[LB852 LB1054 LB1107]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, February 19, 2014, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1054, LB1107, and LB852. Senators present: Kathy Campbell, Chairperson; Bob Krist, Vice Chairperson; Tanya Cook; Sue Crawford; Mike Gloor; Sara Howard; and Dan Watermeier. Senators absent: None.

SENATOR CAMPBELL: I am Kathy Campbell and I serve as the Chair for the committee. I represent District 25 in east Lincoln. And we have three hearings this afternoon. And before we start I'd like to go over some of the basic procedures. If you have a cell phone or a tablet with you, please turn it on silent or turn it off so that it does not disturb anyone while we are here. If you are planning to testify today, we need you to complete one of the orange or bright neon sheets on either side. Print very legibly. And when you come forward to testify, you can give your orange sheet to our clerk Brennen Miller. And if you have copies, we'd like 15. If you need some assistance with that, one of the pages will help you. You do not need to have a handout if you'd like to testify. As you come forward, we use the light system in the committee, which means we start at five minutes and it'll be green for a fairly long time, and then it will go to yellow. That means you have one minute. And it'll go to red and you'll look up and I'll be trying to get your attention to finish your testimony. With that, I think we'll start with introductions. Senator, to my right.

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

SENATOR KRIST: Senator Bob Krist. I'm from District 10 in Omaha and Bennington and unincorporated parts of Douglas County.

MICHELLE CHAFFEE: I'm Michelle Chaffee. I serve as legal counsel to the committee.

SENATOR CRAWFORD: Good afternoon. I'm Senator Sue Crawford, and I represent eastern Sarpy County, Bellevue, and Offutt.

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

SENATOR CAMPBELL: And our two pages today, Stuart and Emily. They both are at the University of Nebraska-Lincoln; Emily is from Sioux Falls and is a political science major, and Stuart is from Lincoln and is an English major. And they have been enormously helpful to the committee this year. So if you need assistance with anything, they'll be glad to help you too. So with that, we will proceed to our first hearing this afternoon, LB1054. Senator Karpisek is here. Please, welcome. Senator Karpisek's bill is to redefine treatment under the Health Care Facility Licensure Act. Welcome,

Senator. Good to see you again. [LB1054]

SENATOR KARPISEK: Thank you, Senator Campbell. I don't darken your doorstep very often, but (laughter) when I... [LB1054]

SENATOR CAMPBELL: We're glad you're here. [LB1054]

SENATOR KARPISEK: When I do, I was trying to decide if I should form a quorum across the hall or come here, but they can find more people. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District and I live in Wilber, Nebraska, which is spelled with and "e" not a "u." I like people to know that. (Laughter) LB1054 amends the definition of treatment in the Health Care Licensure Act by providing intent for a minimum amount of supervision and monitoring of noncommunicative persons. The bill does not place mandates or requirements in statute but rather highlights the importance of this issues in and of itself. Similarly, the definition of care in this same act requires a minimum amount of supervision and assistance as it pertains to its own section. The idea and reasoning behind this bill was presented to me by a constituent and very dear friend pursuant to the death of their 14-year-old daughter. Savannah, a noncommunicative young lady, would likely still be with us today had sufficient monitoring and supervision been utilized during her last hospital visit. Her death is an absolute tragedy that possibly could have been avoided for this family. Today I present LB1054 to the Health and Human Services Committee in an attempt to prevent the same tragedy from happening to future families. I greatly appreciate the time and effort of those who are here to testify to the importance of this issue and subsequent legislation. It is a very difficult subject. Futhermore, I understand that there will be those here today who will testify in opposition of this bill and explain to you why this legislation is not necessary. Perhaps they will tell you that regulations are put in place to address these particular concerns. But yet here I am today on behalf of Savannah and her family due to the lack of monitoring and supervision that was provided during her final hospital stay. LB1054, by adding only a few words, is quite simple on paper yet quite large in the scope of what it could potentially accomplish for many families. I'd be glad to take any questions. I'm sure that we have people behind me that will talk about their situation and things with a lot more clarity than I can, but I'd be glad to try. [LB1054]

SENATOR CAMPBELL: Okay. Thank you, Senator. Senator Crawford or anyone? I thought you had your hand up. I'm sorry. [LB1054]

SENATOR CRAWFORD: No. [LB1054]

SENATOR CAMPBELL: Any questions? I take it you will not be staying to close? [LB1054]

SENATOR KARPISEK: I will stay to close. [LB1054]

SENATOR CAMPBELL: Oh, okay. I thought maybe they needed you as a quorum. [LB1054]

SENATOR KARPISEK: Well, if they come to get me I'll go check in and come back. [LB1054]

SENATOR CAMPBELL: Okay. All right. Excellent. [LB1054]

SENATOR KARPISEK: You can't get rid of me that easy. [LB1054]

SENATOR CAMPBELL: Oh, no, no, and we don't want to. [LB1054]

SENATOR KARPISEK: Thank you, Senator Campbell. [LB1054]

SENATOR CAMPBELL: Thank you, Senator. With that, we'll open up our testimony on LB1054. The first proponent to testify in favor of the bill. Okay. Good afternoon. I think the page will help you out there. [LB1054]

TERESA KAY STEWART: Sorry, I'm...this is new to me. [LB1054]

SENATOR CAMPBELL: That's quite all right. Oh no, you're fine. Go ahead. [LB1054]

TERESA KAY STEWART: My name is Teresa Stewart. [LB1054]

SENATOR CAMPBELL: And would you identify...you've given your name and spell it for us? [LB1054]

TERESA STEWART: T-e-r-e-s-a S-t-e-w-a-r-t. [LB1054]

SENATOR CAMPBELL: Okay. Go right ahead. [LB1054]

TERESA KAY STEWART: Okay. The moral test of government is how it treats those who are in the dawn of life, the children, those who are in the shadow of life, the sick, the needy, and the disabled. These are the poignant words of Hubert Humphrey. My name is Teresa Stewart. I'm a single mother of a 17-year-old medically fragile boy whose name is Austin. Austin was born happy and healthy, but after just one month of age he contracted meningitis and suffered profoundly. He has intractable epilepsy, cortical blindness, cerebral palsy, is quadriplegic, fed through a G-button for 18 hours at a time. He's on a special ketogenic diet to assist in seizure control. He has a baclofen pump that's filled every four weeks to aid with rigidity issues. He takes 14 types of medicines, two to six hours around the clock. He has breathing treatments with a

percussion vest used for children with cystic fibrosis twice a day. He has pamidronate infusions every other month to maintain his precarious low bone density. In our lives, it's not a question of if Austin will have to go to the hospital; it's a question of when. I cannot tell you exactly how many times Austin has been hospitalized, but I estimate it to be several hundred in the last 17 years throughout Nebraska as well as other states. These hospitalizations were for an pneumonia, RSV, seizure issues, surgeries, and issues due to osteomalacia with broken bones. A simple cold can quickly turn into a respiratory distress situation and send hospital...Austin to the hospital for weeks if not longer. Thankfully, his health has been more stable over these last few years. I've never felt comfortable leaving Austin alone in a hospital room for very long. There have been too many mishaps and close calls to feel that kind of trust. Austin has had adverse reactions to antibiotics, also has a faulty hypothalamus making it hard for someone who does not know him to differentiate between the two as the physical reaction can look very similar. I have witnessed medication errors that had I not been there would have been very dangerous if not deadly. Austin's epilepsy is not the normal kind of grand mal seizures one normally sees in patients. I've actually been questioned by a medical professional if I was sure that they were seizures. Maybe they were just tics, they suggested. Well, after several trips to hospitals, with his primary neurologist, EEGs, EKGs, and several types of brain scans, I believe I just might have become an expert on the subject. It's safe to say that I have had a crash course in running an ICU out of my home. Correct monitoring for these conditions would have provided information critical in identifying these issues. My home health agency always sends out the same nurses consistently. They're trained to identify and deal with these unusual medical issues. He requires monitoring all of the time. Blood pressure and temperature are taken every hour. A new nurse would have a hard time identifying seizure episodes or other issues. Most of his home nurses have been with us for six years or more. Having correct in-depth monitoring systems in place would provide medical staff real-time information so they could take proper measures to deal with these issues as they arise. I would also suggest you think about allowing these patients home nurses to be staffed at the day time at least in the hospital so I, myself, could go to work. Obviously I would not do this if the situation was seriously precarious, but as I stated, they could identify a potential escalating issue; a layperson who has never taken care of him would not. The general patient safety says the numbers are between 210 and 440,000 patients each year who go to the hospital for care suffer some kind of preventable harm that contributes to their death. That would make medical errors the third leading cause of death in the United States today, right behind heart disease and cancer. These estimates were developed by John James, a toxicologists at NASA Space Center in Houston who runs an advocacy organization called Patient Safety America. James wrote a book about the death of his 19-year-old son after what John maintains was due to negligent hospital care. While I'm very fortunate these last few years to have found secure employment at a home health medical supply company who is sympathetic to the situation, this was not always the case. Through the years, I have lost numerous jobs. I have had to drop out of college and not maintain my degree because I felt I had

to be with Austin as he was hospitalized for fear of medical mishaps or errors. After losing employment, I would have to turn to the state for financial assistance: housing, food stamps, Aid to Dependent Children, and energy assistance. I'm grateful these programs were available, but would have been far more financially stable at this late date in my life had I been able to maintain longevity at one company. Having this law in place could potentially save a family from having to turn to public assistance, giving them the peace of mind that everything possible was being done to take the utmost care of one of life's most precious gifts--our children. People often say they don't know how we do it. My answer is always the same. I am the blessed one. I get to live with a pure soul. He doesn't understand and will never compute greed, animosity, bigotry, or any of the nasty things of the world. Sorry. [LB1054]

SENATOR CAMPBELL: You're fine. [LB1054]

TERESA KAY STEWART: He just wants to be healthy, pain-free, and get lots of hugs and kisses. That's about as much as close to living with an angel as you can get. He has much joy in his life and he gives that love and joy back to everyone he comes in contact with. That makes us the lucky ones, doesn't it? In closing, I'd like to invite you to express any ideas you may have in helping us solve this issue. A quote from the Dalai Lama says: Our prime purpose in this life is to help others, and if you can't help them, at least don't hurt them. Thank you for your time and consideration in passing this most important bill today. I ask you to think hard and picture yourself in this situation to make the right decision, and that is to pass this bill. [LB1054]

SENATOR CAMPBELL: Thank you, Mrs. Stewart. Questions from the senators? We very much appreciate, personal stories are always difficult, and so we doubly appreciate you coming forward. [LB1054]

TERESA KAY STEWART: Thank you for your time. [LB1054]

SENATOR CAMPBELL: Our next testifier, a proponent. Okay. How many plan to testify in favor of the bill? We just want to make sure...okay. Thank you. Thank you, Emily. Thanks, Senator. Would you like me to read what he'd like to say or...he has copies for all of us. [LB1054]

_____: Yeah. [LB1054]

SENATOR CAMPBELL: Okay. Mr. Nelson has been here with us before. We're going to need some extra copies. Emily, can you go ahead? Mr. Nelson, you go ahead and start. [LB1054]

KENNY NELSON: (Exhibit 1) Well, this (inaudible) that I'm on now (inaudible), but read that and then I'll make more. I need you to read that... [LB1054]

SENATOR CAMPBELL: Sure. [LB1054]

KENNY NELSON: ...but I have more I want to say. [LB1054]

SENATOR CAMPBELL: Oh, okay. You have more that you want to add other than what you have printed out for us. [LB1054]

KENNY NELSON: Yeah, yeah. [LB1054]

SENATOR CAMPBELL: Mr. Nelson, do you want...we can read what you have or I can read it for you or you can go right ahead and make your comments. [LB1054]

KENNY NELSON: Why don't you read that then I'll just make my statement. [LB1054]

SENATOR CAMPBELL: Okay. I will read what you have written and then you can add comments. Members of the committee, people who can't talk need help. I had a girlfriend who couldn't talk and she passed away in 2007. I spent numerous hours with her in the hospital at Bryan East. I also spent a lot of time with her at the Ambassador. Senators, DHHS is trying to get out of helping any type of person with a disability. It seems to me that DHHS really doesn't want any disabled person alive, and that is dead wrong, especially people who can't talk or push a call button. And they're saying they don't need to be monitored? Put yourselves in these people's shoes for a minute. You can't talk, walk, help yourself do anything, much less push a call button to get help from a nurse in a nursing home or a hospital. Wouldn't you want to be monitored? All disabled people have feelings, even those who can't talk or do anything. They may look like they're in another planet but they're not. They are just like anybody else. I know so cause I can talk...I couldn't talk as a boy, but I got speech therapy and physical therapy and dedicated parents. Thank you, Mr. Nelson. What would you like to add? [LB1054]

KENNY NELSON: I would just like to add... [LB1054]

SENATOR CAMPBELL: I would like to add. Go ahead. [LB1054]

KENNY NELSON: ...that (inaudible) this boy right here, I met him in Omaha. And it's my girlfriend that died. I would also like to say that now that I spend time with her in the hospital, in the nursing home. But the reason...but the reason I did all of that is basically because I did not trust the people who were taking care of her. And I feel that people that cannot talk really, really need help. And I am pleading at you so I can help people who can't talk because they are human beings. They are not people who are (inaudible). Now let's not let that go now. They are human beings. They are like you, just like me. And they need help. They really do. And now if you really (inaudible) that the Department of Health and Human Services maybe not need die, but they'd be

happy, healthy, (inaudible) that people don't need help. And they didn't (inaudible) with that one right here who need help. [LB1054]

SENATOR CAMPBELL: Mr. Nelson, thank you so much for speaking on their behalf today. And it's always good to see you and have your testimony. [LB1054]

KENNY NELSON: And thank you for your time. [LB1054]

SENATOR CAMPBELL: The pages, did you all receive a copy of Mr. Nelson's... [LB1054]

SENATOR COOK: Yes. [LB1054]

SENATOR CAMPBELL: All right. We just wanted to make sure of that. Thank you again. Our next proponent. Anyone else? Okay. Good afternoon. [LB1054]

MICHELLE HOWELL SMITH: Good afternoon. [LB1054]

SENATOR CAMPBELL: And your name, you have to state your name and spell it for us, please. [LB1054]

MICHELLE HOWELL SMITH: Sure. It's Michelle Howell Smith, M-i-c-h-e-l-l-e, my last name is H-o-w-e-l-l S-m-i-t-h. [LB1054]

SENATOR CAMPBELL: Thank you. Go right ahead. [LB1054]

MICHELLE HOWELL SMITH: All right. Senator Campbell, members of the committee, Senator Karpisek, and all the other members of the gallery, thank you for your time today. I'm here to honor the memory of Savannah Stearns, the young girl who inspired the legislation before you today, LB1054. Savannah became a member of my family about three years ago when my husband and I adopted our son who happened to be the biological half-sibling of Savannah's adopted little brother. It's complicated, I know, but we are family (laughter). We are just family. It's just easier that way. So I haven't known her long. Excuse me. But I've known her long enough for her to touch my heart. Savannah wasn't just a girl who was medically fragile and who was noncommunicative. She could communicate through her smile. It lit up a room. And she always made you feel better whenever you had a chance to see her. Her favorite color was pink and she loved Hello Kitty. And I was just telling her mom I can't be in a store and see Hello Kitty and not think of her smiling down on us. Because Savannah's family and my family were joined through this strange adoption, we have some things in common in that we don't always know what the road ahead is going to hold for our children. We don't always have a lot of information about what kinds of family health issues might come into play down the road. So right now my children are very communicative, maybe

sometimes too much. But there may be a time when they aren't able to speak for themselves. And I know as a mother of a special needs child that you become the expert on your child. You read every book, every journal, every episode of Dr. Oz that talks about it. Whatever it is, you are hungry for information and become the expert on whatever it is that's facing your child, because you're the only one there to advocate for them when they're with a new provider who doesn't know all of the ins and outs of their history and how their particular disorder presents for them. You are the one that has to educate them about how to help your child. And it's a responsibility that we all take on when we're a parent, whether it's through birth or through adoption. And it's a very grave responsibility that we have. But we're not always able to be there to shoulder that responsibility for our children. When you have a job, depending on your employer, you may or may not have access to paid leave to be with your child. And FMLA only guarantees you 12 weeks of unpaid leave per year. So it may not be financially possible for you to take large periods of time to be with your child who might be in the hospital for an extended period. And those are difficult choices for parents to have to make to provide for their family or to advocate for a child in their family. So what happens when you're not there to be the voice of your child? This bill is so important because it protects not only medically-fragile children and adults who are nonverbal and not able to communicate for themselves, but it protects all of us who at some point may not be able to communicate for ourselves. Whether it's through a specific medical episode or being on pain medication or being under anesthesia, by providing that minimal monitoring to make sure that any mental health...sorry, not mental health crisis, medical crisis that occurs can be quickly addressed. So thank you for your time. I appreciate it. [LB1054]

SENATOR CAMPBELL: Thank you for your testimony today. Questions? Senator Cook. [LB1054]

SENATOR COOK: Thank you, Madam Chair, and thank you, Mrs. Howell Smith, for your testimony. A question that I have that maybe you can help answer is, what does this person look like? Who is this person? Is it a licensed health practitioner? Is it...who is this person? Do you have an idea? [LB1054]

MICHELLE HOWELL SMITH: Which person? In the legislation? [LB1054]

SENATOR COOK: A minium...yeah, a minimum amount of supervision and monitoring of noncommunicative persons. Who would provide that service? Maybe somebody else can answer. [LB1054]

MICHELLE HOWELL SMITH: I think probably Senator Karpisek might be in a better play to answer that. I'm not the best person on those kinds of specific details (laugh). I'm sorry. [LB1054]

SENATOR COOK: Okay. Okay. All right. Thank you. [LB1054]

MICHELLE HOWELL SMITH: Sorry. [LB1054]

SENATOR CAMPBELL: Other questions? Thank you very much for your testimony today. [LB1054]

MICHELLE HOWELL SMITH: Okay. Thank you. [LB1054]

SENATOR CAMPBELL: Other proponents for the bill? Okay. Those who are in opposition to the bill. Oh, I'm sorry. [LB1054]

KELLIE ELSASSER: And my name is Kellie, K-e-l-l-i-e, last name E-l-s-a-s-s-e-r. I tried to do some research for you. This is the Nebraska Child Death Review Report. It's for '09. It came out September of '13. That's how far behind they are. Some of the things that I read in here, it's just pretty obvious that the medical monitoring can save lives and help people. Nate sitting there next to me is somebody I care for 24/7. He's no blood relative. I also have a special needs child that's 14 that is blood, and a 9-year-old that rules the roost. So our lives are stressful to begin with--therapies, medical appointments, specialists. But when they get put in the hospital, stress gets really high. And having so much going on with my 9-year-old that needs to go to school, my 14-year-old that needs to go to school, he goes to school it's important for the monitors to be on these children that cannot speak. Their vitals are going to give the nurses a heads up something is going on with these children. And it's not just children. It's have a stroke, you can't talk. Dementia. I've worked with dementia patients. Sometimes you just can't get the words out. You can't explain what's going on. You can't press a call button. But if you have an oxygen sensor on, if your heart is being monitored, if you have something going on in your body, the monitors are going to alert the nurses, because in the hospitals people who can push the call lights are going to get the attention. So if I leave the hospital to take my daughter to school or to be home to sleep, I've spent many, many weeks in the hospital with both of these children and to leave is hard enough. But to know that they're going to be watched more carefully by monitors is going to really help, really help us. So, I mean, I can go into so much of my life, my daily routines, what I do for a living. And basically that's it, is the monitors are going to give us the eyes and the ears that us caregivers that can't always be there can do. And it will prevent deaths. It can prevent somebody from falling out of bed by their pulse raising and the nurse can walk in then. You're going to prevent other injuries. It's just...it dumbfounds me that this isn't already in place. When it came to my attention that it wasn't, I asked why. Why isn't this already there? If somebody cannot communicate, how are they knowing what's going on? They don't know the individual. I can look at him or my son in a split second and know what's going on, but nobody that knows...that don't know them are not going to be able to tell. They're vitals are going to be able to tell them. So I really hope that you will pass this bill and help save lives. Thank you. [LB1054]

SENATOR CAMPBELL: Thank you. Senator Cook. [LB1054]

SENATOR COOK: Thank you, Madam Chair, and thank you, Ms. Elsasser, for coming to testify. My question would be the same to you. Who might, in addition to you, a caregiver with an additional charge, who else might it be? Would...because we as the Health and Human Services Committee kind of talk a lot about levels of certification and training and who is, let's for lack of a better way to say it, eligible to be a caregiver or administer drugs or who do you imagine this person to be? [LB1054]

KELLIE ELSASSER: The way it's set up now, the state helps provide with respite care for my special needs son. [LB1054]

SENATOR COOK: Respite care. [LB1054]

KELLIE ELSASSER: It's respite care, and we train those people. They have background checks. [LB1054]

SENATOR COOK: Okay. [LB1054]

KELLIE ELSASSER: We're not allowed to utilize those if we're in the...if they're in the hospital. They do not double pay. [LB1054]

SENATOR COOK: Okay. So... [LB1054]

KELLIE ELSASSER: I get income from him, but the state will pay the hospital. They will not pay me if he's in the hospital. He's aged out of the foster care system his entire life, and I took him in instead of going to a nursing home. So I have two kids at home, he would be in the hospital. I'm not going to get paid either way but I'm not going to want to leave him either, especially not being monitored. So with my special-needs son, even the staff that I have come into my home to help, the state will not help pay for them. [LB1054]

SENATOR COOK: Okay. [LB1054]

KELLIE ELSASSER: It would have to come out of my pocket. [LB1054]

SENATOR COOK: All right. Thank you. That helps. [LB1054]

SENATOR CAMPBELL: Senator Krist. [LB1054]

SENATOR KRIST: This also in the... [LB1054]

KELLIE ELSASSER: I apologize. [LB1054]

SENATOR KRIST: That's all right. She don't want to talk to me. (Laughter) I also read this as supervision and monitoring, and what I think I heard you say was, and I'm familiar because of our special-needs daughter, at some point it is oxygen levels, it is heart rate, it is all those other things. And I don't see enough of that in care right now. We have heard testimony of folks at home who are able to take their own vitals, and those feed into a nurse centrally located that can handle 200 patients. That goes into this as well, doesn't it. I mean, can you talk to me about that? [LB1054]

KELLIE ELSASSER: I don't know enough information to give you that answer. [LB1054]

SENATOR KRIST: But where it applies to these guys, absolutely. I mean, if you're not...if you don't have... [LB1054]

KELLIE ELSASSER: You do, you... [LB1054]

SENATOR KRIST: ...if you don't have the ESP that you do or I do with my daughter... [LB1054]

KELLIE ELSASSER: It's vital signs. [LB1054]

SENATOR KRIST: ...it's vital signs. [LB1054]

KELLIE ELSASSER: Definitely. [LB1054]

SENATOR KRIST: So it's not just a physical person. That would be my point. It is the monitoring capability that we're asking for as well. [LB1054]

KELLIE ELSASSER: Yes. Right. [LB1054]

SENATOR KRIST: Thanks for coming. [LB1054]

KELLIE ELSASSER: Thanks. [LB1054]

SENATOR CAMPBELL: Thank you. Are there any other proponents? I think I got everybody. Okay. Those who may be opposed to the bill. [LB1054]

JOSEPH ACIERNO: Good afternoon,... [LB1054]

SENATOR CAMPBELL: Good afternoon. [LB1054]

JOSEPH ACIERNO: ...Chairman Campbell and members of the Health and Human

Services Committee. My name is Dr. Joseph, J-o-s-e-p-h, Acierno, A-c-i-e-r-n-o. I'm the Chief Medical Officer and Director of the Division of Public Health with the Department of Health and Human Services. I'm here in opposition to the bill. And I don't have anything prepared, but I figured it would just be easier to talk a little bit about the laws the way they're set up at this point and why my opposition to the bill. As written...as the bill is written at this point, I think what makes it difficult is when you're looking at defining treatment, how that section is set up, this has already gone...has been looked at over time to determine what treatment is. What's being placed in here really doesn't have anything to do with treatment. So I think it may be unnecessary and somewhat misplaced being in this section. But with that goes Section 71-407 of the Health Care Facility Licensure Act. That does define care, and that's regardless of the facility. And it does discuss supervision and assistance in that section as well. So I think between the two of those sections, I think those concerns are already taken care of in the law under the Health Care Facility Licensure Act. I think the other thing that's hard to know is what's really expected in this bill. What are we really hoping to achieve? And we're willing to work with the senator, but I think looking at what is expected of a professional, what's expected of the facility. As the Health Care Facility Licensure Act is set up now, it is not to discriminate against those who can communicate and those who can't. You're supposed to be receiving the care you're supposed to received depending on the type of patient you are. So it's anticipated that any facility would look at your needs and be able to provide whether monitoring, whatever it might need, whatever type of supervision you need. A noncommunicative patient can come in many forms as well. Individuals that have been discussed already, and some have been mentioned, could have people who are intubated, they can't speak for whatever reason, an obtunded patient due to an accident, whatever. Where does all this responsibility be coming in here? What are we talking about when we speak of monitoring the noncommunicative patient? So I think we just need to look broadly. Those words I just don't think fit very well in how we can...where we go with enforcement. And I don't think as it's written now there would be any difference in the way we might even enforce any of this. We're still looking at facilities and we welcome. If a facility is not carrying out their duties as a patient may see or a family, they're free to contact us to see if there's been a violation somewhere in the regulatory structure of healthcare facilities. So we do have surveyors who handle complaints. But I just wanted to emphasize, I'm not discounting the need for people to have appropriate care. I just don't think that this phraseology in this section does anything more than the Health Care Facility Licensure Act already does. And because of that, and I think it starts mixing definitions, frankly. And so I would prefer to keep 71-407 and 71-431 kind of in the worlds they're in. So with that being said, I'm willing to answer any questions. But I think that's the framework we're working under at this point. And I think as written I don't think we gain anything with the phraseology that's been put in the bill. [LB1054]

SENATOR CAMPBELL: Senator Krist. [LB1054]

SENATOR KRIST: Dr. Acierno, thanks for coming. [LB1054]

JOSEPH ACIERNO: Sure. [LB1054]

SENATOR KRIST: And I understand the points at which you try to clarify the two different sections of law, statutes. However, I'm just going to read this out loud: 71-431 as it's currently written, treatment means a therapy, modality, product, device, or other intervention used to maintain well-being or to diagnose, assess, alleviate, or prevent a disability injury, illness, disease, or other similar condition... [LB1054]

JOSEPH ACIERNO: Right. [LB1054]

SENATOR KRIST: ...would have been, period. It goes on to make a change, including a minimum amount of supervision and monitoring of noncommunicative persons. So even though you differentiate between two different statutes, I clearly think that this adds another level of definition to avoiding injury and illness by saying, oh, by the way, we want you to make sure that if someone can't communicate you are making sure that they are properly supervised and monitored. It's another level within 71-431. And understanding I am not a lawyer, but, you know, and I could make the joke that I stayed in a Holiday Inn Express last night but I won't. (Laughter) But I've been around these statutes I think long enough to know that if it amplifies or if it adds to the process within the statute itself, and I find it hard to argue that this doesn't amplify or extend the extent to which we want to make sure people are not injured while they are hospitalized, because prevent a disability, injury, illness, disease, or other similar condition, including a minimum amount of supervision. So if you'd like to respond to that, that's fine. But I guess I'm...I'd have to read the other statute that you're talking about in order to clearly define it. But I think this clearly amplifies the conditions of which we are...and we're...to me, this statute by itself as it exists right now is a warning under the licensure act that you need to pay attention to these things while people are in these institutions. [LB1054]

JOSEPH ACIERNO: I'm not sure...not sure what I can say other than I think where the period would have ended after condition I think takes care of this issue as well. But I understand what you're saying with it, including a minimum amount of supervision. And I don't want to get into legalese because there's a little bit...I mean, I think we could go back and forth on legalese on some of this. But to say a minimal amount of supervision, then we start getting into defining what that is and what the responsibilities of those providers. This gets back to what Senator Cook was talking about. Who, where, how, how much. And I don't think the bill is very clear on that, so that makes for a little bit of an enforcement issue in knowing who's going to carry that out. But I think when you read up to the point of including a minimum amount, I think it does include...I think that is a huge umbrella with that being a subset of it. So we may have a little bit of difference of opinion on that. I understand your position. But I don't believe it's necessary in light of that section. [LB1054]

SENATOR KRIST: Well, and just to add...maybe the words are misplaced within the paragraph, but the words definitely add to the conditional...to the statement of paying attention to in particular the noncommunicative person. I mean, I have personally watched in different situations where...in our own case where being able to tell somebody clearly turn up or turn down the heat, I'm cold or I'm warm, all those kinds of things are critical just to human needs. So I like the noncommunicative part of it. If you're saying that the department or that you are willing to talk with the senator in terms of putting... [LB1054]

JOSEPH ACIERNO: Sure. [LB1054]

SENATOR KRIST: ...the right wording someplace within these two... [LB1054]

JOSEPH ACIERNO: Yeah. [LB1054]

SENATOR KRIST: ...statutes. But clearly I think that there's an additional...there's another level of concern here, and it is the noncommunicative person that we're dealing with. [LB1054]

JOSEPH ACIERNO: And I...but I would also say that a noncommuniative patient is fairly common in hospital settings at least and maybe in other settings as well. But that's why they're in the hospital. Maybe they can't communicate and they've had certain procedures or they have certain conditions. So I just don't...I'm not...I don't feel as strongly that there needs to be that exception made because I believe that's already within the role of that type of facility to take care of that type of patient. [LB1054]

SENATOR KRIST: Okay. Thank you, Doctor. [LB1054]

JOSEPH ACIERNO: Yeah, sure. [LB1054]

SENATOR CAMPBELL: Dr. Acierno, if you think it's in 71-407, what does that section address just broadly? [LB1054]

JOSEPH ACIERNO: It talks about care, care defined. [LB1054]

SENATOR CAMPBELL: Okay. [LB1054]

JOSEPH ACIERNO: And it talks about including a minimum amount of supervision and assistance provision, personal care, activities of daily living. But it goes into that, how care is defined versus how treatment is defined, and that goes for any facility. That isn't special to one type or another. It's under the whole licensing act. [LB1054]

SENATOR CAMPBELL: So the expectation of the department is that the facility would come under that section and that the facility would have some protocol in place... [LB1054]

JOSEPH ACIERNO: Sure. [LB1054]

SENATOR CAMPBELL: ...for helping and assisting a noncommunicative person. [LB1054]

JOSEPH ACIERNO: Yes. I think it probably goes more to the standard of care more than almost regulatory. You can regulate so far but there's also a standard of care of how you're going to care for a patient in a facility day in and day out. I mean, we can continue to regulate, and that's what I do, but I think you have to look at what are facilities doing and how are they taking care of patients generally in standard of care issues there. Because there will be a gradation of what one patient may need one minute and the next minute how much they need to be monitored, how much they don't need to be monitored. And that's where it's left up to professional judgment and standard of care to determine those issues, how much monitoring a patient needs. So I'd leave that to the professional who may be caring for that patient at that time. [LB1054]

SENATOR CAMPBELL: I think we're going to have somebody from the Hospital Association follow, so I can also direct my question to them. Because I'm assuming that most of this has to do with being a person in a facility, in a nursing home. [LB1054]

JOSEPH ACIERNO: Yeah it would because don't forget it is...the bill is coming under the Health Care Facility Licensure Act, so we're talking about in a licensed facility of some sort that comes under that act. [LB1054]

SENATOR CAMPBELL: Okay. [LB1054]

JOSEPH ACIERNO: Sure. [LB1054]

SENATOR CAMPBELL: Any other questions? Yes, Senator Crawford. [LB1054]

SENATOR CRAWFORD: Thank you, Senator Campbell. Thank you, Dr. Acierno. So just to clarify, if you are to explain to us the basic existing expected standard for monitoring of a noncommunicative person, how would you explain what that current standard would be? [LB1054]

JOSEPH ACIERNO: I think the standard depends on the type of patient it is. [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: I think it's unfair. [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: I can't give you every permutation. [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: But I think it depends on the patient. [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: Are they a postoperative patient? Are they somebody who has been in an accident, somebody who's intubated, can't speak but could communicate other ways? I think there's too many permutations, so I don't think that's black and white. [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: And that's why I think it has to be left somewhat to the professionals to case by case. [LB1054]

SENATOR CRAWFORD: And so if there's an issue of an inappropriate...if someone has a situation where they feel it's an inappropriate level of care, is it the professional who's making those professional decisions that is the place where that discussion needs to be held? [LB1054]

JOSEPH ACIERNO: It may be. It may be. I guess theoretically you may have a staffing issue maybe in a facility that for whatever you're doing. If you're getting into competence of the professionals, that's a different issue altogether. It's something we potentially look at, you know, from a disciplinary standpoint. But the facilities we also look at under regulatory scheme and how the facilities are set up. So, yeah, to answer your question, I mean, to get back to it, I think that the professionals...I mean, it's their judgment and, you know, we could look at those issues, I mean, generally, professional judgment. [LB1054]

SENATOR CRAWFORD: Is there any part of what you would do in certifying a facility or inspecting a facility that would touch on this issue in terms of is it any way in which you would see whether or not they have appropriate monitoring and standards of care? [LB1054]

JOSEPH ACIERNO: Well, I think generally all the regulations are looking at appropriate

staffing... [LB1054]

SENATOR CRAWFORD: Okay. [LB1054]

JOSEPH ACIERNO: ...and facility to allow them to take care of the type of patient that might be in that facility. If you're a hospital, you're expected to have certain types of equipment, you're expected to have certain type of staff to carry out the duties of that facility. If you're a nursing home, you're expected to have those types of...that type of infrastructure to carry out the duties of that facility. [LB1054]

SENATOR CRAWFORD: Thank you. [LB1054]

JOSEPH ACIERNO: I mean, that's basically it. [LB1054]

SENATOR CRAWFORD: Okay. Thank you. [LB1054]

SENATOR CAMPBELL: Okay. Any other questions? Thank you, Dr. Acierno. [LB1054]

JOSEPH ACIERNO: Thank you. [LB1054]

SENATOR CAMPBELL: Our next opponent. Good afternoon. [LB1054]

BRUCE RIEKER: (Exhibit 2) Good afternoon. Senator Campbell, members of the Health and Human Services Committee, my name is Bruce Rieker, it's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association. And I'm here testifying in opposition to the bill, however, that's not an opposition to the intent. It's probably a very...it is, not probably, it's a very important issue. It may be best solved in a different venue. And I hope that my prepared written testimony for you helps put together a pathway we could pursue to look at this, and as we were talking about facilities, some of the issues, and I commend all of those who have testified in support of the bill and their caregivers and the thousands of people that they represent who couldn't make it here. I think to a certain degree I can understand their plight. And that we represent thousands of providers who want to give them the best care possible everyday. To summarize the testimony that I've prepared for you, it's based on the guidance of the Institute of Medicine. And there's a very rigorous process for going through developing standards of care, which you started to ask Dr. Acierno about. This is bringing the appropriate providers, stakeholders, to the table to look at eight very rigorous standards that are outlined in the testimony as well as the goals that should be there for what the end result should be. And I'm not going to say that with every day that goes by there's a new standard of care developed, but I will tell you that there are already 2,800 standards of care that are recognized in the United States and more than 3,700 around the world. When we talk about supervision, CMS, the Centers for Medicaid and Medicare Services, has many different standards for supervision. We

have general supervision, direct supervision, personal supervision, depending on the therapeutic services or whatever care is being provided to the patient. So there are many rigorous standards that already exist. So I'm not here to contend that this isn't a very legitimate issue. However, to try and codify this in statute versus developing it through standards of practice and other regulatory means isn't the more appropriate place to address this issue. I hope that we've given you somewhat of a road map or a blueprint of things that we would need to go through to be looking at the standards of care for various individuals, because every one of these individuals is unique. Every one of them presents themselves to...there isn't a one-size-fits-all. In some ways, you know, in all respect the term minimum actually diminishes the care that's expected in many other realms. So with that, that's the summation of my testimony. I'd be happy to try and answer any questions. [LB1054]

SENATOR CAMPBELL: Senator Krist. [LB1054]

SENATOR KRIST: Thanks for coming. And I'm going to give you a scenario that I think that you're probably best suited to talk me through. We had a testifier come up and talk about extended stays in a hospital. Her experience is that the home care person that she has understands the needs of the individual who's very noncommunicative. Yet when she goes to the hospital and stays, she has that same awareness. When she leaves the hospital, that's your hospital staff that's there. [LB1054]

BRUCE RIEKER: Correct. [LB1054]

SENATOR KRIST: They don't know that patient. [LB1054]

BRUCE RIEKER: Correct. [LB1054]

SENATOR KRIST: Here's my problem. [LB1054]

BRUCE RIEKER: Not as well, yes. [LB1054]

SENATOR KRIST: Here's my problem. I visited some home care where a little girl with a trach and on a feeding tube, on a button, had to be transported back and forth to hospital visits. On Monday, she could have her home nurse accompany the grandfather who drove her in the backseat of the car. On Tuesday, the department/insurance company decided that was redundant care and they couldn't pay for that person to be in the car nor could they pay for her to be at the appointment. That was physical therapy and nobody at the physical therapy facility knew how to handle the trach or the button. So the trach comes out and you've got by all estimations less than a minute to do something about it or you have a serious problem. [LB1054]

BRUCE RIEKER: Right. [LB1054]

SENATOR KRIST: My problem is not that you...that we...I understand what Senator Karpisek is trying to do because I personally have been in the situation before. We don't do a good job of continuum of care with patients who have a specific need, in this case it's noncommunicative issues. If there were continuity there and that patient was being cared for the way that they were in the home setting as they went into the facilities, we wouldn't have an argument about what was done. But yet we're seeing on a daily basis that continuum of care being cut not just at going to the facilities, but going to these kind of appointments. And you and I both know what's going to happen. If we can't provide that kind of care, where is that individual going to end up? He's going to end up in one of our institutions, and it's going to cost us a gob of money. [LB1054]

BRUCE RIEKER: Right. [LB1054]

SENATOR KRIST: I could use a bunch of other adjectives, but a gob of money to do what we would normally do by keeping them with a continuum of care that's there. So if this isn't the right answer, and I know Dr. Acierno said that he would help Senator Karpisek get to the point, if this isn't the right alternative, then we need to find some alternatives that provides the continuity of care in the most affordable way with the best care for the individual. And I'll shut up and let you respond. [LB1054]

BRUCE RIEKER: Okay. Well, I appreciate that and I agree with you wholeheartedly. Some of the things that are occurring that will help address this is that...you mentioned standard...or, excuse me, continuum of care. For the longest time, our country, our state has delivered care through silos. Okay. Silos of physicians, clinics, physical therapists, long-term care, hospice, but all these different silos. Okay. Where we're headed, and this isn't just because of healthcare reform, but this is the economy and the escalating cost of healthcare, is that we are moving towards population health and patient-centered medical homes and continuum of care. Some of it, I'm not saying that we're the solution to all of this, but there are many things that are happening within the healthcare industry or the hospital industry specifically. There are over 230 long-term care facilities in the state. Okay. We represent 90 hospitals that own 39 of those. So we have some stake in that game. As reimbursements continue to go down for Medicaid and Medicare, more things...they're 20-25 years ago there was a huge which I say migration away from physicians and other providers being employed in hospitals, and they went to set up their own practices. Now they're coming back. I'm not saying they're coming back en masse, but we're seeing that a lot. So our hospitals are owning more of the clinic. Our hospitals are owning more of the long-term care facilities. And these aren't money makers, but it's like part of the community service. Okay. As we have more of this and we go down this, and we're going to go through this at an exponential pace with the way the economy and healthcare reform and other factors are at play, we're going to go through this. The process that I outlined in the testimony is where we need to address the issues of standards of care throughout that continuum. Standards

of care that apply to transportation. Standards of care that apply to once they're relocated to another facility, those sorts of things. I'm not here for one second to tell you that we have all the standards of care in place that need to be. And we appreciate that this issue is before us and it's one of many that we need to tackle. But we're going to be developing standards of care through the continuum of care that never existed before. And I think with the criteria that we put before you, working with Senator Karpisek, Dr. Acierno, other stakeholders that have, you know, the medical professionals that have a much better understanding of the standards of care that need to be provided, whether it's...I mean, and they're...we deal with this everyday with the federal government whether something requires general supervision, direct supervision, personal supervision, what level of provider can provide that supervision. These are things that we're going to have to work through. And we're here to say we'll do it. So we're opposing the venue in which it's being...tried to be solved, but not the issue. [LB1054]

SENATOR KRIST: Okay. Thank you. [LB1054]

SENATOR CAMPBELL: Other questions? Senator Crawford. [LB1054]

SENATOR CRAWFORD: Thank you, Senator Campbell. And thank you, Bruce. [LB1054]

BRUCE RIEKER: You're welcome. [LB1054]

SENATOR CRAWFORD: Do you think that there would be opposition from the hospitals to having home healthcare providers who understand the patient being present in rooms to help provide some of that monitoring? [LB1054]

BRUCE RIEKER: I think in general no. Okay. Any time that we can have, you know, better coordination, communication, which is definitely a center point of this discussion today there are issues. There are definitely issues as far as home healthcare providers and the reimbursements associated with that. But as far as their actual presence there to help enhance or facilitate the communication and the care that's required, in many regards our hospitals look at that almost the same as having a family member there. You know, Dr. Acierno talked about there's lots of patients that are presented to the hospitals that are noncommunicative. I went through it three years ago with my mother and a major cardiac event. You know, she probably wished for better, but I was her spokesperson while she was at Bryan Health and they saved her life. But I was it. But they weren't going to kick me out. [LB1054]

SENATOR CRAWFORD: Right. Thanks. [LB1054]

SENATOR CAMPBELL: I just have to say that I think the question that Senator Crawford is raising is really an issue that's probably going to have to also be discussed

by the Banking and Insurance Committee because to some extent I think you're talking about a payer reimbursement and whether that comes through the state and a Medicaid situation or whether it comes on a payer. You know, I'm going to make a statement and you don't have to...it's not really a question. But this is an issue that's immediate for me. Many of you know that our daughter was seriously ill in December with a viral syndrome that paralyzed her to her shoulders. And, no, she couldn't communicate. But the standard of care in terms of the monitoring and all of that, so it's not...I mean, this floats across...this statement floats across many medical conditions. And what would be expected of a minimum amount of supervision and monitoring when she was in the neuro ICU for those nearly three weeks was different than when she went to the rehab hospital. And all I'm saying is that you've got a whole continuum here that these words of these sections may not address. And I am concurring with you because the hospital did a fabulous job I thought of monitoring her. But they couldn't monitor her every single minute because she couldn't communicate, not physically, not verbally. She just couldn't. And to begin saying a minimum amount of supervision or what...I mean, they could have looked at her and two minutes after they left. So I think we have a very broad issue here, I agree with you. But I do think that it's tied across many committees here and won't be easily solved, but the issue needs to be addressed. [LB1054]

BRUCE RIEKER: We will be happy to work with that continuum of committees. (Laughter) [LB1054]

SENATOR CAMPBELL: That's a good summary. Any other questions or comments? Thanks, Mr. Rieker. [LB1054]

BRUCE RIEKER: You're welcome. Thank you. [LB1054]

SENATOR CAMPBELL: Our next opponent. Okay. Anyone who wishes to testify in a neutral position? Okay. Senator, I think we're back to you. [LB1054]

SENATOR KARPISEK: Thank you, Senator Campbell and committee. I wish that Savannah's mom could testify today, but she can't. If anybody would like to speak to her privately, I could try to set that up. I'll try to finish the story for her. Now this got to be much bigger and we're talking about people being there, home health. I probably didn't do a very good job of opening. But like Senator Campbell said they can't monitor in person 24/7, but to be hooked to the monitor, we called it a Nurse on a Stick when I was at the nursing home. I think that was actually the brand name. I'm not sure. But that's what I'm talking about, to be hooked to that monitor. This was not the case. And no matter how hard mom tried to have a monitor put on, which is I think the first time in her...Savannah's life that she wasn't, they were said they wouldn't, no. That's why when I talk about a minimum standard of care, I think just a minimum standard of hooking her to a monitor would have detected a seizure and would have sent everything in motion from there. So that's why I have come here with this bill. Is it in the right place, Senator

Krist? Maybe not. You know, we tried to draft it. We took it to Bill Drafters, not to say that they did it wrong, but we had a hard time trying to figure out where to put it. And I just want to read real quick when the doctor talked about 71-407 care defined. Care means the exercise or concern of responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services. Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, similar activities. Health maintenance activities means noncomplex interventions which can safely be performed to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; (c) personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities. I don't think that that fits then to say and to be supervised and monitored. If it does, I'd be happy to put it there. Does it belong in the statute? You know, we could argue that. I didn't know how else to get in front of a committee. Maybe it can go into rules and regs. But I think if you have a caregiver ask a doctor to use a monitor and they decline, something is wrong. Again, maybe...they can argue that it's already in statute, but again here we are. So being in statute, if it is, didn't work. I didn't specify it very closely exactly what Senator Cook and some of you talked about. Everyone is different. What would be right for me may not be right for you depending on the circumstances. But again going back to a minimum standard of care, not just getting you comfortable and rounding on you and however long. Because these people again cannot tell you what's wrong. Dr. Acierno said that maybe it is in the wrong place. Maybe all these things, and would be glad to work with me. Well, I would have been glad to work with him prior to this hearing. Five minutes before the hearing if even I get a call that we're going to have negative testimony. That upsets me. Maybe we could have worked some of this out prior. The bill was dropped January 22. Today is February 19. To get a call five minutes not even before the hearing, do you think if I went to HHS, the department not the committee, to try to talk about this issue that I would have gotten very far? I greatly doubt it. We talk about who's at fault. And who is at fault? I don't know but do we have to wait to have a dead little girl to find fault? This bill is trying to be proactive rather than reactive, and I would be glad to work with them. Mr. Rieker and I have spoken and I appreciate that. Again, I don't know exactly how to go about this. In hindsight, I probably should have asked Senator Krist to carry the bill because he knows a lot more about it than I, but maybe it's better if someone not so close. I just don't want this to happen all the time. Maybe it doesn't, maybe it does. But any of us could end up tomorrow or today in the hospital and be noncommunicative and, by god, why wouldn't you be hooked to a monitor if nothing else to see if something is happening? I appreciate your time. I appreciate everyone coming in and testifying. It got to be a lot bigger deal than I thought and I really appreciated everyone who's come in. And I hope we can do some good because of this. [LB1054]

SENATOR CAMPBELL: Thank you, Senator. Senator Cook. [LB1054]

SENATOR COOK: Yeah, thank you, Madam Chair. And thank you, Senator Karpisek. We have all kinds of direct experience with our loved ones and whether or not they're on a monitor or you just happen to know what they look like when they look good versus when they didn't look good. So the committee will certainly draw upon that. My question to you is whether or not you wanted to start with the idea of the electronic monitors since that's where Savannah's situation emerged from or do we go out among all of the committees and talk about respite care Medicaid reimbursement? Would you be content in starting our conversations around you shall attach a monitor or somebody says you...something like that? [LB1054]

SENATOR KARPISEK: I would. The only thing, Senator Cook, with that is maybe some people, especially if they're severely handicapped, maybe a monitor isn't the right thing for them. Maybe it's too restrictive. Maybe they tear it off. But then they should be rounded on or have someone sit with them... [LB1054]

SENATOR COOK: Okay. [LB1054]

SENATOR KARPISEK: ...to check vitals. That's again why I didn't make it as direct as I would have liked to. But if it doesn't work, it doesn't work. And I do believe the healthcare professionals should know best. But, again, we're here because what happened or didn't happen. [LB1054]

SENATOR COOK: Thank you. [LB1054]

SENATOR CAMPBELL: Okay. Any other questions? Thank you, Senator Cook. [LB1054]

SENATOR KARPISEK: Thank you very much. [LB1054]

SENATOR CAMPBELL: Thank you, Senator Karpisek. That completes our hearing on LB1054. We will proceed to the next hearing which is LB1107. Is Senator Conrad here? Okay. We'll wait for Senator Conrad. Colleagues, Senator Conrad was called but she's opening on another bill. So we're going to stand at ease. You can take a little break. [LB1107]

EASE

SENATOR CAMPBELL: All right. If we could resume our hearings for today. Senator Conrad is a busy woman today. We will open the public hearing on LB1107 which is Senator Conrad's bill to change Medicaid payment provisions for federally qualified health centers as prescribed. Welcome again. [LB1107]

SENATOR CONRAD: That's a mouthful, isn't it? Yes. [LB1107]

SENATOR CAMPBELL: Absolutely. [LB1107]

SENATOR CONRAD: Hi, hi. Senator Campbell, members of the Health and Human Services, my name is Danielle Conrad, that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, and I represent, as you know, the "Fightin' 46th" Legislative District of north Lincoln. I'm here today to introduce LB1107, and also on a personal side note, I think this is my last piece of legislation before the Health and Human Services Committee. So... [LB1107]

SENATOR CAMPBELL: And you've been one of the... [LB1107]

SENATOR CONRAD: ...you can all breathe a big sigh of relief. [LB1107]

SENATOR CAMPBELL: No, we can't because you've been a stalwart in the committee. [LB1107]

SENATOR CONRAD: But how quickly those eight years went. Nonetheless, I introduced LB1107 after touring the People's Health Center this summer, which is a federally qualified health center in my district, or an FQHC. I know you have a lot of alphabet soup in this committee. So they shared a concern with me about billing at that time, and the issue that they presented was that, for example, if a person came to the People's Health Center for a medical issue and presented a mental health issue, they had to make an appointment for another day because Medicaid reimbursement would only cover one visit per day. This seemed incredibly inefficient to me and, thus, I introduced LB1107 in consultation with the FQHC's to save time and money for the providers, the patients, and the state. Under the current framework, this is a significant issue for some FQHC's. As I understand it, some centers have negotiated a "work around" with DHHS to address this issue. However, this is not a uniform policy, so it remains a problem for some senators. Secondarily as part of this effort, FQHC's have also identified a parity issue in terms of reimbursement among physical and behavioral health visits. I think you'll hear more about that from some of the testifiers after me. LB1107 would allow billing to occur for each instance with a provider, even if it occurs on the same day. We have worked with the FQHC's on the language and hoped this bill would allow a more integrated approach to care for their clients. Believe me, I am not an expert when it comes to Medicaid billing and I do not pretend to be. But there are those who are who will follow me here today and who can answer technical and substantive questions about the bill. I am happy to work with this committee to move this issue forward. I think it's a matter of efficiency and bodes well for our state's continued evolution to have a more integrated policy when it comes to the provision of healthcare. With that, I'd be happy to take questions. [LB1107]

SENATOR CAMPBELL: Thank you, Senator. Senator Krist. [LB1107]

SENATOR KRIST: Because I know you're an appropriations wizard... [LB1107]

SENATOR CONRAD: That's one term for it. (Laughter) [LB1107]

SENATOR KRIST: ...I am dumbfounded at the fact that you want to make a consolidation of services at the same facility be more efficient and economic, which is pretty much what the legislative fiscal note says, and yet it's going to cost us two men, two years, and $2 million to do multiple things on the same visit in the other fiscal note. Can you...I mean, the explanation...I guess if I walked through the explanation, if these expenditures were paid at a higher encounter rate, what's the higher encounter rate? I don't get that. [LB1107]

SENATOR CONRAD: I'm not sure I do either, Senator Krist, but generally I'll tell you this. I had a chance to review the fiscal note presented by the department, and of course they're entitled to their own opinion and their own numbers. We in the Legislature utilized the Legislative Fiscal Office for our fiscal notes. So I'm going to stand by their calculations on it. Secondarily, my office received slipped under the door at 1:07 p.m. today a letter of opposition from Health and Human Services on this topic. So I haven't had a chance to visit with anybody from that agency about their concerns directly because they didn't provide me with that professional opportunity. So I'm sure they'll be here today and can potentially answer some additional questions. [LB1107]

SENATOR KRIST: Thank you, and we'll miss you. [LB1107]

SENATOR CONRAD: Thank you. There's one. (Laughter) [LB1107]

SENATOR KRIST: Okay. I'll miss you. How's that. [LB1107]

SENATOR CONRAD: Okay. All right. [LB1107]

SENATOR CAMPBELL: Senator Gloor. [LB1107]

SENATOR GLOOR: Thank you, Senator Campbell. I'm two. [LB1107]

SENATOR CONRAD: All right. [LB1107]

SENATOR GLOOR: We'll work our way around the table eventually. [LB1107]

SENATOR CONRAD: No, let's don't. (Laughter) [LB1107]

SENATOR GLOOR: The additional healthcare professionals list that you got, did you get that from the FQHC's because that's the various entities that they're likely to bring in

to the FQHC's? [LB1107]

SENATOR CONRAD: Yes, that's right. [LB1107]

SENATOR GLOOR: Well, I do understand why Medicaid has these limitations having gotten complaints in my own district of Medicaid patients going to see a professional for one thing and then being ushered down the hallway because they happen to also have the opportunity to have this individual under their roof who also can now do and audiology screen. And so I understand that we've...for all its uncomfortableness I understand why Medicaid may have this in place. But this just relates to FQHC's, correct? [LB1107]

SENATOR CONRAD: That's right. That's our original legislation is very targeted. [LB1107]

SENATOR GLOOR: Yeah. I mean, we're not talking about business enterprises here. And we're lucky if we can get some of these patients in and if we do, why not expose them to multiple services that they need because this isn't...this it seems to me to be the opposite of the reason that this regulation may be in place is to protect us from churning patients when they show up someplace. These patients aren't the kind of patients that, to be polite about it, I mean, we're glad to get them in to be able to see them, not all of them, but a lot of these patients. So I think this is...this merits some serious discussion. [LB1107]

SENATOR CONRAD: Yeah. Thank you very much, Senator Gloor. I do appreciate that, and there's always a counterpoint to any piece there. But you note in particular the type of clientele that utilizes our federally qualified health centers, and I think that's something really important to keep in mind as we take a look at this issue. If folks who are coming in for a physical health issue, then have to schedule another appointment to address a behavioral health issue or another health issue on another day, that's another day off work, that's another set of transportation that has to be negotiated, that's another childcare provider potentially that has to be arranged for. So it's incredibly inefficient from the individual perspective, and then of course it...with each additional visit, that impacts the show rate for the provider as well, which is inefficient from that perspective and then has additional days of billing and all of those things. So it just seemed to me that it was one of those issues that really frankly just stuck in my craw over the interim period where I had a chance to interact with the federally qualified health center in my district to hear about all of the good things that were happening there. They had mentioned this as a concern and I thought, gosh, we really need to do something to bring some attention to that next year. And so this is how we got here today. [LB1107]

SENATOR CAMPBELL: Okay. Any other questions or comments? Thank you. [LB1107]

SENATOR CONRAD: Thank you. [LB1107]

SENATOR CAMPBELL: Senator Conrad, are you staying? [LB1107]

SENATOR CONRAD: I will try to. [LB1107]

SENATOR CAMPBELL: Okay. Unless you get called away. Our first proponent. Good afternoon. [LB1107]

ANDREA SKOLKIN: (Exhibit 3) Good afternoon, Senator Campbell, members of the committee. As you know, my name is Andrea Skolkin, and I'm the CEO of One World Community Health Centers, and I'm here today testifying in support of LB1107 on behalf of the Health Center Association of Nebraska. I want to thank Senator Conrad for introducing this important bill which we believe will enable us to care for our patients in the best, most cost-effective way with the good outcomes and meeting their primary and behavioral healthcare needs. Nebraska's six federally qualified health centers operate 27 locations across the state now and care for 65,000 low-income patients in providing comprehensive primary preventative care, including medical, dental, behavioral health, pharmacy, and a number of support services. And we know a new health center will be opening shortly during this month in Grand Island. We are safety-net providers whose mission it is to provide cost-effective, quality healthcare to the medically underserved. Our model of providing a one-stop shop for healthcare needs works well in supporting our patients who are primarily uninsured and low-income families. Our adult patients are your working poor in your communities. As Senator Conrad said, they often have transportation challenges, a hard time getting time away from their work to go to the physician office, and then that hourly pay is often docked for that. Coming for healthcare in one visit is very important to them and to the effectiveness of our clinics. One of the challenges that we have faced as federally qualified health centers has been Nebraska Medicaid's implementation of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000--long name--or otherwise known as the Prospective Payment System or PPS. PPS is a unique payment rate for each FQHC based on reasonable costs per visit, and it's adjusted annually by the Medicare Economic Index for primary care and changes in our scope of services. State Medicaid agencies are required by federal law to reimburse federally qualified health centers and rural health clinics for behavioral health services consistent with other services in the center. In a recent survey, this is a nationwide survey, 64 percent of states paid this PPS rate for mental health services at a federally qualified health center. Unfortunately, Nebraska is not one of those states. Nebraska pays FQHC's what we call regular Medicaid or fee-for-service Medicaid for behavioral health, and receiving payment for that care on the same day as a medical visit has presented challenges. This bill will solve these problems by directing that the PPS rate be provided for behavioral health services, and that that PPS rate be used for same-day visits when someone comes for a medical and a behavioral health visit. Let me give you an example. A patient presents

to the health center with a physical condition, but is also determined to be suffering from a severe behavioral health disorder. This is a completely different diagnosis and requires a provider trained and credentialed in a different sector of medicine. Health centers have two choices, one is to send the patient home and have them come back another day or, two, to try and absorb the uncompensated costs of either no payment for services or a fee-for-service payment with a five...it's called a cap session, so it has a five-visit cap on it. And in that way they can get the same day, we can get the fee-for-service payment. If a patient needs behavioral health, they need it in real time and having to come back another day they could lose work, as we've heard, incur childcare costs, have to find transportation, and so on. Untreated behavioral health issues are very high in low-income populations, which our patients represent. The numbers of patients coming to community health centers with severe mental health issues have been increasing and our health centers are strapped to meet their needs. The PPS payment rate for FQHC's would make the difference between our ability to care for them or our ability to say go to the local emergency room. Additionally on another note, Nebraska Medicaid regulation doesn't allow health centers to collect or bill the PPS rate for a number of other providers and as LB1107 changes this, these providers are becoming increasingly common in patient care and patient-centered medical homes because of evidence-based research on cost-effective care, safety, preventative services, and the healthcare home model. So in addition to behavioral health services, LB1107 allows FQHC's to receive PPS reimbursement for services for registered dieticians, certified diabetes educators, and clinical pharmacists; all are vital to comprehensive healthcare. For example, clinical pharmacists are a primary source of scientifically valid information and advice regarding the safe and appropriate effective medication. An effective diabetes and obesity prevention occurs because registered dieticians and diabetes educators are in primary care settings and assisting patients. And we are asking that we be able to recoup our costs for that. In conclusion, we ask that you advance LB1107 to help us serve our patients in our community, the patients that need it the most with one-stop health services. Thank you and I'm happy to answer questions. [LB1107]

SENATOR CAMPBELL: Any questions? Senator Gloor. [LB1107]

SENATOR GLOOR: Thank you for your testimony, Andrea. What I read into the bill doesn't relate to PPS reimbursement. What I read in the bill has to do with the ability to have multiple encounters in the same day with different modalities and still be able to bill for it. But I don't read into the bill anything that relates to traditional fee-for-service Medicaid versus a PPS rate or is it built into the further statutes that are referenced in here? [LB1107]

ANDREA SKOLKIN: Senator Gloor, the bill does have two intents. That is that health centers are able to bill the PPS rate and that we can see a patient for behavioral health and medical on the same day and get the PPS rate for both. [LB1107]

SENATOR GLOOR: But it's not just behavioral health. It would also be a dietician, it would also be a variety... [LB1107]

ANDREA SKOLKIN: We're asking as the world is expanding and we think about the kinds of healthcare that makes someone healthy, it is an expanded billing capacity. [LB1107]

SENATOR GLOOR: Well, I know it'll be different from provider to provider, but what would be the difference between PPS rate and the Medicaid discounted fee rate? Do you have any idea? Is it 30 percent less generally? I mean, in your experience. [LB1107]

ANDREA SKOLKIN: It's probably more than that. I can give you specific example in behavioral health. The fee for service is $67 and our...just our health center, every health center has a slightly different rate, is $147. [LB1107]

SENATOR GLOOR: Is that...is this supposed to only relate to those fees when the service is provided the same day or is this supposed to relate to...is the fee issue one of any time even if it's a single visit day by day that we're agreeing that we'll pay a PPS...excuse me, yeah, PPS... [LB1107]

ANDREA SKOLKIN: Yes. [LB1107]

SENATOR GLOOR: I got too many acronyms today. [LB1107]

ANDREA SKOLKIN: PPS, FQHC. [LB1107]

SENATOR GLOOR: ...PPS rate versus a discounted rate. [LB1107]

ANDREA SKOLKIN: Yes, Senator, the latter. The bill is intended so that if they were to come even if it's not on the day they have a medical visit that we would be able to have the PPS rate for that visit. [LB1107]

SENATOR GLOOR: Okay. Thank you. [LB1107]

SENATOR CAMPBELL: Any other questions? Senator Howard. [LB1107]

SENATOR HOWARD: Thank you, Senator Campbell. I was hoping you could talk a little bit about integrated primary care and behavioral healthcare and maybe define the warm hands off, but go on between primary care providers and behavioral health providers. [LB1107]

ANDREA SKOLKIN: Senator Howard, thank you for that question. That is I think all the talk in the nation today about integrated primary and behavioral healthcare. So just a brief explanation of what happens, that we're a primary care/medical care clinic, and within that clinic, our providers can recognize signs and symptoms and needs in mental health concerns when they are seeing a patient in the medical exam room. So we perform what we call a warm hand off to what they call a colleague, but it is therapist who can then come into the medical exam room. It is more their expertise. As an example, if it's chronic headaches or chronic back pain or some kind of family issue, oftentimes domestic violence or people wanting to do self-harm. So that pass that on to the therapist who in that moment deals with the immediate issue, does an assessment, and helps the patient or the family through. And then the physician can then move on and care for more medical patients. Thank you. [LB1107]

SENATOR HOWARD: Thank you. [LB1107]

SENATOR CAMPBELL: Okay. Any other questions? Thank you, Andrea. Good to see you. [LB1107]

ANDREA SKOLKIN: Thank you. [LB1107]

SENATOR CAMPBELL: Our next proponent. Good afternoon. [LB1107]

JONI COVER: Good afternoon, Senator Campbell, members of the committee. My name is Joni Cover, J-o-n-i C-o-v-e-r, and I'm the executive vice president of the Nebraska Pharmacist Association. I'm here today in support of LB1107. I think Andrea did a fabulous job at outlining all of the important services that the FQHC's provide, and thank Senator Conrad for bringing this issue to your attention. Our pharmacists that work for and with FQHC's, we chatted about this legislation and they were sort of saying we need to be there to support this. We have...this is going to sound eerily similar to some of the comments we heard yesterday in Banking, but, you know, pharmacists are providing the clinical services and recognizes that in these facilities. FQHC's serve so many communities and do such great work, and to recognize all the provider services in a timely and cost-effective manner, it makes sense that we have this discussion. So we just want to go on record as the Nebraska Pharmacist Association in support. And if there's continued dialogue, we'd be happy to be at the table and have that discussion. So thank you for letting me come testify today. [LB1107]

SENATOR CAMPBELL: Any further questions? Thank you. [LB1107]

JONI COVER: Thank you very much. [LB1107]

SENATOR CAMPBELL: Our next proponent. Anyone else? Okay. Those in opposition to the bill. Those in a neutral position. Senator Conrad, we're back to you. [LB1107]

SENATOR CONRAD: Well, I just wanted to thank the committee for their kind attention and consideration to this important issue and thank you for your service and your patience with my many pieces of legislation before this committee over the many years. And it seems like this is well-suited for consent calendar, so. (Laughter) I'm kidding. But I do hope that we could see some movement on it. You know, no fiscal note and no opposition, I think that's the criteria. But I kid. It's a serious issue and we do hope to move forward. [LB1107]

SENATOR CAMPBELL: Do you have a question, Senator Howard? [LB1107]

SENATOR HOWARD: I do. Thank you, Senator Campbell. In reading the letter from Mr. Winterer from DHHS, he indicates that LB1107 is a rate increase. Can you clarify whether or not LB1107 is a rate increase or rather it's just the ability to bill for two separate services in the same day? [LB1107]

SENATOR CONRAD: Yes. I'd be happy to respond to that. And, again, I haven't had time to read through the letter because we just had a chance to get it. But I think our intent with bringing the legislation was very clear, was to address this inefficient billing kind of situation. As is part of the process after you'd introduce legislation and people have a chance to provide some additional feedback, the FQHC's have also identified this kind of a parity issue in terms of the rates and reimbursements that are provided for physical health versus behavioral health. And they see this as a potential opportunity to address that issue as well. So I think that dependent upon how the committee wishes to move forward on this that could be taken into a consideration more directly if that is your province. But I think...and I would be very supportive of those efforts because I think that's wrong, quite frankly. But I think that our original intent was very narrow. [LB1107]

SENATOR CAMPBELL: Okay. Any other comments? Senator Conrad, you've been a stalwart supporter of Health and Human Services. We'll miss you. We will miss you. [LB1107]

SENATOR CONRAD: Well, thank you very much. Thank you. [LB1107]

SENATOR CAMPBELL: (See also Exhibit 7) That concludes our hearings this afternoon. [LB1107]

SENATOR CRAWFORD: No, it doesn't.

SENATOR CAMPBELL: Oh! Senator Crawford got all excited there, didn't she? (Laughter) No, please. Ah, we've waited here. Sorry, Senator Crawford. I just saw people start filing out and thinking, well, you know. Okay. We will open our last hearing of the day, let's put it that way, LB852, Senator Crawford's bill to change provisions

relating to asbestos regulation. So whenever you're ready. [LB852]

SENATOR CRAWFORD: (Exhibit 5) Good afternoon, Chairwoman Campbell and fellow members of the Health and Human Services Committee. My name is Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in Bellevue, Offutt, and eastern Sarpy County. Today, I'm presenting to the committee LB852, which is a bill dealing with asbestos abatement projects. The issue LB852 addresses was first brought to my attention by the assistant city administrator in Bellevue who is with us to testify today. Since then, we have learned this a challenge facing cities large and small as well as nonprofit agencies like Habitat for Humanity. In 1995, the EPA issued guidance regarding NESHAP, that's the National Emission Standard for Hazardous Air Pollutants for asbestos. NESHAP shapes guidelines for asbestos removal projects. Up until that point, individual homeowners of residential buildings with four units or less were exempt from these NESHAP guidelines. This exemption was based on a National Academy of Sciences report which stated that in general, single-family residential structures contain only small amounts of asbestos insulation. Cities and other municipalities began contacting the EPA for guidance on whether this residential exemption also applied to similar properties that were owned by municipalities that had been declared a safety hazard or a public nuisance. The 1995 clarification of intent letter answered those questions stating, the EPA believes that individual small residential buildings that are demolished or renovated are not covered by the asbestos NESHAP. This is true whether the demolition or renovation is performed by agents of the owners of the property or whether the demolition is performed by agents of the municipality. In other words, a house is a house whether a city owns it or an individual property owner owns it. In either case, the house is exempt from NESHAP's rules regarding asbestos abatement. Since 1995, there have been no new guidance from the EPA pulling back this clarification except to clarify that large-scale economic development or road projects are different and are not eligible for this exception. Municipalities in Nebraska who wish to demolish homes for large-scale economic development projects will still be subject to EPA standards for asbestos abatement. The low safety risk established in the National Academy of Sciences report on which the 1995 guidance was based appears to have stood the test of time in terms of demolition of a single house. A house is a house, and so municipalities should be able to demolish a house and that would be safe for the public. Despite this clarification from the EPA that a house is a house no matter who owns it, our Nebraska statutes do not reflect this guidance. In fact, they are more stringent than this EPA guidance. LB852 brings our asbestos abatement statutes in line with federal regulations, allowing cities to deal with residential properties that may contain a small amount of asbestos the same way an individual property owner does. The pages are now circulating an amendment to LB852. The amendment clarifies that this exception only applies to demolition projects so that it is not at any risk to homeowners if someone does maintenance or remodeling in their home. This is...those asbestos permits and regulations will all remain in place. And also, our intent is not to skirt or circumvent federal regulations. Our DEQ and Department of Health and Human

Services regulators will enforce federal regulations as they do now. Thank you for your consideration of this bill. I am happy to answer any questions you have now or at closing, but keep in mind that the real experts are behind me. [LB852]

SENATOR CAMPBELL: Nonexpert questions? Senator Gloor. [LB852]

SENATOR GLOOR: I own up to being a nonexpert. But the question is, what is a single residential property of four units or less? So it's the single and four units or less that are the confusing terminology for me. I know there's an explanation. I'm just trying to figure out what it is. [LB852]

SENATOR CRAWFORD: Four units or less, I suppose that means four people...four housing...people or less. But, again, maybe someone behind us could answer the single residential property. I guess I'm not sure what four units or less means. So hopefully somebody behind me can answer that and we'll try to get an answer to you. [LB852]

SENATOR GLOOR: Yep. My question has forewarned them. So that's... [LB852]

SENATOR CRAWFORD: Right, yes. Thank you. I guess that is an expert question I'm afraid. [LB852]

SENATOR CAMPBELL: I took that to mean that there were four apartment units that were let. Because I lived in a building... [LB852]

SENATOR CRAWFORD: Yeah. So we're talking small units. So a single residence or four-unit building. [LB852]

SENATOR GLOOR: A single residential property with no more than four individual units within it. [LB852]

SENATOR COOK: Units within it. Okay. Thank you. [LB852]

SENATOR CAMPBELL: We'll see who's right. All right. Okay. Other questions? Thank you, Senator Crawford. We know you'll be here, so. [LB852]

SENATOR CRAWFORD: Thank you. All right. Thank you. Yes, I will be here to close. [LB852]

SENATOR CAMPBELL: Absolutely. Okay. Our first proponent for the bill. Good afternoon. [LB852]

LARRY D. BURKS: (Exhibits 6 and 7) Good afternoon, Senator Campbell, members of the committee. My name is Larry Burks and I am the assistant city administrator for the

city of Bellevue, that's L-a-r-r-y B-u-r-k-s. Just to answer the question, there are also a lot of very large older homes that are converted into duplexes, triplexes, and fourplexes, and that is another example of what four units may be as well. Up until 2007, 2008, I would have probably been skeptical of some sort of legislation such as this because asbestos is a sensitive subject. However, the more and more I learned about this, the more I've shared it with others as well. One of the biggest problems with this is the fear and misunderstanding of asbestos. It is a barrier for many homeowners or property owners that would like to tear down a structure that is substandard. However, you know, that misunderstanding or the fear of and cost of asbestos abatement is a barrier to them. If you...I have some...part of the information that I have put together is from the Department of Health and Human Services, or ATSDR, Agency for Toxic Substances and Disease Registry. This is a 2001 one study on toxicology report that it says the magnitude of the risk appears to be complex function of a number of parameters. The most important of which are, one, the level and the duration of exposure to the time since exposure occurred, the age at which the exposure occurred, the tobacco-smoking history of the exposed person, and the time...the type and size distribution of the asbestos fibers. Exposure, therefore, is generally regarded as a cumulative impact and is expressed in terms of concentration of fibers over a period of time, and those are fibers per year. With that understood, it is more of an occupational health hazard when you're measuring fibers per year, brake manufacturers, you know, or plants that people work in, that type of understanding. When I first began working in the municipal...for a municipal government, it was...I realize that these old dilapidated or substandard housing structures are a significant threat not only due to just the general condition, it is also low-hanging fruit from an economic development perspective because it's a...when you take into consideration the broken-window theory, you have a dilapidated structure. And then someone moves in next door and they don't really care too much about trimming around their house or, you know, they let the car park in the backyard and maybe even park one on the neighbor's yard because no one's living there except the raccoons. So it's important to keep in mind that just having that structure there whether there's asbestos in it or not is much more of a threat to your community than if you were to tear down a structure and have asbestos fibers in the air because over time...there's another element here that I wanted to point out. Senator Crawford already read to you the NESHAP clarification of intent, which is a federal register July 28, 1995. And it's the federal code, the EPA's opinion, and the reason for that residential exemption, because there's relatively minor amounts of asbestos in those homes. But exposure is an issue. That's what it's all about. Correct? So if you'd think about a structure with asbestos siding on it setting next door to your house degrade, over time asbestos fibers in the air are going to increase because of that degrading factor. However, if you eliminate it right away and remove it, there may be an increase in asbestos fibers in your air temporarily, and then they will go away. So the question is, do we want to eliminate the barrier for property owners do to this and make it easier for municipalities to do it? Or do we want to remain more stringent than the EPA and cost taxpayers and...more money when there's really a justification not to? I think it's really important to make this a simple

process for property owners to understand and municipalities to quickly get through it, because it take well over a month to get an inspection--set an appointment to get an inspection, have it analyzed, and then go through the process of having it...property demolished. So... [LB852]

SENATOR CAMPBELL: Thank you, Mr. Burks. Are there questions? Senator Krist. [LB852]

SENATOR KRIST: Sorry I missed the introduction, but I've read the bill and I picked up on most of your testimony. We are all products of where we've been, life experiences we've gone through. I lived with my father for two years with mesothelioma. He was a product an environment where he was industrially through the Navy and through his exposure to...while being an electrical engineer and others, somewhere he picked up a fiber. I have no argument with you that it is exposure. However, the oncologist that I dealt with over a three-year period tell me that it could be one fiber that gets in your lungs and you're that guy that's most susceptible to forming that lesion that then becomes cancer that attaches itself to the diaphragm and it's almost uncurable by the time the mesothelioma gets to that point. Or it could be continued exposure where finally there's enough pieces of fiber that get into your lungs to do it. So your argument about...or your point that it is exposure, I have no doubt about that. So here's my problem. My problem is that there's going to be kids that are going to be tearing down these properties. And it's not just that one in Bellevue or another one in Omaha or another one in Grand Island or wherever. Those are the people who are going to be exposed to that over and over again. And the federal standard really protects the person in my mind who is removing the asbestos from whatever structure is there. And I don't think that reducing the cost of removal of asbestos is worth the life of the person who is, you know, removing several structures. So your point of exposure is the number of times that that young man or that young woman is exposed to it. So to that end, what's the difference in cost--and if I missed it, I apologize--if I were tearing down one home and you had to do it the way the federal government wants you to do it, which is providing protection for the people who are removing it, what's the difference in cost between doing that and what you're proposing to do? [LB852]

LARRY D. BURKS: I'd be glad to answer that question if I could comment on your statement. The important thing is in my mind is that this is a barrier to many small communities and to many property owners. And the longer that structure sits there with asbestos in it or on it or on the roof, whether it be siding or shingles or tiles, the longer it sits there increases that exposure as well. [LB852]

SENATOR KRIST: No argument. [LB852]

LARRY D. BURKS: Yeah. Okay. And the difference, I'm estimating between...the inspection itself is probably around $400, depending on the size of the structure. And

then the abatement will vary. A good round figure would be $2,000 to $3,000 depending on what needs...it could be a lot more than that. [LB852]

SENATOR KRIST: To do it the way the federal government wants you to do it right now. [LB852]

LARRY D. BURKS: To do it the way the state of Nebraska wants municipalities to do it right now. [LB852]

SENATOR KRIST: And the federal standard is higher than the state standard. [LB852]

LARRY D. BURKS: No. The state does not recognize the federal exempt....oh, are you talking the process of abatement? [LB852]

SENATOR KRIST: Yeah, yeah. Right. [LB852]

LARRY D. BURKS: Following those abatement regulations from NESHAP. [LB852]

SENATOR KRIST: Right. [LB852]

LARRY D BURKS: ...yeah, that's what the cost would be. [LB852]

SENATOR KRIST: Okay. And the cost to do it without that process. [LB852]

LARRY D. BURKS: In time, it would save about a month to a month and a half, and it would also save anywhere from $2,000 to $3,000. [LB852]

SENATOR KRIST: Okay. [LB852]

LARRY D. BURKS: Maybe less, maybe more. [LB852]

SENATOR KRIST: And I guess you can see my concern where it has...there are companies out there that have people who are removing this. This isn't... [LB852]

LARRY D. BURKS: Right. [LB852]

SENATOR KRIST: ...I mean, if I were a homeowner and chose to go in and remove all the insulation from my attic, that's me making a decision to do that. If I'm paying somebody to do that, then that's a business owner that's providing health insurance potentially for a person, and then they have the exposure over and over and over again. And I just think that there's some safeguards built into the system the way it exists now with the federal standards, so. All right. Well, thank you. I appreciate it. [LB852]

SENATOR CAMPBELL: Senator Gloor, just...I want to clarify the testimony and follow up here. There is an amendment, Senator Krist, and as I read the amendment, this is...you're only released from those standards when it's a total demolition not a repair to the house. [LB852]

LARRY D. BURKS: Right, right. [LB852]

SENATOR CAMPBELL: Okay. That's clear. The other thing is, is that the Nebraska standard is higher than what the feds require. [LB852]

LARRY D. BURKS: Essentially they recognize the NESHAP regulations whereas the federal government exempts municipalities and property owners from them. [LB852]

SENATOR CAMPBELL: Okay. At four units or less. [LB852]

LARRY D. BURKS: Right. [LB852]

SENATOR CAMPBELL: And they really mean dwelling units, right? [LB852]

LARRY D. BURKS: Right. [LB852]

SENATOR CAMPBELL: Not four people? [LB852]

LARRY D. BURKS: Right. [LB852]

SENATOR CAMPBELL: Okay. Senator Gloor. [LB852]

SENATOR GLOOR: Thank you, Senator Campbell. And I think the federal exemption probably has me comfortable with this, but my other question was going to be along the same lines as Senator Krist's, which is, I can see in some of these small towns, forget the companies that go around and do this, that in Nelson or Hickman it's the local city maintenance guys, Sven and Ole. And year after year, Sven and Ole are the ones who tear down the houses. And so you end up with not what you would expect with a homeowner, which is one demolition, but a crew that basically goes in and does this on behalf of a city year after year after year and ends up with multiple exposures. And so that's...it's a lot like Senator Krist's concern, that's my concern. Although again I'd say meeting the federal standard certainly it seems reasonable to me rather than exceeding it. But that's where I need to get comfortable I think. [LB852]

LARRY D. BURKS: The levels of asbestos within those dwellings according to the EPA and the number...or the information that they provide is relatively small compared to the industrial settings that we're talking about. [LB852]

SENATOR GLOOR: Shingles, floor tiles, sidings. [LB852]

LARRY D. BURKS: Shingles, floor tiles, and sometimes the floor tiles are not necessarily even friable, which means floatable...I believe it means that they can drift. The asbestos fibers that are most threatening are the larger ones, the over five microns, micrometers. I think that's right. It's a funny shaped m with a slash and then an l, so. I think it's micrometers per liter. Anything over...yeah, it's starting to, you know, confuse the issue. But there are some numbers out there and standards that, you know, but this is also over a 20-year period to the exposure. And you're absolutely right. Approximately 2 to 4 individuals per 100,000 may be susceptible in that manner to where one fiber or something, depending on their other circumstances as well, whether they smoke or, you know, whether they work in a different setting that may compound the susceptibility to the fire...to the... [LB852]

SENATOR CAMPBELL: Senator Krist. [LB852]

SENATOR KRIST: And just for the record, the way that people are reimbursed, you know, you see the advertisements on television: come to our law firm and we'll get you lots of money because your father died from mesothelioma or you have mesothelioma. Those are class action suits that are huge corporations that are forced to pay out, and there's a good number, better than 20 percent, that try to get reimbursed for mesothelioma that have never spent time in an industrial environment. So two out of ten people that have mesothelioma today weren't working in a brake factory or an electrician or something like that. So that's 20 percent of the population that got it somehow. Back to my original point when the oncologist said, how does this happen to me, the first thing he says is, it just takes one fiber that embeds itself in that place and your susceptibility is there. In my father's case, he was never a smoker but he was in that environment. [LB852]

LARRY D. BURKS: Yeah. [LB852]

SENATOR KRIST: So, I mean, we killed a lot of people treating mesothelioma like carcinogen cancers, giving them the wrong kind of treatment, before we figured it out. But, you know, your point about exposure is right on. My concern, as Senator Gloor very eloquently put it, is somebody is going to have the exposure. Are we doing the right thing? So... [LB852]

LARRY D. BURKS: And asbestos occurs naturally in the soil, in the water. There's even some gardening supplements that you use for gardening that have asbestos in them that people should be concerned about. It's...you're right, it's a serious subject. But to me it's more about eliminating the threat, getting it off the lot and out into the appropriate landfill and going from there. [LB852]

SENATOR CAMPBELL: Other questions? Mr. Burks, I have one. Let's go to the example in your own city. [LB852]

LARRY D. BURKS: Okay. [LB852]

SENATOR CAMPBELL: If you had...how many houses a year do you think that you would demolish? [LB852]

LARRY D. BURKS: Right now we have...of the 50-plus houses that are substandard, that 20 are vacant. So we would focus on that 20 first. But we would only be able to budget for maybe eight to ten in a year. [LB852]

SENATOR CAMPBELL: And how large is your community population? [LB852]

LARRY D. BURKS: 52,000. [LB852]

SENATOR CAMPBELL: 52,000. And who would do this? [LB852]

LARRY D. BURKS: We would contract with a demolition person. [LB852]

SENATOR CAMPBELL: Okay. So...I'm sorry to interrupt you. You would contract. [LB852]

LARRY D. BURKS: Yeah. [LB852]

SENATOR CAMPBELL: So Senator Gloor's comment about the small village, like we have a letter from Hickman which is outside of the city of Lincoln and Nelson, they would probably have the local guy, somebody working for the municipality, you'd think? [LB852]

LARRY D. BURKS: No, not necessarily. You need to carry special liability insurance I believe to do a demolish job. [LB852]

SENATOR CAMPBELL: Okay. [LB852]

LARRY D. BURKS: Plus they are always trained to be able to recognize when there are significant situations or they're supposed to be trained in recognizing situations where there may be elevated levels of asbestos or something like, like asbestos tiles, insulation. You know, when I was learning about this, the more and more I learned about it focused on what has been done in the past, whereas many, many of these homes that were built with asbestos have already been renovated, the asbestos issues have been predominantly taken care of. However, there are the isolated incidents. [LB852]

SENATOR CAMPBELL: So do you think most of the cities and towns across the state would contract rather than assume that liability themselves? [LB852]

LARRY D. BURKS: Yes, yes. [LB852]

SENATOR CAMPBELL: Okay. [LB852]

LARRY D. BURKS: And oftentimes most communities just out of general consideration for the neighborhood, they'll wet down materials as well. I know that's what we did and that's what we had done in our communities, the community I worked for before Bellevue. We required that the materials be wet down as well before they went into the truck so there's not a bunch of just dust in general. [LB852]

SENATOR CAMPBELL: Got it. Other questions? Okay. Thank you, Mr. Burks, for your testimony today. [LB852]

LARRY D. BURKS: You bet. [LB852]

SENATOR CAMPBELL: Our next proponent. Good afternoon. [LB852]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities, and we're here today to testify in favor of LB852 and I'd also like to dialogue a little about the issues of acute versus chronic exposure as it relates to a number of environmental laws. The cities and villages deal with dozens of environmental laws every day through the parks department, the public works department, the utilities, the planning department, and in every case except one that I can think of there's a federal law and then there's a state equivalent pass-through type of law to deal with. So on a regular basis, we are asked either through regulatory advocacy or a question with the city or something to compare federal and state environmental laws. And there's kind of an art form to comparing those laws. And this one first came to my attention this summer when I got a call and said Senator Crawford is working on an instance where the state asbestos law is stricter than the federal asbestos law, which comes from the Clean Air Act. It comes past through this NESHAP which is a regulatory concept under the umbrella of the...and we work a lot with NESHAP. The city's own...they own power generation that's under NESHAP, they own small generators that are under...they own dozens of things that are under NESHAP. So I work a lot with the NESHAP laws. So the question was to me is, can you bring me up to speed so I can talk to Senator Crawford about this. And I said sure. So I pull out my red Nebraska law book and I pull out my federal law book, which happens to be blue, and then I get on the Internet to pull up NESHAP. So I've got a big mess of myself. And very readily I was able to find half a dozen places where Nebraska's asbestos law was in fact stricter than the federal law. And in some cases it's numerical

or process related, and in other cases it's really relies on the subtly of a definition. Nebraska's law in several places, including the section identified by Senator Crawford, uses different language than the federal law does. And that's kind of common in environmental laws that sort of come from the seventies and earlier. When they...there's sort of a change of state autonomy within environmental laws. If you get an older one from the eighties, they pretty much mimic...the language mimics it, the federal law and the state law. That's not so...that's not really true with laws as old as the asbestos law. So my question was to flag the places where the language was different, and I found several. And then I get an e-mail, come to find out Senator Crawford's staff and the city of Bellevue had done a lot of research on this already and had some communication from EPA that directly flagged and filled in a lot of the gaps on the significance of some of those language differences. And so in fact this is a rare occasion when Nebraska law is stricter than the federal law. The...cities acquire residential dwellings all the time. They don't want to acquire residential dwellings all the time. They get them for tax sales. They get them for health reasons. They condemn them. They get them for a variety of reasons. I don't think there's any city in the state that wants to be in the business of owning and remodeling residential dwellings. They're a few examples, but they're rare. And the...and when they acquire residential dwellings, they're not nice houses. These are houses that have black mold issues. These are houses that have vermin vector control issues. These are houses that need to be knocked down. And asbestos laws in particularly a small town can be a barrier in timing to getting those done. And there are issues that a Nelson or a Benedict would probably under Nebraska law have to find a contractor from Lincoln or Omaha to come do this type of demolition. And I think Senator Gloor is correct. Probably absent that, it would probably be the maintenance man and the crew that would use the bulldozer to knock the house in. However, keep in mind that also in almost every case the city or village has some relationship with the publicly-owned landfill. So they are paying some attention to this because they are ultimately more concerned about getting in trouble with what happens with the pile of stuff they have. And so there is some level of self-control because of other environmental laws. And then the discussion of the acute versus chronic asbestos was an outstanding discussion. And I think with any environmental law, I think you really start to have to look at the continuum of environmental laws and...to address them altogether. It's taking asbestos in isolation sometimes can lead to a misleading result. And I'll wrap this up very, very quickly if I can. But I think the current properties also have severe black mold issues. There...I think with respect to the safety of the person tearing it down, there may be a trade off in having the property sit idle for a long time in that there's other environmental issues which are far more acute and quite dangerous. The city is tearing the house down because it's dangerous already for, you know, even reasons that aren't environmental like things falling off, you know, and hitting somebody in the head. So you kind of have to look at the continuum of all of the health issues that are out there. But certainly answer any questions. [LB852]

SENATOR CAMPBELL: Thank you, Mr. Chaffin. Questions? Senator Krist. [LB852]

SENATOR KRIST: I'm looking around this room at my colleagues and I'm going to tell you that it's safer to ride a motorcycle with a helmet on. (Laughter) So I'm not sold yet that reducing what we think is the safest thing to do for a timeliness issue or for a few dollars if it exposes anybody to mesothelioma and they have to go through what my father went through, I'm not convinced. So it's just to be honest. So thank you. [LB852]

LASH CHAFFIN: Thanks. [LB852]

SENATOR CAMPBELL: Other questions, comments? Thank you, Mr. Chaffin, for your explanation there. Our next proponent. Okay. Anyone in opposition to the bill? Good afternoon. [LB852]

CHRIS BOCKMANN: (Exhibit 8) Good afternoon. Senator Campbell... [LB852]

SENATOR CAMPBELL: Very patient. [LB852]

CHRIS BOCKMANN: ...that's okay, and committee, my name is Chris Bockmann, and it's C-h-r-i-s B-o-c-k-m-a-n-n, and I am president of Bockmann, Inc. We are a local remediation company that deals with asbestos, and we currently are licensed and do work in 11 states in the Midwest. I am opposing LB852. In 1987, I actually served on the committee that wrote the state regulations for Nebraska. I was appointed by the Governor at the time to serve on a task force. So I was involved in the statute of LB1051, and then going on to write the regulation. So I've roughly been in this industry for about 30 years. To answer Senator Krist's question, asbestos is a carcinogen. There is no known safe level that can be verified through our Occupational Safety and Health Administration, or OSHA, referred to as OSHA. Asbestos was used in 3,000 different products, and residential homes that are built before 1978 are most likely going to have some type of asbestos in them. Now I want to go back just for a moment and talk about inspections of homes. We just performed an inspection for the city of Fairbury two days ago. We did eight houses. I'm a licensed inspector. It took two of us a half a day to go through eight houses. It is not a complex process. City of Fairbury does a very good job. They have a lot of houses that they demo and they got through this process quite frequently. So if you would like to talk to them, they're pretty experts in this area. Some products that we find in homes that contain asbestos can be siding, linoleum, floor tile, boilers, and all of those things can be a very high percentage of asbestos. For instance, pipe insulation that we just did at a home in Fairbury came back at 60 percent chrysotile. That's very, very high. My concern is this. As a contractor, I'm sure that a lot of people will think that I'm up here because I don't want to lose out on any business. To be quite honest, residential market is not our market. We have done hundreds of houses over the last 30 years and most of them have been for the sake of keeping someone else out of the house doing it. Right now in the community, salvaging things out of a home is a big business. As you all know that copper is very expensive. So what

happens is if when we go in, a lot of people will get into the asbestos trying to salvage the things that are in it. So it's best to get the asbestos out before they end up into a mess. Now I want to go...under the OSHA standard, one of the things that I'm concerned about is, okay, so let's say that we contract this with a demolition company. Who's going to protect the CAT driver or the people going into salvage? Demolition companies sometimes will demo houses for almost nothing for the salvage rights. There may be, you know, $100 worth of copper in there, so they charge $400 to demo the house instead of $500. So we have workers going in to doing salvage. Then we have exposure when the house is going down, not to mention the children and the adjoining neighbors. I mean, who's protecting the neighbor next door or little Johnny out with trucks in the front yard? Okay. So that's one thing we need to think about. Landfill is another issue, which was really not touched on today. If properties aren't inspected, the waste has to go to a solid waste landfill to be in compliance with DEQ because a landfill has to be able to prove that you are not bringing friable materials into the landfill. So if they have to go to a solid waste, it is going to end up costing them more money because those fees are higher. And what ends up happening to be quite honest, if this is nonregulated, those houses will go down and the waste will go to a landfill and they will have no idea what loads they're receiving. That's the ultimate of what's going to happen. So landfill and disposal fees we need to think about. Now in testimony today, this is a copy of all of the asbestos regulations in the world I have right now. This is...I'm a certified instructor for the Environmental Protection Agency and also OSHA, and this is what I have to teach someone when they get into our industry. There's a vast amount of them. And to be honest, they're not complicated for me, but after 30 years I'd hope I could figure this out, so. But one of the things then I...when your amendment came in today I was not aware of that until you just said, so I'm regrouping a little bit. But the amendment is going on to say that the...that it's not going to affect residential or four units or less. Now you go onto page 15 of the bill and it says that you're going to adopt the EPA standard 40 CFR 61.141. Okay. And you're adopting the definition of a facility. Now I want to clarify, I'm going to try to be a little teacher here, the definition of a facility under NESHAP says this: Any institutional, commercial, public, industrial, or residential structure, installation, or building. Then it goes on to say, I'm going to paraphrase a little bit, but excludes residential buildings having four or fewer dwelling units. And by the way, that's four units. So if you have an apartment complex that's a fourplex, that technically could come down, okay, under the standard. Okay. So what you're saying on page 3 is you're exempting all homes that are getting demolished. But then on page 15 you're going to follow this standard. Now there was a clarification put out in this standard that they've referred to in the previous testimony, but...this was in 1995. But in the clarification it says this: EPA does not consider residential structures that are demolished as part of commercial or public projects exempt from the rule. Let's give an example. The demolition of one or more houses is part of an urban renewal project, a highway construction project, or a project developing a shopping mall, industrial facility, they would not be...they would be subject to the NESHAP guidelines. So you're contradicting yourself. In one place in the bill you're saying that you're exempt, and then

in the next place under if you adopt this definition you're not exempt if it's becoming a federal highway, etcetera. Now I will tell you, in all the residentials that I do, about 2 out of 100 meet the standard of a true residential farmstead. Okay. Almost all the time that we do residential, I'll give you an example, Bryan Hospital wanted to put a parking lot in. They had to demo eight houses to put the parking lot in. Would those eight houses fall under this federal standard? Of course they would. They're going to put a parking lot in. The intent of the standard federally is for a farmstead out in the middle of nowhere that wants to dump a house, not for something in the middle of the town that could have an exposure issue. So I guess when we talk about is the federal stricter than the state, there's really no difference because 95 percent of the time we are notifying because we don't meet the NESHAP exemption anyway. You can call up the Harry LeDuc in Lincoln at the county, call up Omaha air quality, ask them how many exemptions there really are that truly meet this definition. But, again, getting back to why we are here today, we are really here to protect the safety, the welfare, and the health of all occupants. And to do that, we need to remove these materials correctly with certified trained people so that it can be done. Now everybody is always concerned about cost. I can tell you that $400 a house for a survey, if we surveyed eight houses in a half a day yesterday, it's not $400 a house. We did not bill $3,200. The amount of cost for removal can vary. That is correct, if there's siding, if there's a boiler, etcetera. I just did one for Habitat for Humanity. The cost was $400. Of course, we donated it. We do all of Habitat's houses for free. And you know why? Because I don't want Habitat volunteers in there doing it, and that's what it could come down to. So... [LB852]

SENATOR CAMPBELL: I'm going to stop you there because we've gone way over. [LB852]

CHRIS BOCKMANN: Go ahead. I'm all done. [LB852]

SENATOR CAMPBELL: We'll see...that's okay, just stay right there. What questions might the senators have? Senator Krist. [LB852]

SENATOR KRIST: Did you give us a copy or can we have a copy of that? Is that a circular that went out to exemplify or... [LB852]

CHRIS BOCKMANN: This is part of the federal guideline that you can...if you go under EPA clarifications it would come up, yes. I can get you a copy, yes. This is just mine I brought today. [LB852]

SENATOR KRIST: Can I have a copy of that? [LB852]

CHRIS BOCKMANN: And I only brought the two pages out of the whole thing that were important. There's about ten and the rest of them go onto any...all sorts of stuff. But I can get you a complete copy. [LB852]

SENATOR CAMPBELL: That's okay. The pages can make you a copy. [LB852]

CHRIS BOCKMANN: Okay. Yes. [LB852]

SENATOR KRIST: Thank you. [LB852]

SENATOR CAMPBELL: Other questions? A lot of really good information. How many cities across Nebraska have you worked for, ballpark? [LB852]

CHRIS BOCKMANN: Oh, I would say that...the State Department of Health has done a very good job in the last five years of doing outreach, and where they outreached a lot is there's a lot of fire burns. Burning homes exercises has been a big issue, because the fire department was not aware that you needed to remove the asbestos first. So since that outreach has been done by Doug Gillespie's department, it's really ramped up in the last five years. I don't know. Again, residential is not our market, but somebody...you know, if you have an 80-year-old lady call and she says my furnace is out and John Henry's isn't going to touch that furnace because it's asbestos, I realize that they amended the regulation before it was not going to...it was going to exempt them, but as a ballpark I would say probably 25. Some of the more predominant communities, Fairbury, Adams, Nebraska, is excellent. They demo more houses in that little town of Adams than...so they're just doing a major cleanup. I just did two houses on the corner of 9th and South Street. You might have noticed they're gone. They were kind of an eyesore. Now if the house is dilapidated from a structural standpoint, the Department of Health is very good working with the owner. They're not going to send anybody in to remove asbestos and have the roof fall on them or if there's been a fire. All you have to do is go to Doug Gillespie's department and ask for a waiver or variance. They send an inspector out and they take out the minimum that they have, and obviously there was health concerns, safety concerns there, so. [LB852]

SENATOR CAMPBELL: If you say, well, residential really isn't your business, you're more commercial then, removing commercial structures? [LB852]

CHRIS BOCKMANN: We do, and probably I was here more today is because I'm an advocate on the health effects side. I don't want people, such as Habitat for Humanity, sending their people in to remove product or scrap products to and demo houses. I don't really want demolition contractors, the CAT driver exposed. And you can't...and if he is going to knock a house down like which was on 9th and South Street which was full of siding, they're...it's going to be some exposure with him. You can't dump a facility, and how about the lady next door that had a little boy that had a concern. So that's really why I'm here today. It's not a major part of our business line. There's not enough residential market to even support someone being in that business long. So...and you can ask the Department Health how many notifications they get for residentials a year.

It's probably...unless we had a major flood or something in this area, we'll probably be well under a hundred. [LB852]

SENATOR CAMPBELL: Senator Krist. [LB852]

SENATOR KRIST: My experience with rehabs and those kind of things, if your house is built before a certain time or if it's suspect, they won't even take the tile up. They just do a layover and go forward. [LB852]

CHRIS BOCKMANN: Correct. [LB852]

SENATOR KRIST: And in some cases the homes that border in between my district and Senator Chambers and some to them in Senator Cook's, they side over the asbestos siding just to cover it up. It's when you disturb the asbestos that you get it into the system. So... [LB852]

CHRIS BOCKMANN: Right. We would...in a demolition with asbestos in place, you would have a visible emission. [LB852]

SENATOR KRIST: Correct. [LB852]

CHRIS BOCKMANN: You would disturb it. It would enter into the air. It would be a pollutant. I mean, there's no way that you are going to encase it while you're doing that demolition. So...and some products are going to be nonfriables like your floor tiles are not going to be as big a fiber issue. But when you get into boilers and pipe insulation that are a high percentage, those are going to be quite significant. So...and as we know and just to reiterate and I'll close today, that it is a carcinogen. There is no safe level. We can't sit here as you learned with your father that we can say one fiber is okay, ten fibers are okay. That's why we have the regulations. That's why we pass the statute LB1051 30 years ago. [LB852]

SENATOR CAMPBELL: Ms. Bockmann, before you leave, if you say, well, houses aren't your business and we start seeing communities all across the state become more interested in cleaning up, do they have enough professionals that they can turn to to do this? [LB852]

CHRIS BOCKMANN: Yes. We currently have...at the last hearing or meeting at the state, we...I think we have 24 licensed contractors that can do it. And to be honest, most of the residential calls go to the Department of Health, Doug Gillespie's division right first anyway. And then Doug routes them in the survey and gets them all set up with what they need to be doing as far as compliance. And...but so that's really how they...but, yes, there's plenty of contractors that do it. So... [LB852]

SENATOR CAMPBELL: Okay. Any other questions by the senators? Thank you for coming today and your testimony. [LB852]

CHRIS BOCKMANN: Sure. Thank you. [LB852]

SENATOR CAMPBELL: Our next opponent? Anyone else in the hearing room in a neutral position? Okay. I think, Senator Crawford, we're to you. [LB852]

SENATOR CRAWFORD: Well, I would like to thank the committee for your very thoughtful questions and thinking about what this would mean for people in cities of different sizes, thinking about what it means for the people who work for the cities, what it means for people who obviously face the most horrific consequence of exposure. And so I appreciate your willingness to ask those questions and bring those issues up. I think...I didn't in the opening talk about some of the other people that we had talked to, so I want to just clarify a few things that we have our...that we have talked to other departments about in terms of other protections that will still remain in place if this bill were to pass. So...and we did talk to DEQ, and this bill does not touch the landfill regulations that are in place already. And so we've already have also talked about the fact that the municipalities will have to work with landfills, and there are some landfills that will only accept materials that have been certified as asbestos free, and those rules all stay in place. And so if a municipality is going to have to work with landfills in terms of identifying places where the residential properties that are expected to only have a small amount of asbestos could go. So that will happen. It's also the case that this bill does not in any way get rid of any of the OSHA regulations that are in place for workplace safety. So those contractors who do this work that have to follow OSHA guidelines about asbestos, this in no way prevents that from happening. And, again, it in no way restricts the compliance of the state with federal regulations. It is our intent to align the state with federal regulations. And right now the federal regulations, again from the guidance in 1995, is that a single residential property is a small enough amount of asbestos that could be safely removed. And, again, I appreciate the question about is there any amount that's safe. But I would also remind you that we all...we, in all of our policies, have trade-offs, so we have asbestos threat. We also have mold threat, crime threat, you know, we have other threats that we have to address as well in terms of trying to balance that. It's also the case that if a city, again, has to...removes multiple units for a highway that there are other federal rules they have to follow in terms of approval for that. And, again, the NESHAP would apply if we were talking about removing multiple units for a shopping mall or a highway, this would not apply. This is a single, isolated, residential unit. And the other single isolated residential unit that's a residential unit a or rental of four units or less. So any of the contractors who are doing this work and the kids, adults working for contractors doing this work would be following OSHA regulations. Now in terms of what about, how do you say, Sven and Ole, who are working for Small City, Nebraska? One thing that...and I will check into this to get back to you on this, I would wonder at how much exposure they have in following the

regulations as well too. I mean, if they have to capsulate it and do those other things, they still may have some of that exposure as opposed to a bulldozer as a different kind of exposure. But I will check that to see if I can answer that question of how much more exposure do they have as a maintenance worker that goes in to do this work? That's a good question that we'll...that we didn't answer ahead of time. So I will answer that question. So, again, this was brought to our attention and I think that to me, of course I wouldn't have introduced it if I felt it was a health risk. In my mind, the fact that the clarification was made in 1995 and we've had many years since then for the risks of municipalities following this clarification to be brought to light, and that the clarification has not been pulled back since 1995. In my mind, I saw that as some evidence that this was not a serious health risk because I assume that if we did this in 1995 and we were seeing it become a health risk in municipalities, there would have been a pullback to change that regulation. So I will wrap up there and be happy to answer any other nonexpert questions I might be able to answer. I'll take a stab at an expert question. [LB852]

SENATOR CAMPBELL: Any other questions from the senators? Seeing none, thank you, Senator Crawford. [LB852]

SENATOR CRAWFORD: Thank you. [LB852]

SENATOR CAMPBELL: (See also Exhibit 9) That concludes our hearings for today. I'd like the committee to stay, not for Exec Session, just kind of an announcement. [LB852]