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Executive Board Committee
February 21, 2018

[LR295CA LR296]

The Executive Board of the Legislative Council met upon adjournment on Wednesday, February 21, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR295CA and LR296. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Ernie Chambers; Sue Crawford; Dan Hughes; John McCollister; Jim Scheer; and John Stinner. Senators absent: Tyson Larson.

SENATOR WATERMEIER: Welcome to the Executive Board public hearing. My name is Dan Watermeier. I'm from Syracuse and represent the 1st Legislative District in southeast Nebraska. I serve as Chair of the Executive Board. Our hearing today is your public part of the Legislative process and your opportunity to express your position on proposed legislation before us today. The committee members may come and go during the hearing. We do get called away for various reasons. It is not an indication we are not interested in the bill. It's just part of the political process. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phones. The order of the testimony will be the introducer, proponents, opponents, neutral, and then closing. If you are testifying, please make sure you fill out a green sheet and hand that to the page when you come up to testify. Please hand that green sheet to the page and when you start your testimony please state and spell your name for the record. Each testifier will have five minutes to speak. After four you'll see a yellow light and after five you'll see a red light and I'll ask you to (inaudible). If you will not be testifying but want to go on record as having a position on a bill here today, please fill out one of the white sheets and the page can help you with that. Written materials can be distributed to the committee members but we will need 12 copies. If you don't have 12, let me know and we'll have a page help you out with that as well. To my immediate right is my legal counsel, Janice Satra. To my left is committee clerk, Laura Olson. And helping us for today is (inaudible). All right. With that, we'll open up with introductions of our committee members, starting with Senator McCollister.

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SENATOR MCCOLLISTER: John McCollister, District 20. []

SENATOR BOLZ: Senator Kate Bolz, District 29. []

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR HUGHES: Dan Hughes, District 44. []

SENATOR KUEHN: John Kuehn, District 38. []

SENATOR CHAMBERS: A man who needs no introduction but I'll give it anyway: Ernie Chambers, District 11 in Omaha. []

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45, Bellevue. []

SENATOR STINNER: Senator John Stinner, District 48. []

SENATOR WATERMEIER: All right. Thank you. With that, we'll start as we have them on the agenda: with LR295CA, a constitutional amendment. Senator Vargas. Welcome. [LR295CA]

SENATOR VARGAS: Thank you very much. [LR295CA]

SENATOR WATERMEIER: You bet. [LR295CA]

SENATOR VARGAS: Good afternoon, everyone. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s, and I represent District 7, the communities of downtown and south Omaha, in the Nebraska Legislature. Thank you, Chairman Watermeier and members of the committee, members of the Executive Board. I'm here today to talk about LR295CA, which I'm proud to cosponsor with a diverse coalition of senators from across both the political spectrum and the state. LR295CA would put a measure on the ballot that adjusts legislators' salaries to half of Nebraskans' median household income. I'll get into the mechanics of that shortly but first I want to talk to a little bit about legislative pay in Nebraska and across the country. The committee is familiar with the low pay here in the Nebraska Legislature. I don't think this is a new issue. We receive \$12,000 per year plus a per diem or mileage, depending on your distance from the Capitol. A 2017 survey done by the National Conference of State Legislatures found the average pay of state legislators to be \$35,592 per year, excluding per diem and expense payments. At \$12,000 per year, Nebraska falls far behind many states with similar cost of living, such as Arkansas, Michigan, and Iowa. When considering inflation, average legislator pay has decreased substantially over the

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Executive Board Committee
February 21, 2018

past 30 years, especially in states like Nebraska which haven't increased pay since 1989. Now this low salary prevents many Nebraskans from participating in government at the highest capacity. Nebraska boasts of citizen Legislature, but can we really say that honestly when so many of our fellow Nebraskans are essentially precluded from serving in office due to this financial barrier? Now under LR295CA, legislators' salaries would be adjusted every two years at the beginning of each biennium. I felt it was important to set salaries this way so our salaries are responsive to Nebraska worker salaries. If their median income goes down, there's no reason our pay should stay higher. LR295CA's method to determine legislative pay every two years has been tested in several states, including Massachusetts and Pennsylvania. I believe it's an effective way to increase pay with respect to inflation and cost of living. Now higher legislative pay has several benefits. First, recruiting public servants is difficult. Lawmakers and advocacy groups on both sides of the political aisle in Nebraska who once opposed increasing legislative pay now support it because they are struggling to recruit public servants. It allows a broader range of citizens to consider running for public office. Higher pay enables Nebraskans from all income levels and in all districts to consider elected office specifically to be legislators. Six years ago, Nebraskans rejected a similar ballot measure to increase pay for state lawmakers. LR295CA gives voters a chance to reconsider. It is a step towards creating a Legislature that reflects the interests, concerns, and demographics of our state. I urge you to support LR295CA and move it on to General File. With that, I'll be happy to answer any questions you may have. [LR295CA]

SENATOR WATERMEIER: All right. Thank you. Questions from the committee? A well-written legislative resolution. All right. [LR295CA]

SENATOR VARGAS: Thank you. [LR295CA]

SENATOR WATERMEIER: All right. You going to stick around to close? [LR295CA]

SENATOR VARGAS: Yep. [LR295CA]

SENATOR WATERMEIER: Could I get a show of hands of those that are testifying today on LR295CA, how many here today? Senator (inaudible). All right. [LR295CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CRAWFORD: All right. [LR295CA]

SENATOR WATERMEIER: All right, very good. All right, we will open up the floor for opponents...excuse me, proponents of LR295CA, those in favor of or proponents. Welcome, Mr. Hansen. [LR295CA]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union and also our lobbyist. I appear before you today in strong support of LR295CA. We have, during my 28 years serving as president of the Nebraska Farmers Union, we have supported I think every different kind of which way to try to raise the salaries of state senators. And so I think the arguments for merit are pretty clear and that is that the people who make our laws, who take time away from their families, their businesses, travel across the state and perform the people's business by making our laws, is pretty much, most of the time, regardless of how many days, whether we're in the 60-day or in the 90-day session, it's an ongoing responsibility, it's an ongoing obligation. There's meetings. There's the public participation. There's the committee work. There's the study resolutions. There's all of the business of being a part of the community that you represent. So this a full, it's a large obligation, and so you shouldn't get paid less than a county commissioner gets paid, you know, you go down the list of other public offices that get paid substantially more than a state senator. And so we think that it's really important to do that. During my 28 years, I've known and worked with folks that are...have become friends and were friends coming in. And I've seen what \$12,000 a year can do to a younger family who's struggling financially. The burden of the office becomes the conflict with the marriage and trying to pay the bills. I've seen divorce. I've seen a lot of family issues. I've seen folks who just...this salary level just chewed them up and spit them out. And so it's an issue that needs to be addressed. I think the way that this is couched is good. I talked to three different farmers this last week about different races that...where there's vacancies or candidates to run and they all said the same thing: I can't hire somebody for \$12,000 to take my place on my farm and I'm not independently wealthy and I can't afford to do this. And it's a sad thing when qualified, competent, independent, smart folks who have a lot of business and real-world experience, are well thought of by their communities, cannot afford to serve in this position. And so with that, I think I'll end my remarks and wish you well. But I would just close by saying that if this does make it to the ballot, for whatever it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

worth--which is always questionable--at least my organization will be in strong support of it as we talk to voters. Thank you. [LR295CA]

SENATOR WATERMEIER: Okay. Questions from the committee? Senator Chambers.
[LR295CA]

SENATOR CHAMBERS: Mr. Hansen, we've been through a lot of these battles together, haven't we? [LR295CA]

JOHN HANSEN: Yes, we have. [LR295CA]

SENATOR CHAMBERS: And you made an observation that a senator should make at least as much as a county board member. But what the public says is, you let us vote for the county board members and we'll show you we don't think much of them either and we'll make them at the level of the senator instead of the other way around. We really are the only level of politicians that the public can get even with for all of the politicians they're angry at, and I don't believe that this is going to be successful. It usually will take a young person who is still idealistic, will try to reason with public, which gets you nowhere, or somebody who is old and will try to do what needs to be done, knowing it's not going to work. But I'm glad to see that you have persevered all these years and you've come back again and again and again and again and again. So thank you for coming, and I hope this time that people like you who want to see the right thing done may prevail because there are people who I think really could do a good job here but they cannot afford it. And I'm not...this is not to boast. Maybe it is. Had I not been able to get expenses for senators while we're in session, some of those who are here now couldn't afford to come. It's not that they wouldn't want to be here. You cannot serve in office and not get paid anything to speak of. So I appreciate what you're doing. [LR295CA]

JOHN HANSEN: Thank you, Senator. And the effort that you made that was successful was at least an improvement. But we're still completely out of line with what other positions pay, what other states pay, and what other positions in our state pays relative to the responsibilities and obligations that come with this very important job that you have. [LR295CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: All right. Thank you, Senator Chambers. Further questions for Mr. Hansen? Thank you for your testimony. [LR295CA]

JOHN HANSEN: Thank you. [LR295CA]

SENATOR WATERMEIER: Further proponents on LR295CA? All right. Seeing none, anyone in the opposition to LR295CA? Those in the neutral? We do have...Senator Vargas, you want to close? But I will read into the record a couple of letters. [LR295CA]

SENATOR CHAMBERS: What ringing endorsement you got today. [LR295CA]

SENATOR WATERMEIER: (Exhibits 1-4) LR...those letters for the record: Doug Kagan, the Nebraska Taxpayers for Freedom, in support; Christy Abraham of the League of Municipalities; Jenni Benson of the Nebraska State Education Association; and Kevin Cooksley of the Nebraska State Grange in opposition. All right. Senator Vargas. [LR295CA]

SENATOR VARGAS: Thank you very much. I just want to thank you for having this conversation. And as a reminder, I know that not all the members of this committee were here when this happened. But in 2012, when it did eventually get to the ballot, this came out of the committee and it was supported by the Chamber of Commerce, Bankers Association. I think we've added some new proponents to this issue, specifically because we're seeing if we're not going to have this citizen Legislature that really is representative of the diversity in all walks of life from Nebraska and we're precluding individuals from serving, we want to make this to be a more sustainable role that people can take on and be public servants in Nebraska. And I actually believe in that year they also made this priority resolution and bill coming out of the Executive Board during that year, so. [LR295CA]

SENATOR WATERMEIER: Okay. Further questions for Senator Vargas? All right. Thank you for your testimony and your bill. [LR295CA]

SENATOR VARGAS: Thank you very much. [LR295CA]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: ...legislative resolution. That will close the hearing on LR295CA and open up the hearing for LR296. Senator Walz. Welcome. [LR295CA]

SENATOR WALZ: Thank you. Good afternoon, Chairman Watermeier and my colleagues on the Executive Board. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15. I come to you today to introduce LR296 which asks the Executive Board to establish the State Licensed Care Facilities Investigative Committee of the Legislature. The committee would investigate the systematic failures of the Nebraska Department of Health and Human Services in ensuring people with mental illness receive the necessary services and supports in the most integrated setting. It would be composed of seven members of the Legislature appointed by the Executive Board and have access to legal counsel, consultants, and outside investigators in order to ensure the committee has resources it needs. I bring forward this resolution because Nebraska is struggling to improve within facilities, standards within facilities that consistently fail to perform. Currently disciplinary action against violations of standards of care includes small fines that do not match the severity of mistreatment being committed. Too often, there is no action taken at all. Residents in care facilities are stuck in situations they should never have to deal with in the first place. Nebraska is in need of vital change and it will not happen unless further steps are taken beyond DHHS consequences. I have also introduced LB1093 as an additional solution to this issue. That bill would create the Office of Inspector General of Nebraska Public Health and I believe both measures are critical to the health, safety, and well-being of thousands of Nebraskans. In Nebraska, people with severe and persistent mental illness are isolated, segregated, and congregate in assisted living and mental health facilities across the state. The conditions they are living in are substandard and fail to meet even the basic needs of residents. Many facilities are failing to provide the most basic medical and nutritional needs for their residents and are certainly not able to provide assistance for their mental and emotional needs, yet the safeguards Nebraska has in place to penalize or close down these facilities are not protecting residents. For instance, the Department of Health and Human Services did not take action when it discovered numerous violations in a report of Life Quest facility in Palmer in June and July of 2017. The report described: workers purposely isolating residents in an incident where staff locked themselves in a room when a violent individual pulled out a pocket knife, leaving the residents to fend for themselves; residents cooking and cleaning for the facility because there was no housekeeping staff; residents being told their cell phones would be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

confiscated because they were calling law enforcement; a registered sex offender being allowed to prey on female residents; and individuals being given one meal, just one meal choice, despite nutritional needs and doctors' orders. Despite the shocking neglect witnessed by DHHS inspectors during their four-day, on-site inspection in June--and a five-day, on-site inspection in July--the final report of this investigation, dated July 21, 2017, sat on a desk. No action was taken. While the residents of Life Quest at Palmer continued to reside in unsafe conditions, a United States veteran died of an apparent fall after suffering uncontrollable vomiting and diarrhea for at least three days without treatment, or pleas from the veteran and other residents she needed to be taken to the emergency room. It is my belief that her death could have been prevented if sufficient action had been taken. Across Nebraska, state-licensed care facilities are practicing gross indirect and direct mistreatment of those within their care. The people--and I do stress the word "people," as it is often forgotten--are having their voices taken away. I have been told of instances where residents were refused a transfer, disregarded when expressing health concerns, had all contact to the outside world cut off, and generally ignored in all respects. How do we expect so many to fight for themselves when they have no voice? It is our responsibility as public servants to ensure that they are being treated with the dignity and care they deserve, morally and under the law. Currently, a sense of urgency is lacking. Residents are being mistreated across the state as we speak. Any action that has been taken to stop this is nowhere near enough to match the injustice practiced in some of these facilities. What is a small fine to the continuing physical and mental harm? It is our duty to protect Nebraskans and we are failing in this aspect. I am confident that LR296 would allow for decisive steps to be taken in combating this issue through a variety of aspects. This committee will be charged with investigating the treatment of residents in state-licensed care facilities and have the authorization to issue subpoenas, hold hearings, and utilize supporting materials to do so. Facilities need to be held accountable for the way they treat the residents and investing this power in the committee is a way to do so. Under the current system, the licensure unit of the Department of Health and Human Services can up to...can conduct up to a 25-percent random sample of facilities annually, or at least every five years. This is problematic because this percentage quota is not required to be met and so much about a facility can change in five years. Therefore, by this system, facilities that are underperforming can slide by inspection for years on end. I'm not trying to propose a different standard or imply that facilities should be under ever-constant supervision. But I know the current system is failing and must be taken under review. The State-Licensed Care Facilities

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

Investigative Committee would accomplish this. No longer would facilities have the protection of rare or retroactive review. At any point the committee could conduct assessments of the care of individuals residing in problem locations to ascertain whether they are having their rights violated. This would ensure that all residents living in these facilities are not being disregarded. At the same time, the committee can also be ensuring the necessary services are available in community settings of the individual's choice. The committee will provide a critical and long-overdue method of identifying problems within Nebraska care facilities and create a foundation on which change can be created. Secondly, through the committee's investigation, the extent to which steps taken by DHHS is to effectively oversee these facilities would be identified. Because the steps taken are so important to protecting vulnerable individuals, they must be executed as consistently as possible. Through this revision, recommendations should be formulated to improve DHHS oversight. As shown with the Palmer case, this is an integral step toward preventing further atrocities. Problematic facilities continue to commit violations even after DHHS penalty. The department has reported that they were aware of 15 facilities around Nebraska that have consistently failed to perform and have been under investigation for years by the Division of Public Health and the Disability Rights Nebraska. I have the list of these facilities available upon request. Every individual living in these facilities deserve actual change in the care they have been denied of. Finally, the committee will examine why there is a lack of mental health services, supports, and appropriate housing for individuals. The practice of warehousing people with mental illness in these types of mini-institutions is also a symptom of the failure of the Division of Behavioral Health to provide mental health treatment and services in the most integrated setting appropriate to their needs. I've been advised by the state of Nebraska...I've been advised the state of Nebraska is vulnerable to litigation based on these violations of Title II and the Americans With Disabilities Act and the U.S. Supreme Court Case Olmstead v. L.C. Although these are privately owned facilities, they are licensed by the state of Nebraska and funded, in part, by state General Funds. In the end, the primary goal of this committee is to recommend and pass legislation to overhaul the widespread pattern of neglect in state-licensed care facilities. It is important that the department is working directly with the care facilities to assure that all staff are adequately trained and have the ability to support the individuals. My goal is not to close down facilities, but I do want to make sure that all citizens are getting the proper care they need and deserve. In order to do so, the investigative committee will release a report with its recommendations and findings before December 15, 2018. Throughout the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

process, its members will have the power to hire any needed personnel for the investigation so that the findings are as accurate and thorough as possible. It is my hope that these findings will save lives. I encourage you to advance LR296 to General File for full debate for the sake of residents across Nebraska. I'm happy to try and answer any questions you may have about the resolution. Thank you. [LR296]

SENATOR WATERMEIER: All right. Thank you. Questions from the committee? Senator Crawford. [LR296]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Senator Walz, for bringing this proposal and for all the research you've already done on this issue and bringing that to our attention. I have just a question about page 3. It says, "The committee shall also investigate what steps the department has taken to advance the recommendations proposed by the Technical Assistance Collaborative as a consultant to the department..." Can you tell us a little bit about that? [LR296]

SENATOR WALZ: You know what, I'm going to let Dianne tell you a little bit more about that. [LR296]

SENATOR CRAWFORD: Okay, okay, okay, okay. Thank you. [LR296]

SENATOR WATERMEIER: Okay. Further questions, Committee? Senator Walz, when I looked ahead and saw this coming on the agenda, I reached out last week and we talked about this briefly. You know, obviously, the fiscal concern about having counsel, clerk, and the powers that this bill brings forth is concerning as far as just a fiscal note and the budget. So, you know, would you envision if we could amend this, if it's amenable to you and the committee, what would be your vision as far as in the future if we could make something like this work? That's one of the concerns I have. The other thing is defining the population that you're actually looking at. When I look at it as a person that doesn't...isn't in this world, I mean, even right away I see Licensed Care Facilities Investigative Committee. Is that all the long-term care facilities or is it specific to what I think you're getting at in a pretty small group of individuals...or not small, but I mean... [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WALZ: Right. [LR296]

SENATOR WATERMEIER: ...a defined group of behavioral health people. [LR296]

SENATOR WALZ: The main focus is on the mental healthcare facilities. [LR296]

SENATOR WATERMEIER: Okay. So how do we limit that if you want to do that in that regard? I mean with this language it looks like it's pretty broad. [LR296]

SENATOR WALZ: Um-hum. [LR296]

SENATOR WATERMEIER: I mean do you see a way we could do that or...? [LR296]

SENATOR WALZ: You know, I think we left it broad in the beginning because there are so many people with mental health issues that are in nursing facilities. It may be one or two people and that's the reason that we left it broad. But I think that we'd be willing to pull out nursing facilities and just make sure that we're focusing on mental health. [LR296]

SENATOR WATERMEIER: Well, and I think there's people besides me that have so much more experience with that, that can define that population that you're really trying to get at, because it's not the DD group that are getting funding specifically through the state funds. It's the people that are through the cracks and lost through the cracks and we aren't getting in covered. [LR296]

SENATOR WALZ: Um-hum. [LR296]

SENATOR WATERMEIER: That's what I think you're trying to get at. [LR296]

SENATOR WALZ: Right. [LR296]

SENATOR WATERMEIER: So, Senator Bolz, did that bring a question that you want to ask? [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR BOLZ: I was just going to say, if memory serves, there are regulations that cover behavioral health assisted living facilities that are different from those that cover nursing,... [LR296]

SENATOR WALZ: Nursing, um-hum. [LR296]

SENATOR BOLZ: ...home-assisted living, nursing care assisted-living facilities, and maybe would you consider perhaps defining that language... [LR296]

SENATOR WALZ: Yeah. [LR296]

SENATOR BOLZ: ...as it relates to marrying up with the regulations? [LR296]

SENATOR WALZ: Yeah. [LR296]

SENATOR WATERMEIER: Okay. Any further questions? Senator Stinner. [LR296]

SENATOR STINNER: I just need some information. Are the residents, the individuals, do they have guardians or do they have family? And are the reports that are...that come out about that facility, the violations, etcetera, shared with the guardians and the individuals in charge to oversee these people? [LR296]

SENATOR WALZ: You know, from my understanding, they do have guardians and they have family. But I think that the communication is very, very limited. I don't think that...I don't think they're...they have a strong voice working for them. Are those violations shared with that guardian and family? That is a good question and that is something I think that this committee needs to also address. [LR296]

SENATOR WATERMEIER: Senator Crawford. [LR296]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Senator Walz. So just to be clear, you're talking about your real focus here is this behavioral health assisted-living

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

facilities. When you mentioned in your testimony there are 15 facilities consistently failing to perform, are all 15 of those this specific type of facility? [LR296]

SENATOR WALZ: Yeah, and... [LR296]

SENATOR CRAWFORD: Okay. [LR296]

SENATOR WALZ: ...I'll have Dianne verify that, but... [LR296]

SENATOR CRAWFORD: And do you know...okay, okay, okay. I just was wondering if you know how many of these facilities there are. [LR296]

SENATOR WALZ: I thought there were 12. [LR296]

SENATOR CRAWFORD: There must be more. [LR296]

SENATOR WALZ: But I'm going to ask her to verify that. [LR296]

SENATOR CRAWFORD: All right. We'll ask again,... [LR296]

SENATOR WALZ: Yeah. [LR296]

SENATOR CRAWFORD: ...because that also helps us know the scope. [LR296]

SENATOR WALZ: Yeah. [LR296]

SENATOR CRAWFORD: Right. If there are 12 and 15 are underperforming, that's... [LR296]

SENATOR WALZ: Right. She will... [LR296]

SENATOR CRAWFORD: Anyway, that...anyway, we'll follow up on that. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WALZ: Follow up with her. [LR296]

SENATOR CRAWFORD: That also helps us understand what the scope would be. We're talking about a fairly limited number of facilities for us to do. We're not talking about one in each community where we're trying to get across the whole state. [LR296]

SENATOR WALZ: That's right. [LR296]

SENATOR CRAWFORD: We're talking about a pretty targeted investigation. [LR296]

SENATOR WALZ: Right, yes. [LR296]

SENATOR CRAWFORD: All right, thank you. [LR296]

SENATOR WALZ: Yeah. [LR296]

SENATOR WATERMEIER: Any further questions? All right. Thank you, Senator Walz. [LR296]

SENATOR WALZ: Thanks. [LR296]

SENATOR WATERMEIER: I'm going to ask for a show of hands of who's here today to testify, either pro or opposed. Either way, could you raise your hands up? Okay, I think we can allow five minutes, so come on up. We'll start with proponents of LR296. Welcome. [LR296]

DIANNE DeLAIR: Thank you, Senator Watermeier. My name is... [LR296]

SENATOR WATERMEIER: You don't have to lean in. It'll catch it. [LR296]

DIANNE DeLAIR: Okay. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: It's very sensitive. The mikes are very sensitive. Just relax and you can speak at will. [LR296]

DIANNE DeLAIR: (Exhibit 1) All right, thank you. My name is Dianne DeLair, spelled D-i-a-n-n-e, DeLair, D-e-L-a-i-r. I'm the senior staff attorney with Disability Rights Nebraska, a private nonprofit organization with the sole mission of advocating on behalf of and for people with disabilities in our state of Nebraska. You've heard the introduction from Senator Walz about the scope of the issue presented today that would cover LR296, and I'm here to tell you that this is not an isolated incident. I've been with Disability Rights Nebraska for 18 years, practicing, going in and out of these facilities during that time. Things are bad and they're getting worse. I'm here to talk to you a little bit today not only about my experience but also the law that's implicated with the policies and practices that continue to create and proliferate facilities that we're talking about today. I also have some documents here that I'd like entered into the record in its entirety. So first I want to talk a little bit about the Americans with Disabilities Act and Title II which implicates state and local governments. And essentially, Title II of the ADA through its integration mandate states that it's illegal for public entities--namely, state and local governments--to deny qualified individuals with disabilities the benefits of their programs, services, or activities. Okay, that's the law. And how are private facilities implicated by the ADA and Olmstead? Well, I'm going to talk a little bit about that. So, the ADA's integration mandate has been interpreted by the U.S. Supreme Court in Olmstead v. L.C. and it states the "mandate is implicated where a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities." So here we have a system where there is a population of people who are neglected and forgotten and pushed into these types of assisted-living facilities and mental health centers. And they are primarily, the people living there, I would say almost 100 percent have a severe and persistent mental illness. Well, the ADA and Olmstead--that case was decided in 1999--that said, look, state, if you're going to operate programs for people with disabilities, you have to show that you're doing it in the most integrated setting possible. We know this can't happen overnight, but if you develop what's called an Olmstead Plan, this could be an affirmative defense against litigation, just one though. That doesn't mean you're still...you're not vulnerable. So let me just read this to you. "More specifically, a public entity may violate the ADA's integration mandate when it: (1) directly or indirectly operates facilities and/or programs that segregate individuals with disabilities..." That's what's happening here, the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

facilities where people are isolated, congregated, and segregated. And, yes, the conditions are deplorable and inhumane and it's the right thing to do to make sure people are getting what they need. But the real issue here involves the state's influence into creating and perpetuating these facilities. So the other part of that, and I'll just finish up, it "finances the segregation of individuals with disabilities in private facilities," and there are General State Funds that go to support the room and board that people pay, along with almost all of their Social Security income, "through its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs." Well, guess where people are discharged to from the hospital or the regional center? Places like this all over the state. What I'm doing for you now is mapping out potential litigation that the state is vulnerable to. Now you'll hear that, yes, we do have an Olmstead Plan. I'm a member of that committee, so, you know, there's a plan in place. That does not relieve the state of liability. Also, the Department of Justice has been to other states dealing with a very similar problem to ours. And, you know, the settlement agreements go on for years. It's expensive litigation. In our response to the situation at Palmer, we reached out to the division and they told us, yes, we're trying to implement the Technical Assistance Collaborative recommendations, they are in our new strategic plan. Well, I've been doing this for 18 years and things are not changing. And, Senators, if the citizens of this state knew what was going on and saw and understood the conditions of how the most vulnerable were living, they would want you to act. And I know there will be a response from HHS today saying everything is okay. Well, it's not because people who left Palmer went to Blue Hill assisted living, Life Quest, and that place is shutting down next week. And so another 35-40 people are going to be displaced, scrambling around, trying to find a bed. And like I said, this is a symptom of a much greater problem with respect to the appropriate services that are available. And I apologize for going over. [LR296]

SENATOR WATERMEIER: Okay. That's fine. I was going to give you a little latitude there, so. Did you have your hand up, Senator Crawford? Go ahead. [LR296]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you for being here, Ms. DeLair. You had mentioned--I know you're running out of time so now I'll give you a little more time to just explain to us what the Technical Assistance Collaborative is how it relates to the Olmstead Plan and why we would need this committee to push those recommendations or how

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

the committee might use those recommendations if that...if those questions make sense.
[LR296]

DIANNE DeLAIR: Sure. [LR296]

SENATOR CRAWFORD: You can answer any of those that make sense. [LR296]

DIANNE DeLAIR: Okay, certainly. Yes, so the Division of Behavioral Health has worked with consultants called the Technical Assistance Collaborative. They're a nationwide kind of consulting firm specialist that states often retain when they're looking at community integration and how best to implement that in their state. They also get called in when the Department of Justice is suing their state and they need some help implementing some of the settlement agreement initiatives. They came to our state a few times, one in 2014, and they advised the division that, look, you know, here's some of the issues going on in your state with housing and integration in the mental health area. They also said you're vulnerable to a lawsuit because it's 2014 and you don't have an Olmstead plan. Our own consultant specifically told us that. While we do have a committee that's working on the plan now, that does not relieve us from liability. The Technical Assistance Collaborative was brought back again in 2016. Additional short-term and long-term recommendations were made about how to use existing resources of the state to better serve people with mental illness in integrated settings and also to suggest ideas about additional federal funding or grants that are out there to make this happen. What's a consistent theme in both of those reports is that leadership is really needed from the top to make these changes happen. So that means when the divisions of...the regional behavioral health divisions throughout the state are saying we're not getting enough money from the Division of Behavioral Health and the Division of Behavioral Health is saying, well, that's the regions' responsibilities and they need to identify that. Well, when I go out and visit people at these facilities, they have no idea about the regions, they barely talk to their guardians, and they don't have case management services, so there are policies in place that really prevent folks who are really isolated that the regions know about that they're just not acting. And I would just refer you to Hotel Pawnee. That's in your packets of information. The regional behavioral health, Region II, is about four blocks from the Hotel Pawnee as people in that facility were suffering 95-degree temperatures in the summer, no air conditioning, you know, inedible food, and so that's really an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

illustration of this problem that continue year after year. I hope that answers your question, Senator. [LR296]

SENATOR CRAWFORD: Thank you. It's very helpful. Thank you. [LR296]

SENATOR WATERMEIER: Any further questions? Senator Bolz and then Senator Stinner. [LR296]

SENATOR BOLZ: Just for the sake of clarity, my understanding is that some of the state's responsibility relates to our funding streams. So individuals who reside in these facilities, may be paying for those services through the (Assistance to the) Aged, Blind, and Disabled program, they'll probably be getting healthcare services through Medicaid, and then there's the responsibility and funding for the oversight and licensure through the Division of Public Health, and so because of those intersections with government funding, that is part of what our responsibility is as related to Olmstead. Is that all correct? [LR296]

DIANNE DeLAIR: That's correct and that's a really good summary. That's a piece of it. And then how the policies and programs, you know, failure to create those services that are necessary in the different regions, that's operating your policies and procedures that segregate people with disabilities, so, yes, that's exactly right. [LR296]

SENATOR BOLZ: That's helpful. And would you say just a little bit more about the work that you have done over time, because some of the documents that you gave us I think reference some initial action in 2012. So I think it would be helpful to this committee to know that lots of strategies have been tried that have brought us to this place, and I think that is the case but I'll let you... [LR296]

DIANNE DeLAIR: Sure. I was personally involved, along with other members from my office, investigating the assisted-living facility in North Platte, Nebraska, called Hotel Pawnee. This was an old structure. Once it was a really nice hotel at the turn of the century and now it was once a nursing home anyway. So you have 60, almost 70-plus people, living in this converted hotel which was crumbling under the weight of mismanagement and abuse and neglect. We were

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

called out there and what we found was unconscionable, and this was back in 2012. People were living in filth, portions of the hotel crumbling, and they're paying \$1,200 a month, and some more, to live in a place like this. A lot of the folks were not clients of the regions, and so they spent their days doing not much of anything. What we found is mismanagement of medication, all kinds of violations. And what I will say is that when we alerted APS and regulation and licensure, they sent in investigators from that area who did a fantastic job outlining those violations, 80 pages of them, and they were violating almost every single section of the regulations. Isn't that the time when you pull people out who are vulnerable, who are under psychotropic medications and in heat? Over and over, they went back, and I talked to one of those investigators who said this can't be happening in Nebraska. But that facility remained open and you might remember some of the...around this time we also were dealing with the crisis of Judith Widener who had so many wards. Well, a lot of her wards were placed in facilities like Hotel Pawnee. Some of her wards were the last to leave that facility. We had meetings with the Division of Behavioral Health, with the medical director, urging them to take action. And what happens and continues to happen today is that we're falling back on these notices of due process, which are important, and the rights of the facility, but when people start dying we need to take action. And people wanted to get out of this place. They wanted to leave. But there was no place to go, and that's the issue. So we've got to work on the services and supports so we have community integration. And we're not the only state struggling with this, but so we have monitored facilities like this all over the state. We've filed reports. We're trying to work with Health and Human Services on this. There were great recommendations that I'm sure they will mention that have been adopted in their strategic plan, but that's not going to help the people, that's not going to help that veteran who spent the last hours of her life begging to go to the hospital. And the police, the only reason that this has come to light, in my opinion, is that law enforcement saw something was up and talked to residents and said the residents were saying call the police, call an ambulance, she's really, really sick, and in DHHS's own report staff said she's VA, she can wait till Tuesday. This was over the Labor Day holiday. This is not an isolated incident. I can't stress that enough. These facilities are all over the state. You're going to hear from other people who have loved ones who have lived in places like this. And I also want to mention that we don't have comparable services like we do on the developmental disabilities side of things. You would not ever see people congregated like this who have developmental

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

disabilities, and that needs to be corrected. People need help and this is a problem that's not going away. [LR296]

SENATOR WATERMEIER: Senator Stinner. [LR296]

SENATOR STINNER: So we've identified 12-15 of these units or facilities? [LR296]

DIANNE DeLAIR: Actually, if we're looking at underperforming facilities, I think it would be closer to the 12. But if we're looking at congregated, isolated, big, many institutions, there's going to be a lot more. And that's a symptom of... [LR296]

SENATOR STINNER: Whose responsibility is it to oversee this, to inspect it, to give us the information that they're underperforming or that they have all of these problems? [LR296]

DIANNE DeLAIR: So as Senator Walz mentioned, the Division of Public Health and... [LR296]

SENATOR STINNER: Right. [LR296]

DIANNE DeLAIR: ...regulation and licensure... [LR296]

SENATOR STINNER: Do they do a good job of inspecting and staying on top of these things or...? [LR296]

DIANNE DeLAIR: Well, like I mentioned with Hotel Pawnee and even the Palmer investigation that was done last summer was very thorough and it cited, you know, all of the evidence, the facts, but no action was taken and that's the issue. [LR296]

SENATOR STINNER: Okay, so it's the follow-up aspect of this thing, and you've already said that where do these people go. I mean that's a big question I have. We can shut these facilities down, but unless we have someplace to put people (inaudible). [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

DIANNE DeLAIR: Exactly. And I'm not advocating that the solution is shutting down facilities. What I'm saying is this is a symptom of the fact we don't have enough services in the community for people. We need to redirect our energies to community-based services, integrated housing, supportive housing that really supports people. And if you were looking at a financial angle to this, track the data of how many people in these facilities go back and forth from the hospital, the cost of that, or the regional center or Corrections. [LR296]

SENATOR STINNER: Now you said you identified some existing resources at the state level. Could you tell me what they are? [LR296]

DIANNE DeLAIR: I don't... [LR296]

SENATOR STINNER: I thought that that's what she said. [LR296]

SENATOR CRAWFORD: No, I'm... [LR296]

DIANNE DeLAIR: What I...I think what you heard me say was that the Technical Assistance Collaborative identified ways to reallocate resources and use them in different ways. There's also a demonstration waiver that the state has been recommended to apply for that would help with paying for some of these services that people need in the community. [LR296]

SENATOR WATERMEIER: All right. Further questions? Senator Crawford. [LR296]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you for those helpful points. So if this committee was formed, it sounds like a really important task for them to do would be following up on this, the recommendations of this Technical Committee, and seeing some of those places where there might be funding and also perhaps really pushing for some of these pilot waivers. And it would not just be looking at what was done wrong in the past. It really would have a very strong...it should have a strong focus on what we need to do moving forward. Is that fair? [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

DIANNE DeLAIR: That's a very fair and correct statement. So we're looking at a symptom. We need to help people now in whatever means we can do that. But we also have to figure out and plan for providing services to people that don't actually exist at this point in our state. [LR296]

SENATOR CRAWFORD: I have a very short follow-up question. [LR296]

SENATOR WATERMEIER: Sure. [LR296]

SENATOR CRAWFORD: Thank you. So I'm just trying wrap my head around the fact that we're supposed to not be congregating or segregating people but we do have these licenses for things called behavioral health assisted-living facilities. So is that illegal or against the Olmstead Act or it's...how do I reconcile that we're not supposed to segregate people... [LR296]

DIANNE DeLAIR: Sure. [LR296]

SENATOR CRAWFORD: ...and yet we have licenses to create facilities to segregate people? [LR296]

DIANNE DeLAIR: Correct. And I want to be clear that these are not grandma and grandpa's assisted-living facilities. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

DIANNE DeLAIR: So what they are, are old nursing homes in rural communities and in urban communities that wouldn't meet code today to provide care for people so they're get... [LR296]

SENATOR CRAWFORD: They would not? [LR296]

DIANNE DeLAIR: No, they would not, so they're very old, you know, kind of run down. And it's not the idea that having assisted-living facilities is a violation. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

DIANNE DeLAIR: It's that the state through its practices, its funding, its failure to provide choices, that's what implicates the violation under Title II of the ADA. So there's no choices for folks who have severe and persistent mental illness. They may have burned bridges with family or friends. There's no caseworker. Where are the services to help people with really high needs? So their only choice are these facilities that have popped up all over our state. [LR296]

SENATOR CRAWFORD: But is it...would...are we in...is this a liability to have these kinds of facilities in existence or to have licensure for this kind of a segregating facility? [LR296]

DIANNE DeLAIR: It is and it intersects with the ADA. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

DIANNE DeLAIR: It's private but the way it's implicated, the way state action is implicated, is through the licensing, you know, continuing to support them through General Funds. [LR296]

SENATOR CRAWFORD: Okay. So these are privately owned facilities; it's legal or okay as a private entity to have a facility like this. The issue is if the only opportunity or option that people with persistent mental illness have is to go into these places that exist. That's our segregation problem, is that fair? [LR296]

DIANNE DeLAIR: That's fair and that's correct. [LR296]

SENATOR CRAWFORD: Okay. All right, thanks. Thank you. I appreciate that. Thanks. [LR296]

SENATOR WATERMEIER: Further questions? All right. Thank you for your testimony. And DeLair is how you pronounce it? [LR296]

DIANNE DeLAIR: Yes. [LR296]

SENATOR WATERMEIER: All right, very good. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

DIANNE DeLAIR: Thank you for your time. [LR296]

SENATOR WATERMEIER: Okay. All right. Further proponents on LR296? Welcome. [LR296]

MARK MUNGER: (Exhibit 2) Thank you. Good day, Senator Watermeier and members of the Executive Board of the Legislative Council. My name is Mark Munger, M-a-r-k M-u-n-g-e-r. I live here in Lincoln. I'm here to speak in favor of the submitted resolution to establish this oversight committee for a situation that from this point forward should never, ever be allowed to exist. I'm speaking specifically of the deplorable living conditions within group homes such as Prescott Place here in Lincoln and those spread across the state. I'd like to relay to you my own story and experiences with someone that I advocated for and a person that became very special to me and changed me in ways I never, ever thought would happen. Karl Hutchings was a man that had mental illness and intellectual disabilities, a man that was abandoned when he was four or five years old and then placed in an institution where he would spend the next 52 years of his life. Karl died this past fall at age 56. I get a little emotional about that sometimes. I came to know Karl through the wonderful work of Citizen Advocacy here in Lincoln, having been recruited by coordinator Bonnie Arrasmith. She thought Karl and I make a good mix, so to speak, so I met Karl for the first time at The Mill on Prescott Street in south Lincoln where we both learned about each other. And then he asked me if I would walk down the street to "see his room" at Prescott. I agreed and off we went. As we walked in to the facility and up the filthy, narrow, dark stairway to his room, I was overcome by the stench of urine. As we got to the door to his room I noticed a "public" bathroom available to all residents in the wing of that structure. I asked if I could look inside, and he said by all means, in doing so I saw a toilet and shower that were literally black in the bowl of the toilet and tub. I know what I'm talking about--I owned a cleaning company for a number of years and have never seen anything quite so vile in my professional life. The smell was overwhelming. I asked Karl before we stepped into his room if he had to use that toilet and shower and he said yes. I asked if anyone ever cleaned it and his answer was a quick "no," which was beyond obvious. We then entered his room which just right there next to the bathroom. Opening the door, I saw immediately that he had no curtains on his window and I asked if he undressed for bed and etcetera and he said, yes, he had to, so there was no privacy. I then quickly noticed a bed without any sheets, pillows, or bed covers. He had a plain sunken mattress that had a vinyl cover and I asked if this is where he slept and he said yes.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

I took it upon myself within the next few days to provide to him out of my own pocket--sheets, blankets, pillows, and curtains--just life basics. I then began a relationship with Karl that spanned 10-12 months. He shared his story with me, story after story about living in these institutions and just how terrible and devalued he felt. He wanted a normal life, like we all have. He wanted to go fishing, he wanted to shoot pool, shop at a mall, dinner out, meet new people--things that we take for granted every day. But somehow...but for someone who is captured in those conditions, it's almost impossible to escape. My bottom line for Karl was I would do anything and everything to get him out of Prescott because he felt terrible there, he really did. So he and I attempted to check off his personal lists of things he wanted to do, feel, and share, and we got most of them done. To have Karl confide in me of those living conditions and how horrible they were and what they do to a person will shape my life forever. No one, and I mean no one, should be expected to live like that. It's Third-World conditions in the world's richest country. I spent 35 years as a professional firefighter here in Lincoln responding to many of the worst emergencies ever to happen in this city and I'll tell you the biggest emergency in my life now is seeing this resolution through to fruition and never have to hear of any person having to live a life like Karl Hutchings had to live. He had no escape and I want to honor Karl now. Let us all make a commitment to work to change the horrible conditions these vulnerable people live in across the state. I thank you. I appreciate your time very much. [LR296]

SENATOR WATERMEIER: Thank you for your testimony, Mr. Munger. I appreciate that and your friend. [LR296]

MARK MUNGER: Appreciate that. [LR296]

SENATOR WATERMEIER: For questions from the committee? Senator Bolz. [LR296]

SENATOR BOLZ: Well, first, thank you for your service. [LR296]

MARK MUNGER: Well, thank you, Senator. [LR296]

SENATOR BOLZ: We've talked about the Citizen Advocacy group in Appropriations and you all do excellent work. I'm just curious. One of the things that Ms. DeLair referenced in terms of how

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

our system is working and what the Department of Justice might pay attention to is whether or not there are options for individuals. And sometimes when we talk about this issue we hear about things like the Supportive Housing Program or options to transfer or the Money Follows the Person program. And I'm curious, since you were such a close advocate with and for Karl, did any of those things ever come up in the work that you did? Were those options real to him? [LR296]

MARK MUNGER: We...it became my life's mission to get him out of there and I worked with his guardian, his state guardian, and it took us forever. It seemed like, you know, months on end, but we finally did get him out of Prescott and moved out to Utica, which was...I don't remember the name of that facility out there, but it was a much better facility. So I can only speak to what I dealt with, with him, and that was that, so. [LR296]

SENATOR BOLZ: That's helpful. So he was transferred to another similar facility that you believe... [LR296]

MARK MUNGER: He was. [LR296]

SENATOR BOLZ: ...was higher quality. [LR296]

MARK MUNGER: He was and that's where he died, yeah. [LR296]

SENATOR BOLZ: But you were not...there wasn't discussion of independent or supportive...it's called the Supportive Housing Program. There wasn't discussion? [LR296]

MARK MUNGER: No, no. [LR296]

SENATOR BOLZ: Okay, thank you. [LR296]

SENATOR WATERMEIER: All right. Senator Speaker Scheer. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR SCHEER: Thank you. Did you ever, just out of curiosity, did you ever bring any of these items up to the administrator or people that worked there and, if so, what was their response? [LR296]

MARK MUNGER: At the Prescott House? [LR296]

SENATOR SCHEER: Yes. [LR296]

MARK MUNGER: Absolutely, but nothing was ever done. Whether it was with meals, cleanliness, all those things were addressed, yes, yeah. [LR296]

SENATOR SCHEER: Okay, thank you. [LR296]

SENATOR WATERMEIER: Further questions? Thank you for your testimony. [LR296]

MARK MUNGER: Thank you. [LR296]

SENATOR WATERMEIER: Further proponents of LR296? Welcome. [LR296]

JANET BENNER: (Exhibit 3) Hello. Good afternoon, Senator Watermeier, members of the Executive Board of the Legislative Council. My name is Janet Benner. I live here in Lincoln. The word "mental illness" has such a stigma that some people are unwilling to even have a discussion about it. It seems in casual conversation, people you haven't seen in a while will ask about your life and how your children are doing. Of course, I always start with my oldest child, a daughter who is married to a wonderful man, and tell them about my two beautiful granddaughters. And next, I tell them I have a bright and creative 29-year-old son who has been struggling with mental illness for 12 years. That oftentimes brings an awkward silence and an end to the conversation. If we can't even talk about mental illness among acquaintances, how can we help those who experience mental illness have a meaningful life? My husband's and my journey has been a heartbreaking one. You have a vision for how your child's life will be. When there are struggles, you keep searching for answers and hoping that someone will finally tell you what you might have overlooked. There is a longing to see that familiar smile on your son's face and hear

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

his laugh again because it has been missing for so long. Though we've been searching for answers for about seven years, when we finally received the official word that Jared had schizophrenia it was devastating as he had just begun his senior year of high school. Even though he had a short-term hospitalization in June 2006, in June 2007, our son walked across the stage at Pershing Auditorium and received his high school diploma with the help and support of his teachers at Lincoln Public Schools' Science Focus Program, also known as Zoo School. The doctors told us there was no cure, but that the symptoms can be managed and people can go on to lead happy and productive lives. But you're never prepared for all the setbacks, and we kept trying to encourage our son when he said, "I'm not sure I can go on like this, I'm not sure life is worth living." He felt left behind when his friends' lives moved on, so he tried community college, but after a few days of classes it was too overwhelming. He tried a couple different telemarketing jobs but could not manage to stay awake due to the side effects of his medication. There was a three-year period when he worked with various social services agencies to receive assistance in job searches, but it seemed all he did was fill out job applications and rarely heard back on follow-up interviews. Later on, there was a three-year period when he did hold down a job, but the stress and the irregular work hours brought about a second short-term hospitalization. It had now been ten years since our son was diagnosed with this illness and all the while he had been living at home. We had been searching for a different living situation as our son was unhappy and there was a lot of anger about still being under our roof with our rules. All of the programs that I checked into told me that unless our child was pregnant or homeless, there were no viable options. Our doctor suggested that we take our son to the People's City Mission and tell them he was homeless--then he would qualify for some programs and housing assistance. Senators, would you be able to take your child to a shelter and deem him homeless? After the eight-day hospitalization in 2016, our son needed a structured living arrangement and the "best" option was Country Meadows through O.U.R. Homes. Jared didn't understand why he was being housed with people with intellectual disabilities. He didn't understand why he was required to attend a day program where most people just slept or listened to music. After the day program ended in early afternoon, he had eight more hours of the day to fill, but there was no real sense of belonging. To him, it felt so impersonal, that his life shouldn't be a one-size-fits-all living situation because different people have different needs depending on their condition. When my husband and I attended counseling sessions to learn how to improve our relationship and how we might help our son, we were given the name of a contact at CenterPointe who put us

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

in touch with staff at Community Transitions. We wanted to improve our son's life, so after only one month's time, we again moved Jared. As you can imagine, all these changes in such a short amount of time was very stressful for our son, but Community Transitions was the start of an improvement. After day program ended, each evening the residents were required to attend support group meetings and there were staff members to lead discussions. It was a caring environment and everyone in the group could vote on outings. My son felt good that he was being listened to. Unfortunately, what was to be a 12-18 month program was cut short. After only nine months, insurance determined that Jared did not meet the criteria for this high level of care. Community Transitions worked hard to see if Jared would qualify for another program with more support, but he was denied due to lack of space. Their waiting list was long and Jared needed to be coming out of the Regional Center or homeless to qualify. After many sleepless nights worrying about the lack of a safe place to live and what would happen without a supportive living arrangement, we were fortunate to find a secure apartment for our son. However, Jared has two parents who frequently check in on him and listen when he is feeling lonely, but what will happen when we are no longer here to help? What about the people who do not have family or a caring person in their lives? Surely these vulnerable people deserve to be treated with dignity and not housed in an overcrowded building with deplorable conditions such as the veteran in Palmer, Nebraska. Throughout this whole process, the most meaningful event in Jared's life has been Lincoln Citizen Advocacy matching him up with a mentor. This has made a real difference. He has someone who will listen and be a sounding board. Relationships are key. Thank you for listening to our stories and considering the much-needed changes that are so vital in making a difference in the lives of a group of people who have been forgotten. This marginalized part of society deserves to have a life where they can hope and dream about a better day and a better life. Thank you. [LR296]

SENATOR WATERMEIER: Thank you, Ms. Benner. Can you spell the record...I mean spell your name for the record and the transcribers. [LR296]

JANET BENNER: B-e-n-n-e-r. [LR296]

SENATOR WATERMEIER: I'm sorry I didn't catch it right away, so thank you so much for your testimony. [LR296]

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

JANET BENNER: (Inaudible) thank you. [LR296]

SENATOR WATERMEIER: Are there any questions from the committee? [LR296]

JANET BENNER: Thank you. [LR296]

SENATOR WATERMEIER: Thank you. Further proponents on LR296? Proponents? Come on up. How many more people here wish to speak on LR296, proponents or opponents? Okay, I'm going to have to watch pretty closely to the time limit here because we have a whole lot of other senators will have to leave here at about 1:30 for their other committees. So, welcome. [LR296]

KASEY MOYER: Thank you. Good afternoon, everyone. My name is Kasey Moyer; it's K-a-s-e-y, Moyer, M-o-y-e-r. I'm here on behalf of the Mental Health Association of Nebraska as a proponent of LR296. The Mental Health Association of Nebraska, better known as MHA, is a peer-run, peer-operated organization, which means everybody employed with MHA has lived experience with mental health and/or substance use issues and trauma. MHA prides ourselves on having a voice in our own care. Due to our experience, many of us have lived in assisted-living homes, group homes, transitional housing, shelters. People with mental health issues and substance issues do and can recover. Sometimes options, or lack of, have a serious impact on one's ability to move forward in recovery. Many of these places have become a permanent destination, rather than a place of learning and growing. We understand that some individuals will always need the assisted-living level of care. But many come to these places and decompensate rather than get better. Like you, we need a safe and clean environment to grow. We need natural supports, a purpose, and not just become permanent fixtures in a system. We individuals, with adequate support, can learn, we can grow. I'm going to tell you a little bit about Ed (phonetic). Ed came to us about five years ago. He had been in three of these assisted-living facilities and was kicked out of every single one of them. They told him if he got kicked out of one more he was going to the Lincoln Regional Center. He came to our five-day respite and stayed--it's a four-bedroom house--and he just checked in and they warned us not to let him come in because he had all these behavior issues and he would cause harm to our house and he would do all these things. Well, what we found out is Ed thrived in our house because it was small, it was supportive, it was clean. So this guy who had been kicked out of all these places all

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Executive Board Committee
February 21, 2018

of a sudden realized that he can live in a home and, with the supports that he needed, be successful. We advocated for him to get his own apartment. People didn't...they thought he was too sick for his own apartment. Well, Ed has now lived in his own apartment for five years. He's got a cat. Last night he went to the wrestling tournament. Yesterday he was playing cards with friends, and he's made friends with his neighbors and he no longer is paying \$1,200 a month for a place that he did not do well in. He pays \$400 or \$500 a month for his apartment and is completely, fully integrated into the system and no longer is visiting emergency rooms. My staff has worked really hard as peers to become peers with people who are living in these situations. We have gone in and cleaned out dirty Depends in rooms that...in a room full of dirty Depends. I've had to go in and ask them to please clean the feces off of their bathroom so they can have clean places. It is very hard to recover with mental health and substance use issues not only if we're in a place that doesn't promote recovery. I see it every day that if people are given the proper supports, if they have natural supports, peers, they can grow, they can live on their own, and we need to quit telling people that they're too sick to have those things. It costs, on average, from what I understand, unless my numbers are wrong, \$450 a day to be at the Lincoln Regional Center, where Ed would have ended up had he not realized that he could live in a different situation. That's \$165,000 a year for one person, so I don't see how we can continue to say that we can't afford this. I think it's what our priorities are and how we want to effectively be able to help people rather than house them. That's all I have to say and I thank you for your time.

[LR296]

SENATOR WATERMEIER: All right. Thank you. Questions from the committee? Senator Chambers. [LR296]

SENATOR CHAMBERS: You made me think of something George Bernard Shaw had written in a play called Pygmalion. He said the difference between a lady and a flower girl is no so much in how they act as in how they are treated. So like they say with children who have been mistreated or they're not doing well in school, they live up to or down to expectations. And they are not inhuman, they are not unhuman, they feel, they think, they understand, sometimes they will not or cannot express it, but they know what is happening to them, they understand who is kind to them and they will react based on, as you said, the circumstances in which they find themselves. If you give an environment where they can grow, they will grow. If you give them

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

what is needed, they can flourish. And whether or not they could go to a regular classroom, go to a high school, go to university, those are not the things that make us human. It's something much deeper. And if we call ourselves human, we ought to perceive and understand these things. And what troubles me about these kind of hearings, I'm a hard man--a hard life makes a hard man--but it's too bad that people have to come before us and show us their wounds, their misery, their suffering, and hope that there's some responsive chord in us that will be touched and we will simply treat other human beings the way we would want to be treated or we would want one of ours treated if they were so situated. However difficult it is for you and others to have spoken today, I'm glad that those who spoke did, that you're doing it. We have to do whatever we think might work, and maybe nothing will, but at least you'll know you did the best you could with what you had to work with, so I appreciate your coming. [LR296]

KASEY MOYER: I appreciate that. I just really feel like we wouldn't treat animals the way people are living right now. And I have seen miracles happen of people who were told they would never work and they would never, you know, be able to have relationships and never be able to be in their own apartments. Well, they were never given the opportunity. [LR296]

SENATOR WATERMEIER: Further questions? I have a quick question, Ms. Moyer. What's...I can't get my arms around the population of this in the state of Nebraska. Your association is for the entire state? [LR296]

KASEY MOYER: Yeah, but we are primarily Lincoln focused. [LR296]

SENATOR WATERMEIER: I wondered. Okay, do you have an idea? I could ask maybe if Senator Walz would know. Is it 5,000, 10,000 people? Do you have any idea? [LR296]

KASEY MOYER: No, I don't. No. [LR296]

SENATOR WATERMEIER: Okay. All right. Thank you. [LR296]

KASEY MOYER: Thank you. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: Speaker Scheer. [LR296]

SENATOR SCHEER: With your facility, are they all dual diagnosed? Are some substance abuse and then some behavioral health or how...what does yours deal with? [LR296]

KASEY MOYER: Yeah, we serve...because we're peers and we're nonclinical, we don't look at actual diagnoses. It's more self-report, so anybody who are living with any sort of behavioral health issue, trauma, whatever it is that they're living with, they can come in and receive that support. [LR296]

SENATOR SCHEER: Okay. Thank you. [LR296]

SENATOR WATERMEIER: (Inaudible) further questions? Thanks, Ms. Moyer. [LR296]

KASEY MOYER: Thank you very much. [LR296]

SENATOR WATERMEIER: Further proponents, LR296? Come on up. Welcome. [LR296]

MELISSA LEMMER: My name is Melissa...good afternoon. My name is Melissa Lemmer, M-e-l-i-s-s-a L-e-m-m-e-r. I'm here just as an individual and just going to share a little bit about my story and...so I spent about ten years of my life in and out of hospitals and residential treatment facilities and there were no options available to me when I got out, so I'm in support of this resolution and looking at different options for people. When I got out the only option for me was I was told that I would never live on my own, that I would be on disability the rest of my life, that I would be living in an assisted-living facility, that I would be not able to work, that I would...all of these things that I had dreams and goals and hopes of. I was kind of living up to what I call the soft bigotry of low expectations. And so I was introduced to people at the Mental Health Association and they told me that recovery was the expectation and I was given two options: that I would move into an assisted living or that I would live in an adult foster home. And I took a third option and that was to get married. (Laugh) And so I have...my husband also lived in an assisted-living home and we have been together for 13 years and we're both working full time, worked our way off into civility. I'm not here to be bragging or be like...but I know that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

recovery can happen if the proper supports are in place and if there are options for people and if people are given the opportunities and if there are other places and options available in the community. I have a lot of friends that are living still in these facilities and when I go to visit the conditions are just conditions that I wouldn't want, that I don't want them to be living in. And when I went to visit and was doing visits, there's no way I wanted to spend that amount of money and be given basically a small allowance to live off of because I knew that my quality of life would not be anything. It was a very minimal amount of money. It wouldn't even buy my personal hygiene items, and that's what people are living off of today. So I just wanted to share a little bit about my story, so thank you. [LR296]

SENATOR WATERMEIER: Thank you. Questions from the committee? Thank you for your testimony, Ms. Lemmer. [LR296]

MELISSA LEMMER: Thanks. [LR296]

SENATOR WATERMEIER: Very good. Further proponents, LR296? Come on up. [LR296]

EDISON McDONALD: (Exhibit 4) Thank you. Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, and I am the executive director for The Arc of Nebraska. We are a nonprofit with 1,500 members covering the state. We are advocates for ensuring the most integrated lives possible for people with intellectual and developmental disabilities. We focus on community inclusion because it ensures that we are the most cost effective; we focus on the best treatment possible, and it brings the most back to us as a society. We strongly support LR296. The investigation and accountability found in our state-licensed healthcare facilities is severely lacking. We must take a renewed perspective from a voice outside of our typical review process. It is time for us to step up to the plate and truly care for those in deep need. The incidents at the Coolidge Center, Hotel Pawnee, and Park View Villa display a poor track record that indicates that we need something more significant than an individual investigation. Unfortunately, this pattern is not limited to these examples. We regularly have seen these questions about the processes surrounding the monitoring of these facilities. It is time to step up and take action. By failing to take action either on LB1093 or LR296 in the face of this clear mismanagement, we will become complicit in the next injuries faced. We need a deeper investigation of these issues.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

The department has failed to take action and shown that we need larger action from the Legislature. Our hope is that this will ensure that we better understand the true implications and intricacies surrounding these tremendous issues. Real quick, I did want to address the cost issue. In particular, when it comes to the overall cost, it will be minute in comparison to the cost that we see with Olmstead lawsuits typically exceeding \$1.5 million--I think the largest one I know of is \$1.7 million--and for the state that would be a poor fiscal direction to take. Also there had been some discussion as to possibly limiting the scope of this investigation and I would encourage that, instead, we keep it broader just because we'd like to not limit ourselves and ensure that there's more direction to take because we don't know exactly what will come up. And particularly in these areas we see tremendous crossover and to offer any limitations I think could require us to take further action down the line. Thank you. [LR296]

SENATOR KUEHN: Thank you, Mr. McDonald. Any questions from the committee? Senator Crawford. [LR296]

SENATOR CRAWFORD: Thank you, Senator Kuehn. And thank you for being here. Just to clarify, when you say crossover, you mean facilities that have both people with developmental disabilities and persistent mental illness? [LR296]

EDISON McDONALD: That's what I was referring to specifically. [LR296]

SENATOR CRAWFORD: Okay. All right. Thank you. [LR296]

EDISON McDONALD: Thank you. [LR296]

SENATOR KUEHN: Any other questions from the committee? All right. Thank you. Any other proponents for LR296? Welcome. [LR296]

J. ROCK JOHNSON: Good afternoon, Chair and members of the committee. I have a brief statement. When human beings are treated as a commodity, they are dehumanized. When an individual is dehumanized, anything can be done to them. Abuse, neglect, deplorable housing,

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

and even death are foreseeable consequences. My name is J. Rock Johnson, J. R-o-c-k J-o-h-n-s-o-n. [LR296]

SENATOR KUEHN: Thank you. Any questions from the committee? Seeing none, thank you. Any other proponents? [LR296]

SENATOR WATERMEIER: All right. Seeing no proponents, any opponents to LR296? Senator Riepe. [LR296]

SENATOR RIEPE: Thank you, Chairman Watermeier and members of the Executive Board. I am Senator Merv Riepe; that's spelled M-e-r-v, last name is Riepe, R-i-e-p-e. As Chairman of the Health and Human Services Committee, I am opposed to LR296. I want to be clear I am not opposed to an investigation or accountability, nor do I minimize the need for support of a safe and proper environment. I am, however, simply opposed to the process that we are proposing today. The Division of Public Health is one of five divisions which the HHS Committee has jurisdictional oversight. The HHS Committee will continue to provide oversight over this division and all divisions of the Department of Health and Human Services. The opposition is to sustain the integrity of the HHS Committee and other committees. The members of the HHS Committee act as subject matter experts regarding HHS issues and, therefore, this investigation needs to remain within the jurisdiction of the Health and Human Services Committee. As Chairman of the Health and Human Services Committee, I strongly oppose LR296 and will be willing to work with all members of the Unicameral to improve accountability of DHHS. I'm also concerned this Unicameral body becomes one of oversight committees and statewide petitions. At what point should the Unicameral become an "Unicameral"? Thank you, Chairman Watermeier and committee members. [LR296]

SENATOR WATERMEIER: Thank you, Senator Riepe. Senator Chambers. [LR296]

SENATOR CHAMBERS: Senator Riepe,... [LR296]

SENATOR RIEPE: Yes, sir. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CHAMBERS: ...I'm not being critical of you specifically but you're the one sitting in the chair and you spoke. I've been in the Legislature longer than some people in this room have been in the world. I've been on that committee for 43 years and people wonder how I can remain sane. We deal with some of the hardest problems that confront people: prisons; there have been investigations of the Beatrice institute, and I'm sure HHS and some other committees dealt with that. Nothing was ever done until a committee was put together that dealt with that specifically. There was a house cleaning as far as employees, a need to change the modus operandi and all these other things which committee members could not even take the time to do. I have to be at a committee at 1:30, but I'm on the Exec Board. We cannot even adequately discharge the duties of just being on committees. When you have the prison system, ten institutions, the Judiciary Committee could not do what needed to be done. When we had a special investigative committee, the director was replaced, higher-echelon people were replaced, the incompetency was exposed. And some lawyers, rather than have to face the Bar Association--it would be called the Counsel for Discipline--because of how derelict they were, they resigned so the information that had been disclosed would never be utilized. So I hope you don't take a proprietary ownership of the issues that fall within the jurisdiction of the HHS Committee. No legislative committee can do what needs to be done. Does your committee meet three days a week? Is it a three-day committee? [LR296]

SENATOR RIEPE: Yes, it is a three-day committee during the session. [LR296]

SENATOR CHAMBERS: That's not nearly enough time. When we were looking at the prison system, we had meetings that went on and on into the night. We subpoenaed the Governor. We subpoenaed people who would not ordinarily come. Now he might have come, but when we used the subpoena power, we got documents that nobody wanted to reveal. And sometimes you have to get a court order to agree with what you're doing even though we have subpoena power. We went through all of those steps and I had no idea that we would uncover as much as we did. So I don't think your committee can do this job that needs doing. We wouldn't have the kind of problems that were accounted...that were recounted to us today. It's not that committee members don't care. You don't even have that kind of information made available. I don't mean just from people testifying, but these agencies, these operations are not going to voluntarily come and do anything. So with all due respect to you and what HHS Committee is doing, they cannot do the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

job, they will not do the job. Meeting three days a week during the session of the Legislature is not what it takes. We don't need a scattergun approach because your committee, like the Judiciary Committee, has other issues to deal with. We need a laser-like focus, not just a light that illuminate but a light that has power behind it that can cut where cutting needs to be done. The focus keeps us from hurting healthy tissue. If we didn't have the time and take the time, as broad as our scope was, we might have made some blunders by going farther than we needed to go. But we had the time, we had people who were willing to give that time and, as a result, a job was done that nobody thought would be done because those of us who are on the committee had no idea we would uncover as much as we did. So I don't think that your committee can do the job that needs to be done, nothing to do with you, nothing to do with the committee, but the structure of the Legislature is not designed to be investigative on a scale and with the depth that this problem merits. I have seen people treated inhumanely. I have seen people dehumanized and the dehumanizers become dehumanized themselves. As they engage in this conduct--maybe they started as an employee and they had to desensitize themselves so that they could work with people in intolerable conditions. They have to steel their own nerves so that these bad conditions would not impact them as they would an ordinary human being, or they couldn't even do it. So I doubt--this is a judgment and judgments can be off the mark--I doubt that you or anybody else in this Legislature, based on your life experiences, would have any grasp of what can be done to dehumanize human beings that would equal mine. I saw it. I grew up with it. I had to go into public schools where black children were and put my hands on teachers because they were doing things to children. One example, then I'm going to stop, but I'm trying to give you a context so you'll see that I'm not attacking you. I went to this school over the lunch hour because I heard the things that happened. In those days, they didn't have individual sinks. They had a long sink and little faucets where you could drink water. And I went and I looked in the hall and I saw all these white teachers standing around. When I went, you know what I saw? I saw a little black boy on his knees--on his knees--and all those white people standing around him and he was terrified. I cleaned house and I wished that they would have called the police, because what they did was far more violative of the law than what I did. I was the good Samaritan and I told them, I'm going to be visiting this school and if I ever see you with a child on his knees like that again then what happened here today is going to be as nothing. And I didn't want to...I'm not a weepy, teary person. But I am very sensitive toward bad things that happen to people who cannot defend themselves and who have no hope. I can't give everybody hope. I cannot protect everybody. But

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

to the extent that I can to some degree alleviate what they're going through, that's what I'm going to do. I do appreciate your coming though. It indicates to me that you recognize that there's a problem, there's a need to do something. But as they say, you cannot...well, I won't use that analogy, but I just don't think the committee structure that we have, this committee system, is up to the job that needs to be done in this situation. And however you want to respond, it wasn't asking a question, but you're free to do so. [LR296]

SENATOR RIEPE: That's fair enough and I appreciate that. The intent was that the jurisdiction of the Health and Human Services Committee would address the issue over the interim and not during the three days that we're in session... [LR296]

SENATOR CRAWFORD: Right. [LR296]

SENATOR RIEPE: ...because I clearly grant you that those three days that we're in hearings and then on the floor does not allow for that. That said, if the committee was given the same resources, and we've talked about the ability to indictments and also I heard resources, if you give the resources, people can direct those kinds of things. So it's where it falls at. You can't, in my...you can't say to this one group, you have to do it on a nickel, and the other group, you get to do it on \$100,000. I mean that's not fair. [LR296]

SENATOR CHAMBERS: But here's something else. [LR296]

SENATOR RIEPE: Yes, sir. [LR296]

SENATOR CHAMBERS: The makeup of these committees, they're entirely different from an investigative committee which selects people who have the interest and will be there. Members of committees don't always come to...in for the hearings. I've been through a lot of that. [LR296]

SENATOR RIEPE: Yes. [LR296]

SENATOR CHAMBERS: And they're burdensome and not every hearing would I even call a hearing. And some members of the public who are aware of what interim studies are don't even

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

want to waste their time. The most that might happen is they'll write a report and give it to the Legislature and it won't be read. An investigative committee is given a charge and the members are expected to do a certain job and nobody would be impressed on, drafted for that committee. So even when they talk about an interim study, you have more than one thing to study. The Judiciary Committee again can be analogized to your committee. It's not going to work in terms of what we need, so maybe what I'm seeing is that you don't really have a grasp of how serious this issue is and the focus that needs to be given in order to address it. Have you ever used a subpoena during any of your hearings? [LR296]

SENATOR RIEPE: No, I have not, because... [LR296]

SENATOR CHAMBERS: Okay. [LR296]

SENATOR RIEPE: But I think, you know, part of the piece here is I think the makeup of the committee, you have to be flexible in going into that with the idea that committee membership may not be limited to simply the seven of us that serve on the Health and Human Services Committee. If you don't have the expertise and the knowledge, then you have to bring that in. I think that's what the Judiciary Committee did by bringing in an outside attorney to bring in to help, in essence, conduct a deposition, if you will, of a number of people. [LR296]

SENATOR CHAMBERS: But it wasn't the Judiciary Committee that did it. [LR296]

SENATOR RIEPE: Well, it could have been. [LR296]

SENATOR CHAMBERS: That study, that was a select committee that was put together by people who were on other committees. It wasn't just the Judiciary Committee. [LR296]

SENATOR RIEPE: But it could have been the Judiciary Committee that... [LR296]

SENATOR CHAMBERS: I don't think so. No, no, no. [LR296]

SENATOR RIEPE: Well, your opinion, my opinion. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CHAMBERS: Sometimes committees are dumping grounds. When we organize, they say, who wants to be on such-and-such a committee? Well, I don't want it. So then they might put the person with the least seniority on it. It's...they're like grab bags. And I'm going to be brutally frank now. I don't want this problem, as serious as it is, to be exacerbated by having people playing with it when we need some people who are willing to grab it by the throat and not let it go. And the...no committee of the Legislature as constructed now can do that or will do it. This will not be a politicized committee where people worry about will I be elected the chair of a committee again, am I going to offend the Republican Party or the Democrat Party or the Libertarian Party? People, the body is supposed to be nonpartisan, but people have partisan labels, except me, and we don't want that in this state. Did you hear the testimony that we heard here today? [LR296]

SENATOR CRAWFORD: Yeah. [LR296]

SENATOR RIEPE: Yes, I did. [LR296]

SENATOR CHAMBERS: Did you hear him describe what that man was going through, the bathroom, the overwhelming odors, no privacy? You haven't seen that. You don't know what it does to a person. You don't know what it means to be dehumanized. You've never had a job that made you do that where you had to be there and you had no escape. I have seen it. I know people in prison who shouldn't be in prison. I know people in jails who should be receiving mental healthcare but they're not. I was one who intervened but I couldn't do anything where there was a blind woman in a facility, and it was for people who had mental difficulties, and she got into it with a person and that person fell and died and she was charged with manslaughter, a blind, mentally ill woman. And when I described it on the floor of the Legislature, the then-only person who had been a commander in the military shed tears and he came to me afterward. He said, Senator, if I'd have known that, I would have helped you. Well, people don't know and people don't care, and if they tried to give this to the committee I would do everything I could to prevent that from happening. That's all that I'm going say. And because I've got to go to a committee hearing, are you all going to take any action today? [LR296]

SENATOR WATERMEIER: No, no. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CHAMBERS: Okay, because I do have to be at the Judiciary Committee. [LR296]

SENATOR WATERMEIER: I understand. It's nice to have you back here, Senator Chambers, but maybe it is time to go to the Judiciary. (Laughter) [LR296]

SENATOR RIEPE: And, Senator, I will walk out with you. [LR296]

SENATOR CHAMBERS: Okay. [LR296]

SENATOR WATERMEIER: All right. Senator Riepe, thank you so much. [LR296]

SENATOR RIEPE: Okay, thank you. [LR296]

SENATOR WATERMEIER: All right. Further opp... [LR296]

SENATOR RIEPE: Oh. [LR296]

SENATOR WATERMEIER: I'm sorry. Go ahead, Senator Crawford. [LR296]

SENATOR CRAWFORD: Yeah, I do have a question. And I know you have to get to committee because it's the HHS Committee, which I'm on as well. [LR296]

SENATOR RIEPE: Yes. [LR296]

SENATOR CRAWFORD: And I thank you for your leadership on the HHS Committee, but I just want a couple questions just on the record that I think are important for the transcript. And I don't mean this with any disrespect, either, and the first is a very leading one, which is, isn't the Health and Human Services one of the hardest-working committees in the Legislature with the high demand for oversight and bills? Is that true? [LR296]

SENATOR RIEPE: We do. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CRAWFORD: Yes, absolutely. [LR296]

SENATOR RIEPE: It is very true. [LR296]

SENATOR CRAWFORD: Yeah, so, I mean, it is just a committee that has a lot of work on its plate. And how many legal staff do we have? [LR296]

SENATOR RIEPE: We have the one. [LR296]

SENATOR CRAWFORD: One, right. And does she have ample time to pick up additional tasks? [LR296]

SENATOR RIEPE: I would say no but I would... [LR296]

SENATOR CRAWFORD: Yeah. [LR296]

SENATOR RIEPE: ...go back to the point that was made earlier. There was talk about added resources in terms of in the opening of this legislation. [LR296]

SENATOR CRAWFORD: Right, right, yeah. Yeah, so... [LR296]

SENATOR RIEPE: So given more resources, then it's a matter of, in my opinion,... [LR296]

SENATOR CRAWFORD: Right, right. But I think that in order to... [LR296]

SENATOR RIEPE: ...back to jurisdictional, not necessarily manpower. [LR296]

SENATOR CRAWFORD: ...in order to get additional resources, including subpoena power, I think the investigative committee is a necessary step to get those resources. So have...what did the Health and Human Services Committee do in its oversight role after the Palmer case incident came to light in June or July of 2017? [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR RIEPE: Well, I think in fairness to the department, we waited until they had the opportunity. It's not the role, in my opinion, of the oversight from HHS to all of a sudden run in and make some, if you will, political gain if we try to. This says, oh, you know, da-da-da-da-da. We get ahead of the facts. It's important to deal with the facts and the facts had to be found out first. [LR296]

SENATOR CRAWFORD: And you thought the department's job was finding the facts first. What has the... [LR296]

SENATOR RIEPE: I felt so, that, and maybe law enforcement in this case. [LR296]

SENATOR CRAWFORD: What has the committee, what has the Health and Human Services Committee done since the department has found facts on the Palmer case now? [LR296]

SENATOR RIEPE: Well, we have not...we have had meetings with the department on numerous occasions but we have not taken any corrective action plan penalties, much like we...Health and Human Services might do. We have not done that. [LR296]

SENATOR CRAWFORD: Okay. And what has the Health and Human Services Committee done to ensure we have an Olmstead Plan in the past year and a half? [LR296]

SENATOR RIEPE: Well... [LR296]

SENATOR CRAWFORD: What has our committee done to ensure that our state has an Olmstead Plan in place? [LR296]

SENATOR RIEPE: Well, I would say that we did hold a hearing on it. It was presented by Senator Walz and I think that it is still in committee and the question always came down with that is the resources that are available. [LR296]

SENATOR CRAWFORD: Resources, right, yeah. And one last thing, have you had a chance... [LR296]

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Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR RIEPE: Now, somebody wants to make resources, hey, we got... [LR296]

SENATOR CRAWFORD: You'd like some resources, is that... [LR296]

SENATOR RIEPE: Well... [LR296]

SENATOR CRAWFORD: Yeah, yeah, that, I understand that. No, I understand. Yeah, I understand. Yeah. [LR296]

SENATOR RIEPE: ...you know, I believe in plans. I'm a big fan of plans so that you know where you're going to go. [LR296]

SENATOR CRAWFORD: Yeah, and...yeah. And I'm just trying to kind of point out some of the institutional challenges you face in your position as well. Have you had a chance to visit any of these facilities, the Palmer house, Blue Hill, or Hotel Pawnee? Have you had a chance to personally visit those yet? [LR296]

SENATOR RIEPE: No, I have not. I have been to the Beatrice. I have been to the Hastings Regional Center. [LR296]

SENATOR CRAWFORD: Thank you. [LR296]

SENATOR WATERMEIER: I think we're about done. Thank you, Senator Crawford. I have to introduce a bill in about ten minutes, so didn't think about this timing like this, so I don't want to interrupt any conversation. [LR296]

SENATOR CRAWFORD: Thank you. [LR296]

SENATOR WATERMEIER: Is there further questions? All right. Thank you, Senator Riepe. [LR296]

SENATOR RIEPE: Thank you, sir. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: Anyone else in opposition to LR296? Welcome. [LR296]

JENIFER ROBERTS ACIERNO: (Exhibit 5) Good afternoon. Good afternoon, Senator Watermeier and members of the Executive Board of the Legislative Council. My name is Jenifer Roberts Acierno, J-e-n-i-f-e-r R-o-b-e-r-t-s A-c-i-e-r-n-o, and I am a deputy director with the Division of Public Health for the Department of Health and Human Services and I oversee most of the area that's regulatory in the Division of Public Health. I am here to testify in opposition to LR296 on behalf of the department. My colleague, Sheri Dawson, the director of the Division of Behavioral Health, and Courtney Miller, the director of the Division of Developmental Disabilities, are also here to answer questions regarding their respective areas. LR296 proposes to create a State-Licensed Care Facilities Special Investigative Committee of the Legislature. Currently the Division of Public Health licenses 13 types of facilities and issues over 4,000 licenses for facilities in the state. Before we address the matter relating to behavioral health, I'd like to address what a facility is and review the process and the role of the Department Division of Public Health. The Health Care Facility Licensure Act was created to protect public health and safety by providing for licensure of healthcare facilities and services, and for the development and enforcement of basic standards. Facilities that have achieved licensure have demonstrated compliance with regulations regarding the standards of operation, care, and treatment provided in the facility, and physical plant standards. Inspections are conducted by trained surveyors to determine a facility's compliance with the regulations specific to that facility type. State statute lays out the time frames for reviewing applications, conducting inspections, reporting findings of noncompliance, investigating complaints and taking disciplinary action. There is often misunderstanding about the role of the department and the time frame in which the department takes action. These statutory time frames are necessary because entities that operate healthcare facilities have due process rights. The statutory process includes time frames that provide facilities an opportunity to correct those deficiencies. In situations where people reside in a facility, the resident and/or their guardian are responsible for decisions regarding the resident's care or where the resident will receive that care, while the department's role is to evaluate whether the facility is safe to operate. I wanted to reference a few things that were mentioned earlier. There was a list that was mentioned and it was mentioned that that was generated, a list of 12-15 generated by the Department of Health and Human Services. I will tell you that that list was not generated by the Department of Health and Human Services, so I just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

wanted to clarify that. And then I also wanted to clarify a comment related to a license specific to behavioral health assisted living. In Nebraska we do license assisted-living facilities, but we do not have any particular license related to behavioral health assisted living. The Division of Behavioral Health currently works with, participates on, and is subject to oversight and recommendations on the system by numerous committees, including the State Behavioral Health Advisory Committee, federal on-site reviewers, and ongoing permanent oversight by the HHS and Appropriations Committees of the Legislature. Findings and recommendations provided by each of these entities are taken seriously and consistent with state and federal requirements, we continue to move forward to address issues and gaps in the system as identified. While the concern resulting in LR296 is understood, the committee and the work called for would be duplicative. In 2016, DHHS assembled the Disability Services Stakeholder Olmstead Planning Advisory Committee pursuant to LB1033. DHHS is complying with the activities outlined in this bill. The work includes all DHHS divisions, covering all populations, including people with intellectual, developmental, psychiatric, and physical disabilities, aging disabilities, as well as persons at serious risk for institutionalization or segregation. The information on the following pages describes in detail other areas of the bill that would create duplicative work for the Division of Behavioral Health. Thank you for the opportunity to testify before you today and I and my colleagues are happy to answer any questions. [LR296]

SENATOR WATERMEIER: Thank you, Ms. Acierno. I have a question. Did I catch you say that you don't have a license for one group but you do another? What was that? [LR296]

JENIFER ROBERTS ACIERNO: So there was a reference earlier about a behavioral health assisted living license, and there is no such license. [LR296]

SENATOR WATERMEIER: Okay, that's what I thought. [LR296]

JENIFER ROBERTS ACIERNO: There are licenses for assisted living generally. [LR296]

SENATOR WATERMEIER: Okay, that's kind of what I took it as. [LR296]

JENIFER ROBERTS ACIERNO: Okay. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: Okay. Senator Crawford. [LR296]

SENATOR CRAWFORD: I just want to follow up on that question. Thank you, Chairman Watermeier. And thank you for being here. I really appreciate your being here to help answer questions. So the, like I say, the Palmer house, the Blue Hill, Hotel Pawnee, are you saying they have assisted-living licenses that are the same kind of license as assisted living Hillcrest in Bellevue? [LR296]

JENIFER ROBERTS ACIERNO: Okay, so actually one of those facilities was licensed as an assisted living. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

JENIFER ROBERTS ACIERNO: The two other facilities are actually licensed as mental health centers, so that's a different licensure type. [LR296]

SENATOR CRAWFORD: Okay, so there is a license but it's called mental health center. [LR296]

JENIFER ROBERTS ACIERNO: There's a mental health center license. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

JENIFER ROBERTS ACIERNO: But it is not the same as an assisted-living license and it does not have the same requirements. [LR296]

SENATOR CRAWFORD: Okay. Okay, thank you. [LR296]

SENATOR WATERMEIER: Senator Bolz. [LR296]

SENATOR BOLZ: Thank you for that clarification. That's precisely what I was referencing. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR CRAWFORD: Okay. Oh, okay. [LR296]

JENIFER ROBERTS ACIERNO: Okay. [LR296]

SENATOR BOLZ: And just to flesh that out, that has a different set of regulations... [LR296]

SENATOR CRAWFORD: (Inaudible), yes. [LR296]

JENIFER ROBERTS ACIERNO: Correct. [LR296]

SENATOR BOLZ: ...that follow along, and those different regulations have different expectations than other assisted-living facilities that--and I realize this is probably oversimplifying--that follow a less medical model than the assisted-living facilities who provide nursing facility care are more medical services and supports. Is that accurate? [LR296]

JENIFER ROBERTS ACIERNO: Yeah. So I don't want to say that they have different requirements than other assisted livings because they are--I want to be very clear--they are not an assisted living, they are a mental health center, but, yes, their regulations and requirements are different than an assisted-living facility would have, yes. [LR296]

SENATOR BOLZ: Right, and they are less medical in nature. [LR296]

JENIFER ROBERTS ACIERNO: I think it depends on the facility and the type of care each individual needs. Certainly there are some components related to mental healthcare that are included with the mental health center expectations. But physical healthcare specifically, yes, you would have to have physical healthcare requirements to meet an assisted-living facility. [LR296]

SENATOR BOLZ: Right, okay. [LR296]

SENATOR CRAWFORD: But not the center. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR BOLZ: Can you tell me what percentage of--so please repeat the terminology--the...
[LR296]

JENIFER ROBERTS ACIERNO: Okay. [LR296]

SENATOR BOLZ: ...behavioral health center, mental health, just so I get it correct. [LR296]

JENIFER ROBERTS ACIERNO: Yes. So mental health center? [LR296]

SENATOR BOLZ: Mental health center. [LR296]

JENIFER ROBERTS ACIERNO: Um-hum. [LR296]

SENATOR BOLZ: What percentage of mental health centers are currently on probation?
[LR296]

JENIFER ROBERTS ACIERNO: And I don't have that number but I can get it back to you.
[LR296]

SENATOR BOLZ: Yeah, I think that's important information to share back. [LR296]

JENIFER ROBERTS ACIERNO: Yeah. Okay. [LR296]

SENATOR BOLZ: Can you tell me what contingency plans have been developed for the residents that have been displaced by the two facilities that...well, the one that has closed and the one that is closing? [LR296]

JENIFER ROBERTS ACIERNO: So what I can tell you is that the Department of Health and Human Services, all divisions have been involved for a number...for quite some time working to inform guardians that there is the likelihood or potential of closure, making sure that people have...individuals living there can work with their guardians because obviously where they go next will be the choice of them. Sometimes them, not all of these individuals have guardians but

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

most do, will be the choice of their guardians and them to determine where they decide to live next. And so we have been working very closely with the facility and the guardians in order to facilitate that. [LR296]

SENATOR BOLZ: Um-hum. Have all of the residents who were displaced from Palmer found a new home? [LR296]

JENIFER ROBERTS ACIERNO: Yes. Before that facility had closed, all of those residents had found somewhere to live. Correct. [LR296]

SENATOR BOLZ: Okay. Can you tell me--the last time I checked, the waiting list for supportive housing was at 343--can you tell me what the waiting list for supportive housing is? [LR296]

JENIFER ROBERTS ACIERNO: So I am going to have to defer to Director Dawson on that because that's not my area of expertise and she (inaudible). [LR296]

SENATOR BOLZ: Um-hum. [LR296]

SENATOR CRAWFORD: Okay. [LR296]

SENATOR BOLZ: Okay, thank you. [LR296]

SENATOR WATERMEIER: All right. Thank you. Further questions? Speaker Scheer. [LR296]

SENATOR SCHEER: Not a question but I have to leave, so I'm going to take this opportunity. A couple things: I hate to have the hearing go by and assume that all of our providers are schmucks. They aren't. There's some people and institutions out there doing wonderful work with needful people. And I feel badly and I'm not trying to minimize those that spoke before in relationship to their people from their family or people that they were working with. But I think the ownership also has to stop here and I will...the analogy is also to the extent of our aged population with nursing care. As more and more have gone onto Medicaid and because of the reimbursement levels, those facilities cannot even break even and those that even were being

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

subsidized by counties or communities have had to close simply because the cost became too tremendous to bear on those local entities. And I would suspect that the same is true on some these. I don't think people start out trying to provide bad service, unhealthy services, and mistreatment of individuals. But when you are continually reduced in your reimbursement levels, which has happened over the years, the only way to react to those lowering reimbursements is to lower your staffing. And when they lower the staffing, obviously your services become less and less frequent and it becomes less and less manageable for that. And unfortunately sometimes those facilities that have people in them, even though they're poor and no one should have to live like that, there's no place else for them to go. And so, you know, we can...we have to be careful. We have to work with people. We can't just go around and close everybody up because the people that need the services don't go away. You have to have someplace to take them and you have to have people that will work with them and help them. And so I don't want this to turn into a witch hunt where we're trying to go out after all these bad actors and let's shut them down because the people in those facilities are still people and they still need help. So I think we need to be very careful about how we go about this and realize that a great deal of the problem is not the institutions, it's the lack of the funding of institutions. And with that, you can respond any way. That wasn't a question, but that's the only way I can get it in. So thank you. [LR296]

SENATOR WATERMEIER: Okay. Thank you, Speaker Scheer. Senator Crawford, further?
[LR296]

SENATOR CRAWFORD: Yes. So in the page that has things that you think might be duplicative if this investigative committee comes forward, one piece of that is, it says, "The Technical Assistance Collaborative...report of 2016 reported that 'there is a perception that many Nebraskans with behavioral health disorders are living in assisted living facilities and supervised, congregate residential settings..." And then you say, "The report recommended that work occur to determine the accuracy of that perception and better determine the housing gaps or supports necessary." That seems to be not...that seems to be something that points to the need for this committee to work with you on following up of that report, not that there's something already duplicative. I mean they pointed out we need to get to work on this and so it seems like that's what this committee would do is to actually step in. And it wouldn't be duplicative; it would be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

actually completing or complementary to the work of the Technical Assistance Collaborative.
[LR296]

JENIFER ROBERTS ACIERNO: And I think if you go to that next paragraph, Senator, it does talk about that assisted living does not serve as the primary residential option for individuals with SPMI, and so there has been... [LR296]

SENATOR CRAWFORD: Yeah, yeah, yeah, so... [LR296]

JENIFER ROBERTS ACIERNO: ...some review done in that regard. [LR296]

SENATOR CRAWFORD: And so...and...thank you very much. I appreciate that. Thank you. I do have a follow-up question on that paragraph. So it says severe and persistent mental illness, it's not the primary option for severe, those with severe and persistent mental illness. Okay, so it says...so the Department (sic) of Behavioral Health served over 30,000 individuals. Then it says, according to that data system, you know, one third lived in private residences and how many lived in some other residences. But what we would really want to know in terms of trying to see if this is happening for those with severe and persistent mental illness, the real denominator should be those with severe and persistent mental illness. If we have 30,000 people in our Division of Behavioral Health and we have 314 individuals that are living in these 24-hour facilities, the real question is, 314 compared to how many with severe or persistent mental illness, not 314 compared to all the people that the department serves. It's the congregation, segregation, "this is the way we're treating this population" issue. So I would appreciate if you would let us know, if you don't know off the top of your head, how many people that the Department (sic) of Behavioral Health serves that are specifically those with severe and persistent mental illness. [LR296]

JENIFER ROBERTS ACIERNO: Yes. [LR296]

SENATOR CRAWFORD: Thank you. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: All right. Further questions? Thank you for your testimony, Ms. Acierno. [LR296]

SENATOR CRAWFORD: Thank you. Thank you. Thank you. [LR296]

SENATOR WATERMEIER: Are there further opponents to LR296? [LR296]

SENATOR CRAWFORD: And thank you for your work. I appreciate it. [LR296]

SENATOR WATERMEIER: (Exhibits 6 and 7) Seeing none, anyone in the neutral capacity, LR296? Seeing none, Senator Walz to close. Oh, excuse me. To get in the record: a letter from Carole Forsman in support and a letter from Linda Nicholson in support of LR296. [LR296]

SENATOR WALZ: Thank you, Senator Watermeier. You know, I guess I just have a couple points I want to make after the last testifier and that is that when things get so bad there is a point when you have got to take action and you have got to get people out. If there was a facility that was on fire, does the new owner still get due process rights? No. You get people out. The other thing that I wanted to point out is Life Quest Blue Hill was on and off probation for major violations since 2012, so it just seems that we need to do something to take some action. And I really don't feel that HHS is up to the task either. If they were, we wouldn't be here today. I want to thank the testifiers for their courage and their words today. As Dianne stated, things are bad and things are getting worse. We hear the news and we see what's happening all around us. The need for mental health supports continues to grow in our society. We have to first understand that there is a need and the need is real. This is a significant issue and we need to take action now and put supports in place that will assure people are free from abuse and neglect, services that will allow people to live in the least restrictive environment and services that will provide rehabilitative programming to improve the quality of their lives. It is our job, I feel, to protect all Nebraskans and to keep them safe, and this is not happening, especially for people who are most vulnerable. We should not accept any excuses for this. Thank you, again, for the testifiers who came, and I hope that you will join us in supporting LR296. [LR296]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Executive Board Committee
February 21, 2018

SENATOR WATERMEIER: All right, Senator Walz. Questions from the committee? Thank you.
[LR296]

SENATOR WALZ: Thank you. [LR296]

SENATOR WATERMEIER: All right. We will close the hearing on LR296 and we'll have to all tell the Speaker we're sorry we got into his nap time by half an hour. [LR296]