for the loss of a loved one. We can certainly understand that some may feel that workers' compensation benefits are inadequate in this situation. However, I like to look at this from an objective standpoint and look at the history of the Nebraska Workers' Compensation Act for some guidance. The act, like in many other states, was developed as a great compromise. Under the workers' compensation system, an employee did not have to prove employer negligence as he did at common law. Employers would pay employees for work-related injuries on basically a no-fault basis. In exchange for not having to prove negligence, the employee was not able to seek pain and suffering, loss of consortium, and certain other civil damages. Now as part of this compromise, it is clear that the dependents of an employee killed in an accident arising out of and in the course of his or her employment would need compensation as well. The statutes clearly spell out what it means to be a dependent and under what circumstances said surviving dependent would receive benefits. However, LB408 seeks to expand benefits for those who are not dependent on the deceased employee. It seeks to expand benefits to the deceased employee's estate in the event he or she has no spouse, child, or other dependent entitled to benefits. This seems to expand the purpose of the act and shift the compromise. If one is not a dependent on a deceased employee, then there's a question of whether they have suffered monetary or pecuniary loss as a result of the employee's death. Again, I'm not trying to minimize the situation but instead look at this as objectively as possible. The loss suffered by a nondependent would likely be one of companionship, of love, of affection. But there is nothing in that definition that there is a pecuniary loss. This-- the bill would serve to be a way to essentially add loss of consortium to the Nebraska Workers' Compensation Act for

those outside of two degrees of consanguinity from the deceased employee. Now proponents may argue that modern living situations may create a dependency outside the marital relationship. However, if we are attempting to provide benefits for a dependent domestic partner or significant other, that could be addressed in a different way, in a more clear way. But by giving money to the deceased employee's estate, we put no restriction on the recipient and do not tie it to the dependency. That seems to be outside of the great compromise. Now the practical aspects of administration of this benefit are problematic to us as well. If somebody has no dependents, more than likely they don't have a will. Now with or without a will, the deceased employee may not have enough assets to open up an estate without this payment. Is it the employer's job to open an estate for a deceased employee if one has not been opened? What about waiting time penalties? If no estate is open and the employer has no direction on whom to pay, will the employer be subject to those penalties just as with every other part of the Workers' Compensation Act? Is it practical or even possible for an estate to be opened and the sum paid within 30 days of death? Now we look at other situations where this could be problematic. What if the employee has no next of kin? Is it the intent of this bill for the employer to pay $25,000 that would eventually go to the state? What if the employee only has such distant next of kin that they did not really know the employee? Is the intent of the bill to pay-- and I-- pardon this phrase, but it's-- anybody who's been to law school would know it, laughing heirs? Further, do creditors have a right to take some or all of this payment? Generally in the Workers' Compensation Act, creditors are not allowed to do that. However, if it's going to the estate of the person, where does a lot of estate money go but to pay off creditors and bills of the person who's deceased. So this is a new benefit that has not been provided before. And while providing for those left out of the strict guidelines of the Workers' Compensa-- Compensation Act can be laudable in certain instances, we believe this bill creates more opportunity for waste than is necessary to accomplish the noble goal that they're trying to accomplish. Now every employer hopes that they never have to contemplate this situation. And for most, this is a very rare occurrence. However, we urge the committee to be mindful of the history of the Workers' Compensation Act and how this is a departure from that history. And we urge them to consider the questions that I have presented regarding the administration of this bill. As such, the city opposes LB408, and I'm open to any questions.

M. HANSEN: Thank you for your testimony. Are there questions? Seeing none, thank you.

JEFFREY BLOOM: Thank you.

M. HANSEN: All right. We'll take our next opponent to LB408. Seeing none, does anybody wishes to testify in neutral on LB408? Seeing none, Senator Quick, we invite you up to close.

QUICK: Thank you, Chairman Hansen and members of Business and Labor Committee. I know one of the things that we heard here-- and I'm willing to work with stakeholders and with the committee to maybe address some of the issues that we heard, that maybe others had on the bill. And one of the things that I do know is that when an employee is killed on the job, someone is affected. In this la-- in the case that we heard today, it was the parents of that-- of that individual. And those issues are still there. I mean that's-- that's something that they may not have a spouse or a-- or children, but they-- but there's still someone there that cares about them. And they still have to handle some of those financial responsibilities that-- that-- that they had when they were still alive. So I would ask that we could look at this bill to see if there's anything we can do to-- to address some of the issues and I'm willing to work with everyone. So thank you.

M. HANSEN: Great. Thank you. Any questions for Senator Quick? All right. Seeing no questions, two letters for the record. We have a letter in support from Sue Martin from the Nebraska AFL-CIO and a letter in opposition from Kathy Siefken with Nebraska Grocery Industry Association. And with that, we'll close the hearing at LB408 and our Business and Labor hearings for the day. Thank you, everyone.