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Banking, Commerce and Insurance Committee
February 21, 2012

[LB835 LB838]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 21, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB835 and LB838. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; Paul Schumacher; and Ken Schilz. Senators absent: None.

SENATOR PAHLS: I want to thank you. We are waiting for one more senator, but I think we are going to get started since we are running a couple of minutes late. I want to welcome you to the Banking, Commerce and Insurance Committee. My name is Rich Pahls from Omaha, and I represent District 31. Today we are going to take up the bills in the order as posted, (LB)835 and (LB)838. To better facilitate this meeting, instead of me reading sort of the rules of the game, have you take a look at the white board over there. That should give you some idea of some of the things that we are expected...for all of us to follow to make the meeting more efficient. If you are going to hand out materials, we need at least 10 copies. If you need some copies to be made, if you do not have them already, wave your hand. Nobody's waving their hand, so apparently everybody is ready to go. I want to have the senators introduce themselves. [LB835 LB838]

SENATOR SCHILZ: Senator Ken Schilz, District 47.

SENATOR SCHUMACHER: Paul Schumacher, District 22.

SENATOR LANGEMEIER: Chris Langemeier, District 23.

SENATOR PIRSCH: Pete Pirsch, District 4.

SENATOR McCOY: Beau McCoy, District 39.

SENATOR GLOOR: Mike Gloor, District 35.

SENATOR PAHLS: And to my right we have Bill Marienau, he is the legal brains behind this Banking (, Commerce and Insurance) Committee, and all the way over there is Jan Foster. She makes sure that we get everything down on paper and it's done correctly. And we have Brian Eulie; Brian, would you wave your hand, and Alex Wunrow. Thank you. What I'm going to do today, we are going to use the lights today. And just to give you an idea, we start with green, that gives you four minutes; amber, one minute; and red means please wrap it up before I tell you to stop. Does that make sense? Okay, and also, today we have...we're using the yellow papers by the door. I think it's sort of self-explanatory. Both bills are on it. Circle what your testimony will be, and you need to

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present this to Jan Foster. So every time you're up here, you do need to have this in your hands to give to Jan. I think we are ready to begin, and we will start with (LB)835.

SENATOR LANGEMEIER: Are we going to hear both bills together? [LB835 LB838]

SENATOR PAHLS: Yes, yes, we will be hearing both bills together. [LB835 LB838]

TIFFANY SEIBERT: (Exhibit 1) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Tiffany Seibert, T-i-f-f-a-n-y S-e-i-b-e-r-t, and I'm legislative aide to state Senator Jeremy Nordquist representing Legislative District 7, downtown and south Omaha. Senator Nordquist apologizes that he can't be with you today. He is presenting at a health information technology conference, but he's asked me to share some brief comments about LB835, the Nebraska Health Benefit Exchange Act. I provided to the committee an overview of LB835's version of the Nebraska Health Benefit Exchange Act. As this committee knows well, the Affordable Care Act requires a health insurance exchange to be operational in each state by January 1, 2014. The Affordable Care Act has wisely seated the power to develop exchanges to the states, but should states choose to defer or should they miss established deadlines and benchmarks, the federal government will step in to create this private health insurance marketplace for them. A health insurance exchange creates a competitive marketplace that gives consumers more control, quality choices, and better protections when buying health insurance. It's intended to be an easy-to-use Web site that will allow consumers and small businesses to make real and educated comparisons between plan options so they can find the best option that meets their needs and budgets. In a nutshell, it's intended to make buying insurance easier for those who need it. And there is a significant need in our state. In 2009, there were over 200,000 uninsured Nebraskans, which is approximately 11.5 percent of the population. In that same year, while more than 95 percent of large insurers offered health insurance to their employers, less than a third of small employers were able to offer health insurance to their workers. And, according to analysis produced for the Nebraska Department of Insurance, it's estimated that eventually approximately 120,000 Nebraskans will purchase their health insurance through this exchange. So all that's to say that we do have health insurance access and affordability problems in our state, and Senator Nordquist believes that to continue to ignore these problems and to do nothing is not the kind of leadership this body owes to its constituents. He believes this is an opportunity with full federal funding to create a health insurance marketplace that will help tens of thousands of Nebraskans purchase and afford private health insurance. Senator Nordquist believes that this Legislature should take advantage of this significant opportunity, and that's why he's introduced LB835. Because Senator Nordquist firmly believes that this Legislature should create a state-based health insurance marketplace that is designed for Nebraskans by Nebraskans, he has brought LB835 before you today, or technically, I'm bringing it before you today. Over the course of the summer and fall, he's been working with other senators to bring together stakeholders in the healthcare system to come

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together and find common ground and develop an exchange framework that meets the needs of Nebraskans. As a result of these stakeholder meetings, a few salient points of consensus were brought to light. One was that it was not the will of the stakeholders that a new state agency should be developed to run the exchange. The second point was that it was important to stakeholders that they had a seat at the table to make governing decisions about what this new private health insurance marketplace in our state should look like. LB835 was built around these principles. It establishes the Nebraska Health Benefit Exchange within the Nebraska Department of Insurance. It would also create a governance board that's comprised of consumers, small businesses, healthcare providers, health insurers and agents that would be responsible for collectively making the decisions about what an exchange should look like in Nebraska. It's important to Senator Nordquist that LB835 would create an open and transparent process bringing knowledgeable stakeholders to the table to give everyone a say in the future of our health insurance marketplace in our state. Senator Nordquist has asked me to address a couple of issues specifically about the composition of the independent governance board. We've heard some concern expressed about the lack of insurance industry expertise on the board. We'd like to point out that of the eight appointed members to the board that are non-ex officio members, two of those members directly represent the insurance industry. One being the perspective of health insurance carriers, and the other from the perspective of agents and brokers. Another piece that he'd like me to point out is that in recognition of the significant and truly unparalleled expertise of the Department of Insurance, the director of DOI has a seat on the board as well. It should also be noted that the federal regulations or the proposed federal guidance for the exchange expressly prohibit majority representation of insurance industry and interests on the board. And finally, we think it's worth noting that most other states with governance boards expressly prohibit anyone connected to the insurance industry from serving on the board at all. At the time this bill was drafted, of the 12 states that had established exchanges, 10 had independent governance boards, and of those 10, 6 boards had enacted such strong conflict of interest provisions in their legislation that really expressly prohibited insurance from being on the governing board at all. So Senator Nordquist respects and appreciates the input of those within the insurance industry, and so the makeup of the governing board in LB835 was an attempt to strike a balance between maintaining the exchange as a pro-consumer reform, which is how it was always intended, but also allowing every voice to be at the table and for the insurance industry to share their significant expertise in how insurance works and would continue to work as we move forward. Finally, if you look at page 13 of the bill, lines six through eight, you'll see that the board shall create technical and advisory groups as needed to discuss issues related to the exchange and make recommendations to the board. I think this committee is well aware that there's a pretty tight time line that we're on, should the state move forward in establishing a state-based exchange. These issues aren't easy. Also, these are...and I don't need to tell this committee that as well. Senator Nordquist never envisioned that this 11-member board would automatically come together and have all of the answers to these complex

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issues. In many other states, they've used these technical and advisory groups to leverage the significant expertise of a variety of industries and then provide recommendations to that governing board to make the binding decisions. So the vision for LB835 was always that these technical or advisory groups would come together and help the board meet the significant requirements of this bill and of exchange development and also help them meet the really tight time line. And so all that's to say, there will be plenty of opportunities for the board to leverage the significant expertise of the insurance industry, as well as other industries through these technical and advisory committees. A couple of other things he wanted me to be sure to highlight, one was the funding mechanism that's in LB835. He firmly believes that we must pay for the operation of the exchange with the revenue that we already have, and LB835 has provided a mechanism to do just that. He would like me to be very clear. LB835 does not create any new taxes, nor fees, nor assessments to fund the establishment or ongoing costs of the Nebraska Health Benefit Exchange. It's the intent of LB835 to take the current funding stream for the Nebraska Comprehensive Health Insurance Pool, or NECHIP or CHIP, take that current funding stream and transition it to fund the Nebraska Health Benefit Exchange. This bill, (LB)835, requires the governance board of the exchange to work with the NECHIP Board of Directors to create a plan to transition all members of any CHIP to the exchange as of January 1, 2014. With the availability of federal subsidies to make premiums more affordable, and with the new requirement that insurers can no longer deny due to preexisting conditions, the need for the CHIP pool is essentially eliminated, so it's Senator Nordquist's belief that we can take the ongoing funding mechanism for NECHIP and simply transition it to the exchange. If you look at the fiscal note of LB835, it says clearly that the annual funding for NECHIP is about \$24 million to \$27 million a year. The fiscal note also estimates that the estimated expenditures upon full implementation of the exchange is around \$15 million per year, so we can clearly take that \$24 million to \$27 million that we're currently spending on the CHIP pool and put that towards the exchange at \$15 million a year, and, I mean, you see that leaves us some wiggle room, about \$10 million less that we would be spending on the exchange as opposed to what we're currently spending on the Comprehensive Health Insurance Pool. Also, if you look at the fiscal note, just a little clarity, the last paragraph talks a little bit about some of that funding stream is used for general funds, some of it's used for the mutual aid fund. It was never the intent of this bill to take more money than we currently use for the CHIP program, so we may need to work with this committee. The senator is willing to work with the committee and fiscal office to clear up that language, so we're just taking the current amount of money we spend on the CHIP pool and putting that towards the exchange, and in fact, maybe even using less dollars according to the fiscal note. Finally, Senator Nordquist wanted me to be sure to call your attention to a few provisions in the bill in the event that the federal Affordable Care Act is judicially invalidated or legislatively repealed. If you look at page 15, section 11, it states that if any portion of the federal act or any regulation or other guidance issue thereunder is legislatively or judicially invalidated and rendered of no effect in this state, the board shall immediately issue an opinion as to the effect of

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such action on the legal status of the act. The board shall then make recommendations to the Legislature as to how to move forward. Senator Nordquist believes that this provision provides the appropriate escape clause, if you will, so that if current federal law should change, the stakeholders on the governing board can collectively determine what's the best option and what's the best way to move forward for the state of Nebraska. LB835 allows our state to take action now to create a state-based Nebraska health insurance exchange, but also allows for a change of course should something happen to the federal law. Ultimately, a state-based Nebraska health benefit exchange can bring greater choice, transparency, value and competition into our health insurance marketplace. It can increase consumer choices and portability of health insurance. It can provide affordable options to small businesses to purchase private health insurance for their employees. It can empower consumers to compare plans and make more informed decisions about their healthcare and coverage. Senator Nordquist believes Nebraska should take advantage of this opportunity to create a health insurance marketplace in Nebraska that competes on the basis of price, quality, service and other innovations, and he would appreciate your support for an advancement of LB835. I would be happy to try to answer any questions about the bill, or also, if I'm unable, I'll certainly take really good notes and have the Senator get back to you as soon as he's back. [LB835 LB838]

SENATOR PAHLS: Thank you. Very well done. I think Senator Pirsch has a question. [LB835 LB838]

SENATOR PIRSCH: Yeah. Upon what is this language based? Was this taken from some other jurisdiction or from some model act? [LB835 LB838]

TIFFANY SEIBERT: Sure. Well, you can see from my hefty binder here that we've been looking at a lot of other states' legislation. Over the summer when Senator Nordquist was working on this bill, there were 12 states that had enacted legislation. We really took a look at all of them minus Massachusetts, we knew that was more expansive than probably what Nebraska was willing to do. We also didn't spend much time looking at Vermont's legislation, because they did a...they're working on a single-payer system at this point, so we also knew that was probably beyond the scope of where Nebraska was headed. Specifically, for the governance board portion of the bill, we looked a lot at West Virginia's language. They have a similar model where it's established under the Department of Insurance, but has a 10-member independent governance board, so that's largely where that idea came from. When we look at a lot of the board procedural language that's in the bill, we had asked the Legislative Research Office to put together a very comprehensive, very well-done report of boards and commissions that currently exist in statute in Nebraska, and so we took a lot of that procedural language from boards and commissions that already exist. When we look at the unique appointment structure in LB835, Senator Nordquist felt that it was really imperative, given the unique nature of what this state is being asked to do to develop an exchange, he felt it was very

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important that we had as many people providing input in the process as possible, so you look at the fact that the Legislature provides lists of candidates from which the Governor would appoint to the board. We took a look at the Accountability and Disclosure Commission allows that the Legislature create lists from which two members are appointed. And also, the Commission on Public Advocacy allows the Nebraska State Bar Association to submit lists to the Governor from which to appoint members. So we tried to keep it within language that currently exists in statute and take what we could from other models. When we look at the rest of the language, we looked heavily at Colorado and West Virginia, but ultimately, after meeting with stakeholders, it became really clear, and I think if you look at this bill compared to a lot of other states, Nebraska is really unique in a couple of ways. A lot of the other bills lay out a lot of the more...a lot more provisions of a exchange implementation in a really prescriptive way. And this bill, I think, provides the governing board a significant amount of flexibility to determine what are the best, you know, best provisions we can implement in Nebraska. It was the intent to give the governing board really the expertise, the experts at the table the flexibility to decide and design an exchange that worked to meet our Nebraska-specific needs. So ultimately, if you look at most of the language, I think the bill is pretty flexible and looks a lot different than a lot of other states. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. Ms. Seibert, talk to me a little bit about time frames for the board. It looks like we're talking about the appointments being done by names in by June 1, appointments by July 1. It may be that their first action is to deal with the unconstitutionality issue as it comes up. [LB835 LB838]

TIFFANY SEIBERT: Right, right. It's a really tight time line, admittedly. As Senator Gloor mentioned, they have the...the bill has the Legislature submitting its list to the Governor by June 1, well, it has an E clause on it. It has the Legislature submitting its list to the Governor by June 1, the Governor appointing by July 1, and then on page 14 of the bill, they list out a number of things we're asking the board to make recommendations about, and that report is due on December 1 of 2012. I think, you know, there could be discussions about whether there's flexibility. This was just an attempt to put some time line on the table, obviously, heavily leveraging the technical and advisory groups. I mean, I think to some extent when you look at other states...I know a lot of research is being done by the Department of Insurance, and we have a wealth of information from the first round of grant, the million dollar planning grant that they received. And there's a lot of information in that report, but we would need the governing board and the advisory groups to work quickly with the Department of Insurance to really answer a lot of those questions. I think as far as the constitutionality and how that will play into all of it, I mean, I think this committee knows that the time line is a little bit up in the air. We know the Supreme Court will take it up in late March. There was just an article today in USA Today that said that the first thing the Supreme Court will consider is whether or not

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they can even look at the constitutionality of the individual mandate, because there's something called the Tax Anti-Injunction Act that...I'm not an attorney, so...but that you cannot question the constitutionality of a tax imposed until you've actually imposed it. So that would push a decision back potentially until 2015, should the Supreme Court sort of decide to punt. So I mean, I think that is one of the first things they could deal with. That's also one of the first things that, you know, could be taken off the table. I don't think anybody knows. And so the point of this bill from Senator Nordquist's perspective was to give the opportunity to bring people together, to have the conversation, to talk about how to make health insurance more accessible and affordable for Nebraskans, which is really a conversation we should probably be having anyway, and you know, use federal funding to move that conversation forward, and then we're prepared, and we're not risking the federal government coming in and implementing, and telling us what our private health insurance market should look like in the state. [LB835 LB838]

SENATOR PAHLS: As I, and I will commend you, because I think this is part of your life, isn't it? (Laughter). [LB835 LB838]

TIFFANY SEIBERT: It certainly has been. (Laughter) [LB835 LB838]

SENATOR PAHLS: I just...I can feel from this side that it is. (Laughter). After listening to your, you know, to your talking points, to me, it seems like the kicker in this whole deal is number one, money and the board. Those are the two things you emphasized today, money and board, okay. [LB835 LB838]

TIFFANY SEIBERT: Yeah, I would say, and one thing the Senator in my call with him 15 minutes before I came in here was, you know, I think that is his real priority is that the independent governance board is bring everyone together, the major players in the healthcare system, to the table to collectively decide what's best for Nebraska. And he believes this should be done in an open and transparent process, and these decisions should be made so that, you know, as many people as possible have input, because this is a major undertaking for our state and will affect a lot of people. And you know, I think it's his priority that as many people can weigh in on this as possible. [LB835 LB838]

SENATOR PAHLS: Okay, and in your research...see, I found out because I've attended a number of conferences, and about at every conference, there's always this, hey, we moved too fast. And they said, well, we wish we...you know, so they're having to go back. Did you run into your research on that, that the states that you've, you know, checked on? Are they happy with what they've done? [LB835 LB838]

TIFFANY SEIBERT: You know, I haven't spoken to anyone in particular. I've just read a lot. [LB835 LB838]

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SENATOR PAHLS: Okay, okay. [LB835 LB838]

TIFFANY SEIBERT: I haven't read anything that says anyone's, you know, sort of back pedaling. That being said, that doesn't mean there aren't states doing that, are experiencing that. But I think, you know, we've spoken with a lot of stakeholders in this industry that are involved in the system, and I think there's a lot of expertise here. There's no doubt that we have a significant amount of insurance industry expertise. And if we get all the right people to the table, I think Senator Nordquist is confident that we can, you know, we can do this in a way that's beneficial and it's a meaningful conversation and can move us forward. [LB835 LB838]

SENATOR PAHLS: Okay, I see no questions. Thank you for your testimony, well done. [LB835 LB838]

TIFFANY SEIBERT: Thank you. [LB835 LB838]

SENATOR PAHLS: Now we will take up LB838. Good afternoon. [LB835 LB838]

BILL MARIENAU: (Exhibit 2) Thank you, Mr. Chairman and members of the committee. For the record, my name is Bill Marienau M-a-r-i-e-n-a-u, and it is my privilege to serve as legal counsel to this committee. I appear today at the request of Chairman Pahls to offer a brief overview of LB838. LB838 grows out of the continuing interest of this committee in the subject of establishing a health benefit exchange in response to the federal Patient Protection and Affordable Care Act as amended of 2010. Last year, this committee conducted three briefing sessions on exchanges presented by the Department of Insurance. One was during, the other two were after the 2011 regular session. Also, the committee conducted an interim study hearing on exchanges at the end of November pursuant to study resolution LR85, which was introduced by all of the members of this committee. LR85 was the first study resolution introduced during the 2011 regular session. LB838 is very straightforward in that it is taken almost entirely from the American Health Benefit Exchange Model Act developed by the National Association of Insurance Commissioners, the NAIC. The NAIC is a nonprofit organization made up of the insurance regulators in 56 American jurisdictions. Now I would like to have passed around to the committee copies of the NAIC model act. And you will be able to see how the model act was fashioned into LB838. LB838, as based on the NAIC model act, sets out the statutory framework for establishment and maintenance of a Nebraska exchange. Purpose and intent provisions are present; there is a long list of defined terms, there are provisions for establishment of an exchange, general requirements for an exchange, duties of an exchange, health benefit plan certification, funding to support operations of an exchange, and rule and regulation authority. The purpose of the exchange is to facilitate the sale of qualified health plans in the individual market and to establish a small business health options program to assist qualified small employers in enrolling their employees in qualified health plans

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offered in the small group market. The intent of the exchange is to reduce the number of uninsured, provide a transparent marketplace, provide consumer education, and assist individuals with access to programs, premium assistance tax credits, and cost-sharing reductions. We can probably expect continuing discussion of governance of an exchange. The NAIC model act points out in a drafting note within its section 4 that the states have different options to consider when deciding how an exchange is to be governed. The NAIC model act does not include any specific option for governance. It leaves a blank in the first subsection of section 4 for states to fill in. The Affordable Care Act requires that an exchange must be a governmental agency or a nonprofit entity. In its drafting note, the NAIC model act points out that an exchange could be located in a new or existing state agency. The exchange could also be established as an independent public agency or quasi-governmental agency with an appointed board of commission responsible for decision making and day-to-day operations. An exchange could also be established by creating a nonprofit entity. LB838 was drafted to adopt the first option. You can see it in the green copy on page seven lines 18 and 19. In subsection 1 of section 4, the bill says the Director of Insurance is hereby authorized to establish an exchange. Those are the homegrown provisions that fill in the blank left in the NAIC model act. LB838 recognizes that the Department of Insurance is a long-established and well respected state agency. It is a known quantity that would be already capable of meeting federal requirements and time lines in order to establish and maintain an exchange. The department has a history of carrying out many complex statutory mandates. Last year, the department completed a comprehensive study on this general subject, and among its recommendations was one suggesting that the department should establish and maintain the exchange. LB838 picks up on that recommendation. That is a brief overview of LB838, its provisions and its origins. Thank you. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you. [LB835 LB838]

BILL MARIENAU: Thank you. [LB835 LB838]

SENATOR PAHLS: Now let me explain again, you need to fill this out, and this is how we do it in front of this committee. You see the front row? I want you to think like you're in church and you're going to be in front. (Laughter) So as I look at...so those people who are going to be proponents, at least six of you need to move to the front row, and then as they leave, does that make sense? So if you start coming up, if I can have six up here initially, there will be time for more. It looks like we have two more is all we have right now. [LB835 LB838]

SENATOR PIRSCH: Chairman, since we're considering two bills, if they can state which one they're a proponent of. [LB835 LB838]

SENATOR PAHLS: Yes, yes, yes. Now we are going to start out with the proponents.

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Either bill you want to be a proponent of is not a problem, because that's why you're filling out the form. Does that make sense? And just so I can have a feel how many people are going to, just by waving your hand, plan to testify today? Okay, that's very doable, very doable. We are ready to begin. Good afternoon, Commissioner. [LB835 LB838]

MARY ANN BORGESON: Good afternoon, Chairman Pahls and Senators. My name is Mary Ann Borgeson, M-a-r-y A-n-n B-o-r-g-e-s-o-n. I live in Omaha, Douglas County. I am the vice chair of the Douglas County Board of Commissioners, but I am here today on behalf of the Nebraska Healthcare Insurance Exchange Alliance group. I am here today also to testify in favor of both LB835 and LB838. Beginning in 2014, health insurance exchanges will provide marketplaces for health insurance for tens of millions of Americans who will be eligible for approximately \$500 billion of federal health insurance tax credits and other premium assistance over the next decade. Equally important exchanges will provide gateways to state-run programs such as Medicaid and CHIP. Nebraska will have substantial flexibility if we decide to implement our own state-run insurance exchange including what products are available, how consumers shop for coverage and access tax credits, and how the exchange interfaces with other state programs. States that cede their markets to the federal government will not only give up their authority to design an exchange that meets their unique needs, but will still have to expend considerable time, money and resources to meet the federal exchange requirements. There are four different areas that Nebraska can control by designing its own exchange. These include qualified health plan selection process, network adequacy, marketing standards, and defining the agent-broker role. There are nine other areas that Nebraska can design that are subject to federal approval. Applications for coverage and eligibility, governance, subsidiary and regional exchange standards, shop employer-employee choice model, exchange tools such as a Web site and call center, navigator standards, requirements for qualified plans, qualified health plan accreditation and picking essential community providers. We have the opportunity here in Nebraska to keep the exchanges simple and the cost effective. To assure success, exchanges should not take an additional function beyond those required by law. I want to emphasize to the committee that there is no do-nothing option. A federally-run exchange will demand state resources and take away state authority. States should take the lead on exchanges building systems that meet their unique needs and preferences. I encourage the committee to support LB835 and LB838, and thank you for your time this afternoon. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. Ms. Borgeson. [LB835 LB838]

MARY ANN BORGESON: Yes. [LB835 LB838]

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SENATOR GLOOR: Do you think, in your opinion, that we have a large enough pool of insured lives to be able to make an insurance exchange successful, even if the state's book of business isn't rolled into it? [LB835 LB838]

MARY ANN BORGESON: Even if what? [LB835 LB838]

SENATOR GLOOR: The state's book of business, specifically Medicaid, isn't rolled into it. [LB835 LB838]

MARY ANN BORGESON: From what I understand, yes, I think we do. [LB835 LB838]

SENATOR GLOOR: Okay, thank you. [LB835 LB838]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. I did let Mary Ann get away with not having the light system. (Laughter). [LB835 LB838]

MARY ANN BORGESON: Thank you, Senator. [LB835 LB838]

SENATOR PAHLS: Please. Good afternoon. [LB835 LB838]

AMANDA McKINNEY: (Exhibit 3) Good afternoon. My name is Dr. Amanda McKinney, M-c-K-i-n-n-e-y, and I'm a physician at the Women's Health Center of Beatrice. I am a member of the Nebraska Medical Association's legislative committee and have been involved in healthcare reform in various ways over the last four years. I am here today to speak on behalf of LB835 as it pertains to establishing the guidelines for health insurance exchange for the state of Nebraska. There are two bills being brought forward, but it is my opinion that LB835 offers a better opportunity for consumer advocacy and value. One of the most important decisions before you today is where the exchange should be housed and how it will be governed. I strongly urge the Legislature to establish an independent or quasi-governmental nonprofit entity. This is the structure being pursued in 34 other states. Both bills are similar in many respects. However, LB835 creates a strong, independent governing board that will assure consumer advocacy. It provides that an 11-member governing board would be made up of members from each congressional district, one member to represent the interest of small businesses, two members to represent the interests of healthcare providers, and one member to represent the interest of health insurance agents. Nonvoting ex officio members would include the Director of Insurance, the Director of Medicaid and Long-term Care, and the Director of Children and Family Services. The exchange would be housed in the Department of Insurance, but only for administrative and budgetary purposes. The function of the exchange...the functions of the exchange do not fit well into any existing agency, as both the Department of Health and Human Services and the Department of Insurance have interest in how the exchange functions. Allowing the exchange to be placed within an existing agency such as the Department of Insurance

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would be akin to allowing the proverbial fox to guard the hen house. It is essential for the benefit of the consumer and the patient that this exchange be designed and managed with their best interest in mind. Making sure there is a single point of entry into the exchange and seamless coordination with other public programs like Medicaid and CHIPS is paramount. Getting patients to the point of access for the exchange through community navigators and advocates will help those people obtain needed coverage and make this exchange a success by making the pool of participants as large as possible. The states have been entrusted to develop an insurance exchange that works for the people of the state. The goal is to insure as many of the currently uninsured as possible and to make it more affordable for small businesses to provide health insurance for their employees. Governing the exchange with an independent board will ensure that the exchange does indeed work for the people and not for the interests of the health insurance industry. Thank you. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB835 LB838]

DENNIS BUTLER: Senator Pahls. [LB835 LB838]

SENATOR PAHLS: Yes. [LB835 LB838]

DENNIS BUTLER: (Exhibit 4) My name is Dennis Butler, D-e-n-n-i-s- B-u-t-l-e-r. I'm from Lincoln, Nebraska. I'm a 34-year health insurance professional. I speak in support of LB835 and LB838. I am here today representing the Nebraska Association of Health Underwriters, the Nebraska Association of Insurance and Financial Advisors, NAIFA, the Independent Insurance Agents of Nebraska, and the Professional Insurance Agents of Nebraska. We have handout materials that they're passing out to you now that you can keep. Collectively, our statewide organizations represent 5,000 members who are licensed insurance agents and consultants. We all advocate for laws and regulations which are mutually beneficial to consumers and agents. We all work to promote our members' professional knowledge and ethical conduct. Licensed agents provide professional guidance and protection to consumers in every county in the state of Nebraska. Our members are the most knowledgeable consumer advocates in the insurance delivery process. Our groups have come together as one voice, so if the Affordable Care Act provisions require a health exchange, if they are upheld, we are in a position to assist our state regulators and policy makers to establish Nebraska's own insurance exchange. We feel strongly a state exchange is better for Nebraska consumers because it can be built to meet local needs most efficiently utilizing our existing resources. A state exchange will maintain state authority and jurisdiction for insurance sales that are already regulated by the state and will reduce overlapping and confusing federal legislation. Our associations see agents playing a very critical role in a Nebraska insurance exchange. As the first line of consumer advocates, Nebraska's licensed agents and advisors should be the primary source for insurance enrollment and service and maintain the ability to advise consumers and sell products through a

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Nebraska exchange. Agents will provide valuable services to individuals and employers by explaining choices, seeking affordable plans, resolving problems with claims and coverage. Agents must be able to access exchange resources through the Web portal on behalf of consumers and our customers. Qualified plans offered through the exchange should be available on an open brokerage basis in order to allow free competition, and agents should be adequately compensated for the services they provide through the exchange. On the question of governance, agents should be represented in the governing structure that is ultimately established to operate a Nebraska exchange. We are also often asked about the role of navigators, the navigator being a new term with the new law. Exchange navigators should educate consumers on how the exchange functions, assist in navigating the exchange Web site, explain available subsidies, assist in enrollment for Medicaid and other government programs, and refer consumers to licensed professionals to assist with choosing and enrolling in an insurance plan. Navigators who offer advice on plan choices and enroll purchasers in insurance plans should comply with existing Nebraska licensing statutes and regulations. Unqualified and unlicensed individuals should not be permitted to engage in such activities. Laws and regulations protecting consumers should apply to the exchange as they do to the rest of the marketplace. I am happy to be here today to support the concept of establishing our own state exchange and be glad to answer any questions you might have. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. I'm going to ask you the same question. Do you think we have a large enough pool of lives to be able to make an exchange work if we peel out Medicaid, CHIP and whatnot in the state? [LB835 LB838]

DENNIS BUTLER: Senator, I think the answer to that question depends some on if the law is upheld, and if the...what happens to the subsidies. If the exchange is the only place where a person can reach and get subsidized coverage, the answer's probably yes. [LB835 AND LB838]

SENATOR GLOOR: Okay. [LB835 LB838]

DENNIS BUTLER: But if the...depends kind of what happens to the federal subsidies and those things. [LB835 LB838]

SENATOR GLOOR: Thank you. [LB835 LB838]

DENNIS BUTLER: You bet. [LB835 LB838]

SENATOR PAHLS: I just have a question. You're representing the four organizations at the top of the page? [LB835 LB838]

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DENNIS BUTLER: We try to not get four insurance people to have to come up and talk to you today, Senator. (Laughter). [LB835 LB838]

SENATOR PAHLS: That's good, thank you, thank you. Thank you very much for your testimony. [LB835 LB838]

DENNIS BUTLER: Thank you. [LB835 LB838]

SENATOR PAHLS: Yes. Good afternoon. [LB835 LB838]

JANE YULE: (Exhibit 5) My name is Jane Yule, J-a-n-e Y-u-l-e. I'm a family nurse practitioner self-employed here in Nebraska, lifelong resident of Nebraska, and first-time testifier before a committee. I've lived in...on a farm in northeast Nebraska for the last 25 years with my husband, Loren, and as we are both self-employed, I'm familiar with all the issues regarding the purchase of private health insurance. I have a daughter at UNL and two children also married and living in Nebraska, and they're going to be facing these same issues regarding health insurance purchase when they're considering going into farming or small business opportunities as careers. However, I'm not really here because of our family. We have the resources to kind of deal with the health insurance issues. We know how to go out and find it, although I do have complaints, but what I'm really here for today is for my patients. Many of the patients I see do not have insurance, and they don't qualify for Medicaid and Medicare. And of course, the reasons they give for not having insurance is it's too expensive, or maybe they lost it when they lost their job, or they have preexisting conditions that complicate the whole issue. So I can see how hard it is for a person who has just lost their job and all the issues that go along with that to have to go out and try to find affordable, quality insurance. It's not that easy to do. And as we are all aware, then when people don't have insurance they postpone medical care, and they ultimately end up in the emergency room, and then having to pay higher costs there. As an example, I have a hardworking 40-year-old nephew, also from Nebraska, who has worked all his life and paid for health insurance. He lost his job last year and the insurance, and he was just overwhelmed by the options and the whole process of trying to find insurance and didn't ask for help, so his health insurance lapsed. He had a small skin lesion that's recently been diagnosed as cancer. He thought it was just an infection. So now he and his farming family will be shouldering a lot of those costs. He did recently find out about the high-risk pool, and so he's applying for that insurance program. So I just bring up all these things as an example to emphasize the importance of the concept of a health insurance exchange that provides all the information that a person would need when they're in this situation so that they could go to one location and not be stressed out by all the other things that go along with trying to find health insurance. I've read both the bills, and I appreciate what you have to do now. I didn't realize it was so complicated, but I can see that LB835 contains provisions that keep the best interests of my patients as its primary goal. The inclusion

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of a governing board that is independent of the Department of Insurance would best serve the patients I see, and I like the idea that it provides a board that would be made up of people who are actually using the healthcare exchange and a diversity of other people in the healthcare field. The healthcare crisis isn't going to go away on its own, and I see LB835 as a constructive step in meeting some of these issues. You had asked about the pool of people it would cover, and from what I've read from the federal guidelines, my husband and I would be able to get some benefit from applying to that. You talk about things moving too fast. I think that's the advantage of looking at some of these other states' programs so we can maybe see what their mistakes are and modify this as we go along. And not that I need you to answer this question, but you were talking about the...where you got the information for (LB)838, and I was wondering if any other states had used that as a model, too, so I'm done and can answer any questions. [LB835 LB838]

SENATOR PAHLS: Seeing no questions. Thank you for your testimony, Jane. [LB835 LB838]

JANE YULE: Yes, thank you. [LB835 LB838]

SENATOR PAHLS: Thank you, Jane. [LB835 LB838]

DAVID HOLMQUIST: Good afternoon, Senator Pahls and members of the committee. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I appear today representing the American Cancer Society and the American Cancer Society's Cancer Action Network. I am a registered lobbyist and reside in Omaha, Nebraska. My remarks will be brief. The American Cancer Society has for some years worked to ensure that citizens in Nebraska and across the country have access to affordable health insurance. We want the insurance to be available, affordable, adequate, and administratively simple. One example of a good part of the Patient Protection and Affordable Care Act is the elimination of preexisting conditions as a basis for denial of coverage. That authority has gone into effect for children and will go into effect for adults at a later date. However, I am here today to support the concept of a Nebraska-based health benefit exchange, specifically to support LB835 and (LB)838 or some hybrid of the two. Given the time frame for notification to the Secretary of Health and Human Services and the need to act with care and foresight, we encourage the passage of legislation that will set in place the mechanism for a state-based health benefit exchange. In the event that the U.S. Supreme Court determines all or part of the Patient Protection and Affordable Care Act is unable to pass constitutional muster, Nebraska should be completely prepared to implement the law in the event that the act is found to be constitutional, or parts of it are found to be constitutional. I think I confused myself there. Waiting until the court has issued an opinion sometime in the summer would necessitate a special session of the Unicameral, and as we all know, special sessions are costly. Without indictment of the Department of Insurance or the director, and without any indictment intended of the

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current administration, an exchange solely under the control of the department and the director would be of great concern. Regardless of the Governor in office at anytime in the future, putting an exchange under the control of the department could and perhaps would lead to political influence over the operation of the exchange, not a healthy thing for the state to consider, irregardless of the political bent of the Governor in office at the time. We encourage passage of an exchange bill that sets in place a governing board with authority over the operation of such an exchange. The exchange should represent balance with no one entity exercising too much control. We urge an equal distribution of consumers, healthcare providers, and insurance representatives. And while an advisory board may seem appropriate, authority for governance of the plan must rest in the hands of a well-informed and unbiased governing body. So on behalf of the American Cancer Society and the American Cancer Society Cancer Action Network, I urge the committee to advance legislation that sets a framework for a Nebraska health benefit exchange that will serve all entities in a fair and impartial manner. Thank you. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB835 LB838]

DAVID HOLMQUIST: Thank you. [LB835 LB838]

SENATOR PAHLS: Next proponent. [LB835 LB838]

ANDREA SKOLKIN: (Exhibit 6) Good afternoon, Senator Pahls and members of the committee. My name is Andrea Skolkin, A-n-d-r-e-a, last name S-k-o-l-k-i-n, and I am the chair of the Health Center Association of Nebraska which represents the interest of Nebraska's six federally-qualified health centers with sites located in Scottsbluff/Gering, Lincoln, Plattsmouth, Columbus, Norfolk, Madison and Lincoln, and I am also the chief executive officer of OneWorld Community Health Centers in south Omaha. Today, I'm testifying in support of LB835. Nebraska's federally-qualified health centers are community-based organizations that provide comprehensive, primary and preventive care to all persons of all ages and backgrounds according to their ability to pay. In 2010, 57 percent of our patients were uninsured, and 93 percent had incomes below 200 percent of poverty. We would describe the majority of our families to you in the following ways: They are the working poor, their employers don't provide health insurance, they often have two or more part-time jobs instead of full-time employment, and their incomes, that makes their incomes too low to qualify for insurance in the private market. In short, many of these people will be accessing the insurance products through an insurance exchange. The Health Center Association has previously testified in support of a number of facets in the health insurance exchange, which is the establishment of a state-based exchange versus a federal or regional, because we think that state control will afford our patients better, will be in their best interest. And because health centers are experts in providing primary care to Nebraska's most vulnerable, all of the certified plans for the exchange should include the federally-qualified health centers as

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providers, that exchange plans should have as a minimum reimbursement to health centers, which is also similar to rural clinics through Medicaid, through the PPS rate providing Medicaid is included in the exchange. But also, that the exchange should be accessible and friendly for refugee populations, migrant workers, individuals with low literacy, to make sure that all Nebraskans have access to the products in the exchange. Today as we come forward to support LB835 that would establish the Nebraska health benefit exchange housed in the Department of Insurance for administrative purposes, but support that it be governed by an independent board that includes consumers. The Nebraska exchange must be responsive to the needs of individuals who purchase in the marketplace. Having consumer representation on an independent governing board will help assure this in this new platform where the products will be available. Nebraska is a strong state because of its diversity, and having consumers on an independent board will provide for this. As the CEO of a health center that has a 51 percent consumer majority, I can attest to the importance of having consumer representation in a governing board. Again, I'd like to thank you for the opportunity to be here today and happy to answer questions. [LB835 LB838]

SENATOR PAHLS: Are there any questions? Seeing none, thank you for your testimony. Next proponent? [LB835 LB838]

JONAH DEPPE: (Exhibit 7) Good afternoon, Senator Pahls and the committee. My name is Jonah Deppe, J-o-n-a-h D-e-p-p-e. I'm here this afternoon representing the National Alliance on Mental Illness, NAMI Nebraska. NAMI Nebraska supports LB835 establishing the Nebraska Health Benefit (Exchange) Act and the establishment of an independent board within the Department of Insurance. NAMI Nebraska supports the members of the board as representatives of a variety of interests, including consumers of these services. We support the establishment of a health benefit exchange to facilitate the purchase and sale of qualified health plans in the individual market in the state. The purpose and the intent should be to increase access to quality, affordable healthcare coverage to qualified individuals, including those with preexisting conditions, provide affordable options for small businesses to purchase private health insurance for employees, and provide consumer choice and portability of health insurance regardless of employment status, promote consumer education, and empower consumers to compare plans and make informed decisions, and to integrate Medicaid eligibility to ensure seamless coverage for consumers. NAMI Nebraska represents individuals who have experienced a mental illness or are experiencing a mental illness, and their families. Affordable, accessible healthcare coverage is important to their recovery and the stabilization of their illness. Individuals with a mental illness have a life span shortened by 25 years due not only to their mental illness, but to the coexisting illnesses they live with including diabetes, heart problems, breathing conditions and others. These physical illnesses often are caused by the medications they are taking to alleviate their mental illness. This makes it more imperative for them to have adequate coverage of both physical and mental...of both their physical and mental diagnosis.

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NAMI Nebraska supports the establishment of a governing board consisting of consumer representatives and the establishment of health insurance exchange to assist in the choice of healthcare coverage. Thank you. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Next proponent. [LB835 LB838]

SCOTT STEVENS: Good afternoon. My name is Scott Stevens, S-c-o-t-t S-t-e-v-e-n-s, and at the risk of violating my previous colleague's pledge, I am a health insurance consultant for almost 25 years. However, I've occupied a variety of capacities in that career including stints with an insurance company, with a third party administrator, and for the last 12 years, as a consultant helping businesses and individuals navigate the complex area of healthcare financing and employee benefits. I spend a significant amount of time reading, delineating and educating on various health insurance and employee benefit related compliance issues in what seems to be a never-ending cycle. The Patient Protection and Affordable Care Act of 2010 is without question the most sweeping and impactful law that has been passed in the 25 years that I have been in the health insurance industry. It has been estimated that for each of the 2,500 plus pages of the law, there will be 1,000 pages of necessary regulation. Clearly understanding, much less compliance with PPACA, will pose a significant challenge for everyone. I look forward to navigating my clients, colleagues, friends and audiences through this sea of new rules and regulations that will shape healthcare's future in Nebraska. This brings me to why I am here today, which is an honor and a privilege. I have been asked to testify before you on the matter of health insurance exchanges. Specifically, the issue of PPACA requiring the formation and operation of so-called health insurance exchanges and states having to decide on whether to form their own health insurance exchange or defer to a federal exchange. This is an extremely important issue, and I am very pleased that two of your colleagues, one before us today, have proposed state legislation, LB835 and LB838, which provides for the state of Nebraska to form its own health insurance exchange. This is a matter of state sovereignty which would preclude the federal government from overregulating our health insurance market from Washington, D.C. There are some that would have us believe that passing legislation that allows us to move forward with forming our own state-based exchange is a tacit approval of the entire healthcare bill. In fact, just yesterday, an editorial appeared in the Omaha World-Herald making such an assertion. With all due respect to those individuals and organizations that feel that our efforts to comply with PPACA and all of its provisions are "bad policy," the alternative is clearly untenable. Not only will we be in violation of federal law, we would be ceding our healthcare system's future to Washington legislators, which is clearly not a viable Nebraska solution. Doing nothing is simply not an option. And waiting for a Supreme Court ruling, which could be delayed, as was previously testified, until 2015, is not a sound compliance strategy. I can assure this committee that health insurance exchanges are not the only PPACA-related provision that we in the health insurance

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industry have been busy learning about and educating our clients on since March of 2010. There are new coverage eligibility appeals, benefits, and other provisions that have become the law of the land and thus part of our health insurance landscape requiring education and implementation. Health insurance exchanges pose a particular compliance challenge in that there is a time line involved that is critical to successful implementation. LB835 and LB838 allow us to begin the process of adhering to this time line along with the receipt of needed funding to form our own Nebraska state health insurance exchange. So I sit here today in complete support of LB835 and LB838 or some merged version and encourage all of you to join me. Thank you for your time and attention to this serious matter. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony, appreciate it. Good afternoon. [LB835 LB838]

BOB RAUNER: (Exhibit 8) Dr. Bob Rauner, first name Bob, B-o-b, last name Rauner, R-a-u-n-e-r, testifying on behalf of the Nebraska Medical Association and the Nebraska Academy of Family Physicians. Our interest in this lies not only as mentioned earlier with our patients who would be better access to care, but even our own self interest. Many of us are small business owners ourselves, and access to health insurance can be an issue even for physicians. I'll start with an example actually from myself. When my wife and I first started out in practice in Sidney, Nebraska, after our COBRA insurance ran out, we were surprised to find out that our local broker couldn't find a single plan that would cover us for prenatal coverage because of prior pregnancy complications. And so we were left the option of 1) not having anymore children; or 2) going without coverage for prenatal care, which since I will still paying off my loans, wasn't a great option, or 3) leaving Sidney, going to the front range, and working for a large health system where they would give me healthcare coverage. The solution came out of the blue. It turned out that my father-in-law, having been a captain in the army, had USAA membership for both him and his dependents, and so we actually were able to get coverage because of USAA. And there's something screwy about a system where your career choice and decision to have children depends on your father-in-law having been a captain in the army, (laughter), and so this is something that needs to be fixed. Regardless of how it happens, regardless of the politics, our system does not work well for small business owners and young entrepreneurs, and this is becoming a more prominent problem. More and more people have jobs where they bounce from employer to employer, work on various projects. They don't work for a large company, and so it doesn't work for them. Another example would be my father, who is an accountant in Sidney, he's a small office. To compete with Cabela's for employees, he has to offer health insurance, but one of his big worries is that if one of his employees develops breast cancer or gets multiple sclerosis, it could drive up their small group's risk and price him out of the market. And so we have to find a way to solve this for entrepreneurs and small businessmen. I also attested, we are also in support because we want it to be a Nebraska-based exchange. We deal with issues from our federal healthcare system,

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which doesn't work oftentimes for Nebraska. I work partially on a job with health information technology on a federal grant and frequently have to deal with issues where, obviously, the people who wrote the legislation have no clue how things are practiced in Nebraska. They don't understand that where you practice, you may be hundreds of miles from the nearest intensive care unit or neonatal intensive care unit or an MRI scanner. You may be cut off for days during a Nebraska blizzard, and so they don't get how things work here, and so we really would want this to be based at least locally, maybe in conjunction with, you know, Kansas and Nebraska or something like that, but at least not run by the federal government. Other states have been able to do this. Massachusetts, of course, has an exchange, but so does Utah. You've got various sides of the political spectrum where they've made it work. Colorado most recently passed a law, and there's a really good article in Health Affairs this month about how that happened in what's called the "purple state" where they got people to bipartisan participation, partially because the Denver Chamber of Commerce and the Independent Business Association helped push it, because they could see that it was a value for their own members. I would encourage us not to wait too long. This is not going to be a simple process. People who understand the issues of adverse risk and how to do this, this isn't something that can be cobbled together in a matter of months, and so we think this is something that should be started sooner rather than later. There is potential benefit, even if PPACA goes away, there are still ways to make some benefit from having gone through this process. And so we would testify in support of both LB835 and LB838, although like some other prior people, I like the independent governance of (LB)835 being, I guess, more of an independent Nebraskan, so thank you. [LB835 LB838]

SENATOR PAHLS: Thank you for your testimony. Next proponent? Looks like we are down to five. [LB835 LB838]

BOB HALLSTROM: (Exhibit 9) Chairman Pahls, members of the committee. My name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in support of both LB835 and LB838. I've also signed in on behalf of the Nebraska Bankers Association in support of both bills as well as the Nebraska Pharmacists Association, and I believe you may have already been provided with a letter from the NPA. NFIB is a litigant in the case pending before the Supreme Court in which the Patient Protection and Affordable Care Act has been challenged, the constitutionality thereof. And in the event that what we're promoting, the overruling of the law, in the event the law is upheld, we believe it's important for Nebraska to move forward and create and maintain a state-run health insurance exchange as opposed to deferring to the federal government. Having the implementation and the supervision and oversight closer to home seems to us to be a better solution than deferring to a federal agency. In the interest of time, I just note on page two of my testimony, I have some of the guiding principles that NFIB has promoted, many of which have been touched on by those who have testified prior to

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me, and I would encourage support for both bills or a combination of the two and be happy to address any questions that the committee might have. [LB835 LB838]

SENATOR PAHLS: Senator Pirsch. [LB835 LB838]

SENATOR PIRSCH: Thank you, Bob. Are you familiar...the previous testifier, Dr. Rauner, testified as to Colorado passing its own health insurance exchange bill with in part National Federation of Independent Business backing, I think. Are you familiar with the concepts imbedded in that bill? [LB835 LB838]

BOB HALLSTROM: Not specifically in Colorado. I know NFIB has been involved in a number of states promoting their general principles. But obviously, we're engaged at the national level from our federal organization in the litigation, so there's a little different perspective from that point of view. But we have been working in a number of states to try and move forward in a prudent fashion in anticipation that if the law is upheld or portions of the law are upheld, that an exchange may be required. [LB835 LB838]

SENATOR PIRSCH: Yeah. One other thing, because you're an attorney, I don't mind picking on you, but if you know, if you've looked into it, the 1869 anti-injunction case law, have you had a chance to kind of look into that at all? [LB835 LB838]

BOB HALLSTROM: I've left that to the NFIB attorneys that are working on the case. [LB835 LB838]

SENATOR PIRSCH: Ah, okay. Thank you very much. [LB835 LB838]

BOB HALLSTROM: Thank you, Senator. [LB835 LB838]

SENATOR PAHLS: Thank you for your testimony. Next proponent. [LB835 LB838]

MARK WATERSTRAAT: (Exhibit 10) Chairman Pahls, Senators. My name is Mark Waterstraat, that's M-a-r-k W-a-t-e-r-s-t-r-a-a-t, and on behalf of my business partners and the employees of our company called Benaissance in Omaha and the Nebraska Healthcare Alliance, I thank you for this opportunity to testify in support of LB835 and LB838 and the creation of the Nebraska health benefit exchange in Nebraska run by Nebraskans. My oral comments will be slightly abbreviated from the written ones to save time. Benaissance is a Nebraska business which was originally founded to empower national third-party benefit administrators and health insurance carriers to perform large-scale COBRA administration, retiree health insurance administration, and individual subscriber premium billing. We do this thorough our proprietary state-of-the-art enterprise class technology platforms which are hosted out of a world-class data center in Bellevue, Nebraska, tightly integrated with our premium payment processing operation in Omaha. Our first customer went live on our platform in

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June 2008, and to date, we have invested over \$13 million in our technology in Nebraska. We support over 60 national TPAs and health plans through almost 30,000 U.S. employer clients and over two million Americans whose opportunity to continue their health insurance coverage has been empowered by our Nebraska-based services. Prior to our current company, Benaissance, my business partner and our CEO, John Jenkins, founded and ran a company in Omaha called COBRA Outsourcing Company from 1995 to 2006, which provided fully outsourced COBRA administration services to over 4,000 U.S. employers in all 50 states. Between the two businesses, we have been creating jobs in Nebraska for over 17 years, and we have processed over \$1.5 billion in health insurance premium payments from outside of Nebraska through Nebraska banks. We have, therefore, a very direct firsthand experience with the economic impact of administering individual health insurance continuation in one state from another state. The total impact is, in fact, far greater than just our direct business, as it in turn flows to our Nebraska-based data center partner and our Nebraska-based banking partner who, in turn, has increased liquidity and the ability to make loans to other Nebraska businesses due to the hundreds of millions of dollars in insurance premiums we float through the bank annually. Given our unique combination of technology and payment processing experience, Benaissance was invited in mid 2011 to join a coalition with Infosys, Microsoft, and Hewlett Packard to provide a best-of-breed, integrated solution suite to U.S. states building health benefit exchanges under the ACA. As a result and as part of this coalition, we have personally met to date with state officials in Nebraska, Wisconsin, Arizona, Nevada, Maryland, Rhode Island, Indiana, and Iowa and the Center for Consumer Information and Insurance Oversight in the U.S. Department of Health and Human Services. We have also reviewed and participated in responses to requests for information from Arizona, California, Missouri, Nevada, Wisconsin, Rhode Island, Idaho and Indiana and request for proposals from Minnesota, New York, Washington, Maryland, Colorado, and Arizona. Both classically red states and blue states are moving forward with exchange-enabling legislation, applying for federal implementation funding, and beginning their procurement processes to lay the groundwork for ensuring that their states' health insurance markets and resulting jobs and premium dollars remain within their states under their state control. We encourage Nebraska to do the same. This week, I have personally been enjoying perusing the 350-plus pages of the RFP from the state of Arizona from their health insurance exchange while contemplating this opportunity to speak with you today about Nebraska. In doing so, I keep going back to their detailed RFP procurement schedule which results in an award on or about May 30, 2012, and then their very detailed nine-stage exchange milestone implementation schedule with preliminary operational readiness, operational readiness, and final implementation dates for each of the nine stages culminating in open enrollment for their exchange beginning on October 1, 2013. All nine stages are required to have demonstrated preliminary operational readiness no later than December 31, 2012. Nebraska cannot afford to wait much longer without risking the federal government assuming control of our exchange adding jobs in D.C. instead of Nebraska and taking our premium dollars out of this state. The Nebraska economy has been the envy of the

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country throughout this recent recession. We cannot afford to turn over this large part of our economy to the federal government. Thank you [LB835 LB838]

SENATOR PAHLS: Thank you. Thank you for your testimony. [LB835 LB838]

AUBREY MANCUSO: (Exhibit 11) Good afternoon, Senator Pahls, members of the committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. We're here in support of LB835. With implementation and later expansion of the Kids Connection program, Nebraska has recognized the importance of providing healthcare access for children. And we have made progress in this area, but in 2010, we still had an estimated 47,000 children who lacked health insurance in this state. A new health insurance exchange can potentially fill this gap in coverage for children whose parents aren't eligible for Medicaid, but are still unable to afford insurance. LB835 contains several provisions that are important to ensuring that this healthcare exchange meets consumer needs, including the independent governing board. LB835 also requires that the exchange will work to seamlessly integrate with the Medicaid program. Thoughtful attention to how the exchange will interact with Medicaid will be important to ensuring that children won't experience gaps in coverage based on fluctuations in parental income. To prevent this and the associated administrative problems, we hope that Nebraska will make it a priority to ensure continuity of care between the exchange and Medicaid. Nebraska currently has this opportunity to leverage federal funding to design a healthcare program that meets all of our children's and other Nebraskans' needs, and we would urge this committee to advance LB835 for full consideration. Thank you. [LB835 LB838]

SENATOR PAHLS: Seeing none, thank you for your testimony. As I look at...it looks like we have three more testifiers after this as proponents. [LB835 LB838]

JENNIFER CARTER: Good afternoon, Chairman Pahls, members of the committee. My name is Jennifer Carter, J-e-n-n-i-f-e-r C-a-r-t-e-r, and I am the director of the Healthcare Access Program at Nebraska Appleseed, and we're here today in support of LB835 and in opposition of LB838. But first, I'd like to make clear we support the effort of both bills to create a state-based exchange, and we would encourage the committee to provide the legal authority needed to apply for the establishment grant, the deadline for which is in June. Really, the crux of our support for (LB)835 and concerns with (LB)838 involve the inclusion of a governing board. We believe the focus of the ACA is the consumer, and increasing access to quality, affordable healthcare coverage for them, and that the exchange is the place to create a competitive marketplace for individuals and small businesses where insurers compete to provide quality affordable healthcare coverage and where those consumers can access tax credits and standardized information, which we think is really important on private coverage, and determine if they are eligible for public health programs. To create that exchange and be successful, we believe that it needs to be governed by a broad array of stakeholders

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and that (LB)835 does a good job of balancing industry expertise, consumers, small businesses, and having those key players at the table. From the perspective of having consumers at the table, and I think we've heard some concerns raised not today, but in other conversations, but I think it's important to note that in (LB)835 consumer representatives do have to have some knowledge of the insurance marketplace and public health programs. And as Medicaid advocates, we think that is a really important piece, that whoever governs the exchange needs to have knowledge beyond the private industry. And really, the greatest value to having consumers there is their own experience and their perspective on how the exchange can and will work for them. We think that housing the exchange within the DOI, the Department of Insurance, makes sense to leverage existing state agency resources and their expertise. We have really appreciated the Department of Insurance's openness in meeting with stakeholders, including us, and we have appreciated that throughout the process. But again, we believe that having an independent board where stakeholders actually are part of the decision-making process is very important. And as I mentioned, there will be the need to determine eligibility or enroll families in Medicaid as part of the No Wrong Door policy for the exchange, and to that extent, we also believe a governing board that has a broader array of stakeholders can help with that as well. And finally, we do appreciate that LB835 is also structured in such a way that we can continue to contemplate the existence of an exchange in Nebraska. Even if the Affordable Care Act was found to be unconstitutional, we think there are benefits to the exchange structure for consumers. And I'm happy to take any questions, and I really have to apologize, I'm embarrassed. I made a major typo on my testimony, so I will get copies to you later. Thank you. [LB835 LB838]

SENATOR PAHLS: We have a red marker. We could always scribble over it. (Laughter) [LB835 LB838]

JENNIFER CARTER: That's fine. That works too. I'm happy to hand them out if you'd rather, but otherwise, I'll get you corrected versions later. [LB835 LB838]

SENATOR PAHLS: That's not a problem. Let me add, I have been watching your program with you and Mark. [LB835 LB838]

JENNIFER CARTER: Oh. (Laugh) [LB835 LB838]

SENATOR PAHLS: And I've watched it about a dozen times, because you have an awful lot of really good information. [LB835 LB838]

JENNIFER CARTER: Oh, good. [LB835 LB838]

SENATOR PAHLS: And it's always the same stuff though. (Laugh) [LB835 LB838]

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JENNIFER CARTER: Yeah. (Laugh). [LB835 LB838]

SENATOR PAHLS: I will admit though, I was intrigued by it, I had my staff show me how to do it on the computer, though. And I made copies, because it does look like you've investigated this, so I need to commend you and the League of Women Voters, I think of Lancaster County? [LB835 LB838]

JENNIFER CARTER: Yeah, yeah. They put on a...we really appreciated being able to do that, and we certainly have worked on this for years, and we think it's important to help move us forward and address the problems that are in the healthcare system. So anyway, but I'm glad you're watching it. That's great, thank you. (Laugh) [LB835 LB838]

SENATOR PAHLS: Yes, I did, a number of times. Thank you. Thank you for your testimony. Bruce, why don't we get you next so I can get that side cleared off? (Laughter). [LB835 LB838]

BRUCE RIEKER: (Laugh) If they're okay with that. [LB835 LB838]

SENATOR PAHLS: You can tell that's how I operate. I just move along. Good afternoon. [LB835 LB838]

BRUCE RIEKER: (Exhibits 12 and 13) Good afternoon Senator, members of the committee. My name is Bruce, B-r-u-c-e, Rieker, R-i-e-k-e-r, and I'm here in a couple different capacities. The first one is representing the Nebraska Association of Home and Community Health Agencies, and they would like to submit a letter of support for both LB835 and (LB)838. That letter is being circulated. The second capacity and my primary capacity is vice president of Advocacy for the Nebraska Hospital Association, and I am here on behalf of already nine members and the 43,000 individuals they employ to support LB835. Obviously, throughout the discussion, Nebraska has a very critical decision in front of it. Will we maximize government startup funds, or will we leave the decisions to Washington, D.C. to decide what's best for us? In 2010, the Affordable Care Act mandated the creation of these health insurance exchanges, and it made subsidized coverage, or said that subsidized coverage would be available for individuals between 133 percent and 400 percent of the federal poverty level. To give you an idea of what that means in round numbers, and maybe this addresses some of the pool questions, anybody that makes, or a family of four making nearly \$90,000, it's just slightly less than that, and they did not have access to a qualified health insurance plan, would be eligible to purchase insurance through the exchange. So it effects a great number of people in the state. When healthcare reform takes place or takes affect in 2014, the state will expand from 240,000 people, roughly, that are eligible for Medicaid to nearly 390,000, so roughly 20 percent of Nebraska will be eligible for Medicaid, and I'll get to that point here in a moment why that's important. The second part is that 71 percent of all Nebraskans live at 400 percent of the federal poverty or less, so

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depending on what employers do with employer-provided coverage and qualified health plans, theoretically, up to 50 percent of the state could, emphasize could be eligible for purchasing insurance through the exchange. According to the law, we have to, if we're going to establish the exchange, we have to do it by January 1, 2014, and signal our intent by January 1, 2013, to the federal government. If we don't do it, the federal government will step in. And there's been much discussion about whether or not we should wait on the Supreme Court decision. The simple truth is Nebraska doesn't have time to wait. We must apply for the next round of federal grants by June 29 of this year to receive an estimated \$61 million to \$85 million for establishing and building the exchange, if we are going to do it on a state-based level. In that application, we need to demonstrate that we have an established exchange governance structure, a budget through 2014, as well as plans for developing, excuse me, plans for ensuring the exchange's financial self-sustainability, as well as those that guard against fraud, waste and abuse. To protect the hardworking taxpayers of Nebraska, it is our contention that LB835, which establishes the 11-member governing board, is the best way to approach the governance of the exchange. That is one of three areas that are of primary importance to us of why we support LB835. The second is interactivity, and this goes to the Medicaid issue. The health insurance exchange will have responsibility, even if it works with HHS, to determine eligibility and enroll people in Medicaid. Now when we add 140,000 people that are eligible for Medicaid in 2014, the task is going to be quite large, and the more we can do in advance to prepare for that particular situation is our contention the better governance and prudent planning that the Legislature and the state would be taking. Finally, when it comes to funding, the Hospital Association supports the funding mechanism that already exists, the premium taxes that are collected that would support, that do support the Comprehensive Health Insurance Program. As Ms. Seibert said in her opening comments she shared with you that that particular program right now costs the state about \$24 million to \$27 million. However, when you look at the budget put together by the consultants and the Department of Insurance, the annual operation costs of the exchange would be somewhere less than \$20 million, so we actually would save money, if those numbers are correct, moving the Comprehensive Health Insurance Program and those funds that already exist into the mechanism of funding the exchange without having to create additional fees, aka taxes. This bill rises above politics. There are 11 cosponsors. There are extensive industry support, as you've heard from many of the testifiers already. There have been many collaborative meetings with legislators, providers, payers and the state in developing (LB)835. It moves the state forward with planning and building process taking all the necessary steps to meet the federal deadlines and ensuring that every option remains open to the state. Now, if for some reason the Supreme Court changes the direction that we need to go, later down the road, we can make those changes. However, moving forward with (LB)835 will ensure that we have the options available to us to make all of the decisions we need to in the future. With that, I close my comments and urge the committee to advance LB835 to the floor as quickly as possible so that we can have a forthright debate on the merits of this issue. [LB835 LB838]

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SENATOR PAHLS: Senator Schumacher. [LB835 LB838]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you, Bruce, for your testimony today. You win the lottery and get my question for the proponents. [LB835 LB838]

BRUCE RIEKER: All right. (Laughter) [LB835 LB838]

SENATOR SCHUMACHER: All right. One of the kind of game play this and then look down the road, one of the options that we have is to do nothing and hope that the Supreme Court saves the day and makes this all go away. And then if it doesn't resolve it, either administratively or with some type of a special session that brings us all together to save the day ourselves. What do you see as the big downside from just treading water and following that scenario? [LB835 LB838]

BRUCE RIEKER: Okay. I'll try and illustrate a situation and then say what the downfall would be. Imagine a few years ago, there's this thing called Katrina headed up the coastline, and you're in New Orleans. And the forecasters say it's going to hit, and in this case, they're going to say, you have to have your plans ready by June 29 of what you're going to do, or else you can hope that it changes course, i.e., the Supreme Court rules it invalid, or else it's going to hit you. You can sit there and do nothing and not board up your house, not take care of your children, not evacuate or whatever you need to do to do the necessary measures to make sure that you have done everything possible to keep your options open, or you can sit there and be like the guy who says, I'm going to ride it out, and I hope it turns course before it hits you. Now, bringing that to the analogy, or to the situation at hand, if the Supreme Court rules, let's say they rule it constitutional and we need to, and it's the decision of the Legislature to move forward with an exchange. Let's say they do it on June 28. Do you think you can assemble a special session and get the application done by June 29? There are some that bet that or speculate that this deadline will be moved. Once again, that's a big if. There are so many big "ifs" that we're playing chicken with. This isn't to say that we're endorsing everything about it. It says that we're trying to keep our options open for something that is currently the law of the land, and it's prudent governance to prepare as much as possible for if and when that does happen. If the storm blows away, then we deal with it in a different fashion. [LB835 LB838]

SENATOR SCHUMACHER: Thank you. [LB835 LB838]

SENATOR PAHLS: Senator Pirsch. [LB835 LB838]

SENATOR PIRSCH: Just briefly. Has your organization or you done any legal analysis about the strength of the arguments on the Supreme Court level? [LB835 LB838]

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BRUCE RIEKER: No, no. The American Hospital Association is involved in that. That would be somewhat like Bob Hallstrom. We're leaving that to the legal powers that be in Washington to work on those. [LB835 LB838]

SENATOR PIRSCH: Thank you. [LB835 AND LB838]

SENATOR PAHLS: Thank you for your testimony. By my count, we have one more after Mark. [LB835 AND LB838]

MARK INTERMILL: (Exhibit 14) Thank you, Senator Pahls and members of the Committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP. It's always useful to try to identify common goals. In the case of healthcare, I believe there would be agreement that we should try to achieve positive health outcomes for all Nebraskans at an affordable cost, and we have work to do on all three fronts. A health benefit exchange could facilitate progress towards achieving this goal. The committee is considering two bills that would establish a health benefit exchange in Nebraska, and the main difference between the two is in the governance structure that each would use. LB838 places responsibility for management and operation of the exchange with the director of the Department of Insurance. LB835 would establish within the Department of Insurance under the supervision and control of a governing board that would be comprised of stakeholders who have an interest in the operation of the exchange. Because it provides an opportunity for consumers, small business, healthcare providers, insurance agents, insurance carriers, and key state agencies to join together to chart the course of the exchange, we prefer LB835. Ultimately, this is about healthcare, insurance as a means of gaining access to healthcare. There needs to be strong representation in the decision-making apparatus of everybody who has a stake in the ability of the exchange to make progress towards meeting the common goals. We believe that LB835 provides the best opportunity to establish a strong exchange in Nebraska. A strong exchange would be fully transparent. It will set high and realistic standards that improve value. It will engage in robust outreach to consumers and businesses. It will link seamlessly to Medicaid and tax credits. It will protect against adverse selection. It will provide consistency and stability in coverage of individuals as individual circumstances change, and it will keep in the mind the goal of achieving positive health outcomes for all Nebraskans at an affordable cost. I would encourage the committee to advance LB835 and would be happy to try to answer any questions. [LB835 AND LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony and your good TV show. [LB835 AND LB838]

MARK INTERMILL: Thank you. (Laugh). [LB835 LB838]

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RICH LOMBARDI: (Exhibits 15 and 16) Members of the committee, my name is Richard Lombardi, and today it's my privilege to represent the Center for Rural Affairs in support of LB835. LB835 sets Nebraska on a path to meet the state's responsibilities under the Affordable Care Act. It is a vehicle for the state's middle-class residents, small businesses, self-employed folks to purchase affordable, quality, comprehensive health insurance. The health benefit exchange is almost designed for trying to deal with that ongoing problem that we've had in rural Nebraska, given the fact that we have a higher percentage of folks that are uninsured, have a higher percentage of folks having to navigate the individual market, and because we have ranches and small businesses and farmers, the representation is very, very important on the health insurance exchange. We join others in supporting it, and we urge your attention to the matter. Thank you very much. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. That concludes our proponents. Next will be the opponents. Do I have any opponents? If I have, would you please come forth? I see, I'm just trying to get, I'm gauging about five. Did they try to trip you on the way up? (Laughter). Whoever would like to begin may. Opponents. [LB835 LB838]

BRUCE RAMGE: (Exhibit 17) Good afternoon, Senator Pahls and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge. For the record, that's spelled B-r-u-c-e R-a-m-g-e. I'm the director of insurance, and I'm here to testify in opposition to LB835 and LB838. I may be skipping around to hit some of the high points here so that I can touch on the more dramatic points of the testimony. LB835 is a deeply-flawed response to the challenge Nebraska faces in establishing a health benefit exchange under the Affordable Care Act. LB838 is an improvement upon LB835, but developing an exchange under any circumstances is inappropriate before the United States Supreme Court issues a ruling in the pending litigation on the constitutionality of the Affordable Care Act. Governor Heineman has authorized me to state on his behalf that if necessary to preserve Nebraska's opportunity to create an exchange, he will issue a basic executive order to provide the necessary legal authorization, as has been done in a number of other states. An executive order would provide the necessary legal authorization without raising the potential of a special session to repeal exchange legislation in the event Nebraska prevails in the Supreme Court litigation (cough), excuse me. The ability of states to use an executive order to satisfy the federal requirement has been specifically recognized in recent federal documents. Even though we are asking that both of the bills before you today not be advanced, there is an alternative in the event the Supreme Court rules against Nebraska in the litigation and the grant deadline is not extended. A special session would not be necessary. Not all states are requiring their legislatures to pass legislation as a requirement to create an exchange. A January report by the Commonwealth Fund lists six states as states in which the governor is working on nonlegislative options. Governor Heineman has been clear, most recently in the State of the State address,

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that he will not allow Nebraska to make a decision on having a state or federally-run exchange by default. Pennsylvania and New York and the National Academy of State Health Policy rates Nebraska as one of the top 10 states in terms of completion of tasks required to create an exchange. Although we are not seeking legislation this session, we have been doing the important background work and will continue to do so. Moving to the bills in front of you today, LB835 focuses largely on the creation of a board giving the project over to members who explicitly represent interest groups. The only members without a vote are members of the Governor's cabinet, those who up to now have been tasked with the job of examining all aspects of the health insurance exchange. Moreover, the board is not subject to any control by any elected officials creating a potential for mischief using the authority under current and yet to be developed federal law. There is not one board member who represents the interests of the state, rather only the specific interests of their organization. The administration believes that the appointment method as proposed in this bill is of dubious constitutionality under the Nebraska Constitution due to the methodology of appointment. LB835 would give this board an open checkbook and does not restrict the board's policy-making discretion in any meaningful way. The bill allows a board made up of people representing specific interests to adopt its own policies on ethics, conflict of interest standards, accountability, and transparency standards, and disclosure of financial interest requirements. LB835 gives the board powers that remove considerable authority over health insurance from the director of insurance by giving it discretion over such points as whether Nebraska would have a Massachusetts-style active purchaser and the potential to regulate insurance rates and create and or approve provider networks. The bill goes so far as to empower the board to make recommendations to ensure that the regulation of the insurers is the same inside and outside of the exchange. Although the bill includes a blanket statement that the department's authority is not preempted in any way, there is considerable ambiguity that only leads to conflicts. The exchange is housed under the bill within the department, but for budgetary and administrative purposes only. We're not sure what this means and suggest that this link should be severed for clear lines of accountability. LB835's funding provisions are problematic. The board can't impose a fee on consumers who use the exchange, but it can charge fees against health carriers but does not restrict this authority to health carriers writing insurance on the exchange, and it could extend beyond what most would describe as health insurance. LB835 diverts all premium tax revenue paid by insurers writing health insurance in the state to the exchange, but these funds are already committed to support the Comprehensive Health Insurance Pool, which will need these funds even after January 1, 2015, during a runoff of the high-risk pool's business. Even after 2015 is finished, the money in the Nebraska CHIP Distributive Fund is already spent because it is divided up between the general funds, local government, and the school districts. Spending state money to implement the federal healthcare law is not even required. The exchange must be self-sustaining by January 1, 2015, but does not require state funds. Some of the board's functions appear to be designed to circumvent the effect of the Supreme Court's litigation to which Nebraska is a party. If the federal healthcare law is struck down, this

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exchange may continue in some fashion. The decision of whether to proceed becomes a significant fiscal decision at that point, one delegated to an unelected, virtually unaccountable board with access to a significant amount of premium tax revenue. With me today is Martin Swanson, Assistant Project Director. He will be following up with more information on this subject, specifically with regard to LB838, and I'd be happy to answer any questions. [LB835 LB838]

SENATOR PAHLS: Just for clarification, because I think this is important to a lot of people in the audience, Director, okay, if nothing happens, what are the options for the Governor again? [LB835 LB838]

BRUCE RAMGE: He could issue an executive order to go forward with the exchange, and that is something that has been done by a few other states such as Arizona, Minnesota, and Rhode Island, or he could ask for a special session. [LB835 LB838]

SENATOR PAHLS: Okay, so there are actually two options, special session or by the power of the Governor. [LB835 LB838]

BRUCE RAMGE: Yes. [LB835 LB838]

SENATOR PAHLS: So it's not like we're throwing everybody to the wolves. [LB835 LB838]

BRUCE RAMGE: That's correct. [LB835 LB838]

SENATOR PAHLS: Okay, okay. Senator Schumacher. [LB835 LB838]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Can you cite for me the authority under the Nebraska Constitution or any state statute for the issuance of that executive order? [LB835 LB838]

BRUCE RAMGE: That's something I'll have to get back to you. That's something I heard from our legal staff, so I will... [LB835 LB838]

SENATOR SCHUMACHER: Wouldn't that be one of the very first lines in the line of thinking that would lead to your testimony today whether or not the Governor had such authority, and wouldn't you be able to cite for us right off the bat here it is? [LB835 LB838]

BRUCE RAMGE: I'll get that to you, Senator. [LB835 LB838]

SENATOR SCHUMACHER: Thank you. [LB835 LB838]

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BRUCE RAMGE: You're welcome. [LB835 LB838]

SENATOR PAHLS: Senator Pirsch. [LB835 LB838]

SENATOR PIRSCH: No, I have no questions at this time. Thank you. [LB835 LB838]

SENATOR PAHLS: Thank you. Oh, Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Sorry. Thank you, Senator Pahls. Director Ramge, so cover again for me what the strategy is here in terms of availability of grant monies. I mean, are we hoping that, or are we saying that based upon what we know in conversations, we're comfortable that deadlines are pretty fluid here and that we're not leaving ourselves out of the opportunity to get monies for additional planning purposes, if necessary. [LB835 LB838]

BRUCE RAMGE: Okay. First of all, the Affordable Care Act itself enables the federal government to provide grants all the way up through 2015. They have already extended grant timetables for the level one grant, for which we've already applied, up through June 29, 2012. In addition, there's an opportunity to request additional funds through the level one grant mechanism, and our conversations with our counterparts at the federal government have led us to believe, with a certain amount of confidence, that grant funds will be additionally available after June 29. [LB835 LB838]

SENATOR GLOOR: Are we saying that we're interested in applying for those grant monies if we can after June 29? [LB835 LB838]

BRUCE RAMGE: Depending on the outcome of the Supreme Court case. If the decision is made to go forward, then yes. [LB835 LB838]

SENATOR GLOOR: But is the reverse also true, which is if no decision is made by June 29, we wouldn't apply for those funds? [LB835 LB838]

BRUCE RAMGE: Yes. We would, we would revisit that and see what the appropriate way to go forward would be. [LB835 LB838]

SENATOR GLOOR: So maybe. [LB835 LB838]

BRUCE RAMGE: Yes. [LB835 LB838]

SENATOR GLOOR: Okay. [LB835 LB838]

SENATOR PAHLS: Senator Pirsch. [LB835 LB838]

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SENATOR PIRSCH: In listening to the testimony of Bruce Rieker of the Hospital Association, he indicated the next round of federal grants that had to be applied for by June 29, 2012, so that's the issue, right? [LB835 LB838]

BRUCE RAMGE: Um-hum. [LB835 LB838]

SENATOR PIRSCH: And that it would receive an estimated \$61 million to \$85 million. Is it clear the amount of, I mean, that that's the correct range or, does that, is does that dollar amount sound about right? [LB835 LB838]

BRUCE RAMGE: The dollar amount sounds about right. The original study that was concluded in October indicated to best of the consultant's abilities at that time, because of course, the regulation, the exchange regulation on the federal side has not been finalized yet. But they were in the \$60 million to \$80 million range for establishing an exchange with the estimate of roughly \$17 million a year to operate the exchange. [LB835 LB838]

SENATOR PIRSCH: Okay, thank you. [LB835 LB838]

BRUCE RAMGE: Yes. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: I think I've confused myself. Bruce, can these...if we are put in a position where we have to accept a federal program because we've not built our own, do we also have to incur the costs associated of that with, with...I mean, are we putting ourselves in the position that if forced to go forward, we're not only losing the dollars available to help build our own, we're also losing the dollars that might be available to transition to the federal program? [LB835 LB838]

BRUCE RAMGE: To my knowledge, there's no ability for the federal government to bill the state if they were to take operation of an exchange, if that's the question. [LB835 LB838]

SENATOR GLOOR: But there would certainly be some cost to the state that we would have to incur to go into a federal program. [LB835 LB838]

BRUCE RAMGE: There would be cost to various agencies within the state regardless of whether it's a state-run exchange or a federal exchange, yes. [LB835 LB838]

SENATOR GLOOR: Correct, with no dollars available to offset those costs coming to us from the federal government. [LB835 LB838]

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BRUCE RAMGE: That's correct, yes. [LB835 LB838]

SENATOR GLOOR: Yeah, that's, that's, okay. I'm not confused. Thank you. [LB835 LB838]

SENATOR PAHLS: Just another point of clarification. Let's say deadlines are hitting us, we haven't made the decision, no special session. The Governor, by the power invested in him, he can say we can go ahead, and we collect the money? [LB835 LB838]

BRUCE RAMGE: Yes, and that has been how Arizona, Minnesota, and Rhode Island have gone forward so far. [LB835 LB838]

SENATOR PAHLS: Okay. Senator Schumacher. [LB835 LB838]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Just a follow-up. Rhode Island, Arizona, and those other states, they don't operate under Nebraska statute or constitution, do they? [LB835 LB838]

BRUCE RAMGE: No, that's correct. Yes. [LB835 LB838]

SENATOR SCHUMACHER: Thank you. [LB835 LB838]

SENATOR PAHLS: Thank you, Director. [LB835 LB838]

BRUCE RAMGE: Thank you. [LB835 LB838]

SENATOR PAHLS: Just a second. I'm growing here in numbers. Okay, how many more, because I just need to keep track. Okay, I see six of us plus one, okay. Thank you. [LB835 LB838]

MARTIN SWANSON: Thank you, Senator Pahls, members of the committee. My name is Martin Swanson, M-a-r-t-i-n S-w-a-n-s-o-n, assistant project manager for the exchange planning division and health counsel for the Department of Insurance. Moving to LB838, we also appear in opposition to that particular bill, but it causes less concern for two reasons. First, it does not use Nebraska tax revenue to fund and support federal goals allowing NECHIP the funding that is necessary to keep the program solvent so we can safely return to a wind-down phase. Second, it includes a more accountable governance structure by vesting the creation and operation of an exchange in a code agency. As a lead state agency in exchange development, the department has developed the necessary expertise to create a fluid transition to the bill phase, if required. The lag time in creating a new agency or quasi public-private entity would create more delay. If an exchange is authorized under LB838, we would likely need to create a formal advisory board in pursuant to a federal regulation. The advisory board

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would include, pursuant to that regulation, representatives of the educated healthcare consumers enrolled in a qualified health plan, individuals and entities with experience of facilitating enrollment in health coverage, advocates for those hard-to-reach populations, which include a mental health or substance abuse disorder, small business, self-employed individuals, Medicaid and CHIP agencies, tribes that are federally recognized, public health experts, healthcare providers, large employers, health insurance issuers, and agents and brokers. Not all of these groups are represented on the board as created by LB835, by the way. Adoption of LB838 would not resolve all of the issues we're raising today, but to that end, the bill would need a number of provisions, but due to time, I want to focus on one particular issue. An amendment appears necessary to allow the exchange to take advantage of the potential opportunities in recent federal rule making regarding so-called hybrid exchanges. Under this model, the federal government would retain technology responsibilities such as subsidy eligibility, leaving the state the ability to focus on the areas most useful to Nebraskans, including plan management and whether the exchange would be an active purchaser, some navigator programs and consumer outreach, which are issues that have been of specific concern to both insurers and consumers who have advocated for a state-based exchange. The NAIC models drafted prior to this time and before this became a possibility, and the language needs to be included in the act to give the flexibility to work with the federal government in this area. I'd like to move on to discussing the fiscal implications of creating a state-based exchange, no matter how created. These costs are significant. Some may point to the Utah exchange and argue that if Utah could create their exchange for \$1 million, Nebraska can, too, but Utah's exchange only creates one piece of what is federally required. If they would comply with the federal law, it will be expensive. Comparing the costs when states have full flexibility to design an exchange that meets the needs to where the federal government dictates what those needs are isn't even an apples-to-oranges comparison. The more relevant comparison, the estimates for states that are building exchanges that meet federal requirements, the fiscal note for North Dakota has indicated a cost of almost \$40 million and 28 FTEs. Just last month, Pennsylvania submitted a plan grant request for \$33 million compared just with Nebraska's \$5.5 million grant this fall. The fiscal notes are substantial, but with results from research of independent consultants, we hired Health Management Associates to give us estimates on creation of staffing, bricks and mortar, walk-in center, navigator grants, and call centers. Public Consulting Group gave us a rough estimate on the creation of an IT system that would meet federal requirements. These studies indicated a minimum of \$60 million to \$80 million in startup costs with a minimum of \$17 million of ongoing costs. With the release of recent federal information, this is still yet to be final. Those costs could rise significantly. Meeting federal requirements is an extremely expensive proposition. Minimum federal requirements for the No Wrong Door access and communication between the exchange and the state Medicaid program are expensive. A federally required premium aggregation feature for the small group exchange is expensive. Federally required bricks and mortar and call center operations

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are expensive. The mechanism to distribute federal subsidies is expensive. Spending significant funds before what we know and must be responsible for is not a responsible use of taxpayer funds, even if they are paid for at the federal level. It is still taxpayer money. There is no way to tell how the litigation will turn out, and there's many variables inherent in the breadth of the issues that the Supreme Court is having argued next month. Some have argued that an exchange would be something we would need to look at even in the absence of federal law, so we should seek federal funds to do what we have done anyway. Here's the problem. Even assuming that's true for the moment, Nebraska would not have created the same exchange as required under the federal healthcare law. Nebraska would not need to spend the money on a subsidy administration. We would have left such features as Medicaid integration to a later, more cost-effective date. Nebraska does not have to enact any legislation by the end of the session. The current grant called a level one grant does not require a commitment to actually build a state-run exchange. The deadline for this grant has been extended by six months from December 2011 to June 2012 on the same day that's currently described as the deadline for level two funding. In conference calls, our federal counterparts indicate that these grant deadlines are not set in statute, and the statute authorizes the grants up to January 1, 2015. Some states are seeking level one funding that will allow them to build the exchange so that they don't have to get authorization from their legislatures. Our federal counterparts have indicated privately that these grant deadlines are being kept in place because our federal partners want to pressure state legislatures to act this year. No state will be entirely compliant with the federal requirements when the certification by the Secretary of HHS is made in 2013. As of today, we don't even know what those standards are. The draft rules of July are not finalized. That particular deadline has already been extended. The final rules can differ radically from the rules we have seen that were initially posted. For example, the initial federal rules requiring employers to cover contraceptives exempted faith-based employers. When the final rules came out, they required faith-based employers to provide coverage for contraception. It was recently amended yet again to mandate the insurance companies to cover contraceptive pills. Building a system to meet those requirements when you don't know what the final requirements are is a challenge at best, so no state will be completely compliant. Even though we are asking that both bills before you today not be advanced, there is an alternative in the event the Supreme Court rules against Nebraska in the litigation and the grant deadlines are not extended. A special session would not be necessary, as the director has pointed out. Not all states requiring the legislature to pass legislation as a requirement to create an exchange. With that, I would take any questions the committee may have. [LB835 LB838]

SENATOR PAHLS: After listening to you, it sounds like this could be an unbelievable money pit. [LB835 LB838]

MARTIN SWANSON: Yes, it could, Senator. [LB835 LB838]

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SENATOR PAHLS: Well then, and I've heard prior testimony that a number of states are already moving down the line, so they are secure financially? Have you talked to any of those states? [LB835 LB838]

MARTIN SWANSON: We talk to our state counterparts all the time, nearly on a daily basis. [LB835 LB838]

SENATOR PAHLS: And, I mean, where do they stand? [LB835 LB838]

MARTIN SWANSON: Several states, depending on, obviously, their political situations, are going forward. Others are, obviously, worried to make sure that they have the money to fund this ongoing, because after 2015 it's the responsibility of the state to do so, self-sustaining after that point in time. [LB835 LB838]

SENATOR PAHLS: And the CHIP money, you're saying, or the director said that we still need to use that to finish out the program? [LB835 LB838]

MARTIN SWANSON: That's correct. We runoff in 2015. [LB835 LB838]

SENATOR PAHLS: Okay, okay, and you're saying both bills, I noticed you hit both bills on the governance. You're saying the one bill which has a pretty well-defined board, you're saying there's some holes in that, and you're saying the other bill, to meet guidelines, needs a board of some type. [LB835 LB838]

MARTIN SWANSON: No, actually no, not a board. [LB835 LB838]

SENATOR PAHLS: Or an advisory. [LB835 LB838]

MARTIN SWANSON: Advisory committee which is required under the federal regulation as it stands today. It's still not in final form. [LB835 LB838]

SENATOR PAHLS: Okay, that advisory committee would consist of many of the same stakeholders that are in the one board already. [LB835 LB838]

MARTIN SWANSON: Many more than just those particular stakeholders that are outlined in the other bill. [LB835 LB838]

SENATOR PAHLS: Okay, so in other words, you're saying that more stakeholders need to be involved, if nothing else than at an advisory level. [LB835 LB838]

MARTIN SWANSON: That's correct. [LB835 LB838]

SENATOR PAHLS: Okay. Thank you for your testimony. [LB835 LB838]

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MARTIN SWANSON: Thank you. [LB835 LB838]

MICHAEL CANNON: (Exhibit 18) Good afternoon, Chairman Pahls and members of the committee. My name is Michael Cannon. I'm the director of health policy studies at the Cato Institute in Washington, D.C. The Cato Institute is a nonpartisan, nonprofit 501(c)(3) educational foundation. We take no position on legislation, so I'm not here to tell you to vote for or against either of the bills that you're considering, but I elected to speak with the opposition because I want to speak in opposition to health insurance exchanges generally. And I'm glad I came here today, because we listened to a lot of witnesses, proponents of the legislation, that were making comments about the healthcare law that I think are disconnected from what the law actually says, disconnected from the reality of what's happening in Washington, D.C., and disconnected from the reality of what's happening in other states. So let's just jump right into it. I want to start by noting that it makes little sense to create a new government bureaucracy to implement a law that may be struck down by the Supreme Court in just a few months time or might be repealed within the next year, and particularly when we haven't even seen, as previous witnesses have mentioned, the final regulations that states are supposed to follow to implement this law. That doesn't mean, however, this discussion is premature, because I submit that regardless of how the Supreme Court rules on the constitutionality of the healthcare law, Nebraska should not create a health insurance exchange. There is no upside for Nebraska in doing so. There's only downside. For example, we've heard the claim many times today that if Nebraska creates an exchange, it will retain local control. I think that claim is at odds with the letter of the law. It's at odds with the regulations that we've seen to date. It's at odds with common sense. I've tried to, I've been around the country talking to lots of state legislators about this who heard that claim over and over again. The way that I like to explain or frame the issue is like this. I encourage them to say whenever someone comes into your office and says that we need a state-run exchange because it will allow us to maintain local control of our health insurance markets, ask them to come up with a mental list of all the horrible things that a federal exchange might do to your state, to Nebraska. All the horrible things that might happen to domestic carriers, to agents, to brokers, to providers, to particular groups of patients. And then ask if there's anything that a federal exchange might do, anything on that list of horrors, that the federal government could not require a state-run exchange to do through regulation. And to ask the question is to answer it. Of course, anything that the federal government might do through its own exchange, it can require states to do through a state-run exchange, and that really tells you who is going to be pulling the strings here. The federal government is going to be making the rules, and state-run exchanges are going to be implementing them. There is going to be zero meaningful discretion for state-run exchanges. The only thing that you'll be doing is volunteering to foot the bill for the implementation of this federal law, and as we heard, that would be a considerable undertaking. There will be considerable cost associated with that. Moreover, as state officials, I think it's important

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to be mindful of a particular consequence of this law, which is that if you create a health insurance exchange, you will be taking a bullet for the federal government when this law begins harming patients, I mean, the sickest patients in your state. The reason is this, this law imposes price controls on the health insurance market that tell carriers, the federal government tells carriers we don't care if this patient costs you a million dollars to insure, you can only charge them the same amount you charge anyone else of their age, so that may be a weighted average premium of \$10,000. What the federal law therefore does is, it puts the carriers in a situation where they are collecting, where they are paying \$1 million worth of claims for one patient, but only collecting \$10,000 worth of premiums, and you can see what sort of incentives this creates for carriers. A \$990,000 incentive to avoid, to mistreat, and ultimately to dump those very expensive patients. And we've seen this happen in states and health insurance exchanges where these price controls have been implemented. If you create your own health insurance exchange, you will be responsible for implementing the parts of the healthcare law that are designed to prevent insurance carriers from responding to that enormous financial incentive to mistreat the sick. You are not going to succeed, because as we've seen in states that have adopted these price controls, the carriers stay one step ahead of the regulators, and very sick people end up getting hurt. I can show you newspaper clippings of who some of these patients are. There will be ads, you can see the political attack ads now when these patients are hurt. There are going to be ads run against the incumbent officials who created an exchange, but didn't protect these patients from, from the insurance companies is what the ads will say. But actually, it's the federal law that's creating these perverse incentives, so you'll be volunteering to take a bullet for the federal officials who created those perverse incentives. On the other hand, there's no, when it comes to not creating an exchange, there is no downside, there's only upside. I cannot emphasize this point enough. There is no mandate that Nebraska create an exchange. There is no requirement in the federal law that you do so. The federal government cannot order you to do that. They cannot, you will not lose any funding from the federal government if you fail to create an exchange. Moreover, there are no deadlines. States, the deadlines have been pushed back already for the level one grants, that has been mentioned. They are likely to be pushed back for submitting your intention to create an exchange, but HHS has already said that if a state changes its mind later, if it says we're not going to create an exchange now, but changes its mind in the future, it can do that. So in effect, there are no deadlines for creating an exchange. If you choose not to create an exchange, you will be relieving the state of a long-term fiscal liability. You'll be holding the federal officials, rather than state officials, responsible for the harms of the federal law. There may not be a federal exchange. I think it's wrong to think, to assume that there's going to be a default to a federal exchange. There may not be any federal exchange if you decide not to create one, because the President's budget submission has already...has admitted, and the Secretary of Health and Human Services has admitted, the federal government doesn't have the money to create these exchanges. So this is not a choice between a state exchange and a federal exchange. It's a choice...there may not be a federal exchange

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at all. Moreover, and I can explain, I'll close on this point, I can explain it in more detail if you're interested. If you do not create a state exchange, then there will be no employer mandate under the law in the state of Nebraska. Likewise, there will be no mandate that religious institutions provide contraception or other services that they find immoral, because there will be no employer mandate. There will be no way for the federal government to enforce that mandate in Nebraska, so I'm happy to take any questions. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. Thank you, Mr. Cannon, for your testimony. It's a lot of information to absorb, and you delivered a lot of information to us also. But I'm assuming all this relates to insurance exchanges as defined or laid out by PPACA. Is that correct? [LB835 LB838]

MICHAEL CANNON: That is correct. In my written testimony, I have a section about why some conservatives have supported health insurance exchanges in the past and why, so that's a little bit detached from the healthcare law that's in my written testimony. [LB835 LB838]

SENATOR GLOOR: That's in here also? And we're talking about market-driven issues here as opposed to something that's wrapped around the federal government? [LB835 LB838]

MICHAEL CANNON: In that section of my testimony, I do, yes. [LB835 LB838]

SENATOR GLOOR: Yeah, okay. You did make a comment though, if I heard you correctly, and that is insurers, when you add patients with adverse outcomes, would dump them back on the states. I'm not sure how they dump them back on the states, but they'd certainly be dumped on the system, but they're already dumped on the system. I mean, the uninsured end up not getting cared for. They don't disappear. They show up in emergency rooms and are required federally to be seen until stabilized, and so that expense is in there, and we all pick that up. So I'm not sure that component of your argument is any different than the current, I mean, it's a status quo issue for me. [LB835 LB838]

MICHAEL CANNON: Well, if I may, Senator. [LB835 LB838]

SENATOR GLOOR: Sure. [LB835 LB838]

MICHAEL CANNON: I was not referring to them dumping patients onto say the public role, Sir, or the ranks of the uninsured. In the sort of marketplace that the federal government has created with this law where insurance carriers can only charge a

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premium that's a tiny fraction of the cost that particular patients are going to be imposing on that health plan, there is an incentive for them to mistreat those patients so that those patients switch to another carrier and bring down that competitor's bottom line by \$990,000, or something like that. [LB835 LB838]

SENATOR GLOOR: I understand. [LB835 LB838]

MICHAEL CANNON: And so you get a race to the bottom in terms of caring for the sick. That's what this law puts in place, and that's what state officials will be blamed for if they create a health insurance exchange. [LB835 LB838]

SENATOR GLOOR: I understand, thank you. [LB835 LB838]

SENATOR PAHLS: Senator Christensen. [LB835 LB838]

SENATOR CHRISTENSEN: Two things. First, you said if we don't do a state exchange, there would be no employer mandate, but wouldn't that then make the federal mandate? It's on your last questions there, you said if we don't create a state exchange... [LB835 LB838]

MICHAEL CANNON: Right. I'm not sure I understood your question. [LB835 LB838]

SENATOR CHRISTENSEN: Wouldn't there be a federal mandate then that they've got to follow? [LB835 LB838]

MICHAEL CANNON: Well, what I'm referring to when I say the employer mandate is the federal employer mandate in law. And in order for an employer to be penalized under the healthcare, federal healthcare laws employer mandate, two conditions must hold: 1) The employer must fail to offer minimum essential benefits to all full-time employees; and 2) One of that employer's employees must receive a subsidy through a health insurance exchange. Now, if Nebraska decides not to create an exchange and the federal government is unable to create one because they don't have the money to do it, and the Republican-controlled house is not going to give the Obama administration money to do it, then there's no exchange at all. If there's no exchange at all, those subsidies don't exist. If those subsidies don't exist, then there is no penalty on employers. And also, so no employer mandate and no contraception mandate, because that's how that mandate, the contraceptive mandate is enforced against employers. If Nebraska does not create a health insurance exchange and the federal government nevertheless somehow manages to create one, there is still no employer mandate, because this is something, and this is something that was not understood by either supporters or opponents of the law until about six months ago, the law only authorizes those subsidies in state-run exchanges. There is no authorization for the federal government to offer those subsidies in a federal exchange. So if you refuse to create an

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exchange in Nebraska and the federal government creates one, they don't have the legal authority to offer those subsidies. No subsidies, no employer mandate, and no contraception mandate. So you can literally protect the employers in your state from the employer mandate by declining to create an exchange. [LB835 LB838]

SENATOR CHRISTENSEN: So you're telling us we're best off to do nothing. [LB835 LB838]

MICHAEL CANNON: I would never counsel you to do nothing, because I think there's a lot to be done in terms of making healthcare better and more affordable and more secure for people. In my testimony, I have a number of ideas that you should pursue, but with regard to a health insurance exchange, I think what you should do is declare that you're not going to create one and send any monies that the state of Nebraska has received toward that end back to the federal government, much like Kansas, Oklahoma, Wisconsin have done, Florida and Louisiana have done so. I've actually got a long list of states that have moved in the direction of creating a health insurance exchange, then once they looked at the details and looked at the cost that they were going to be undertaking, looked at how there is no upside, there is only downside for states, they have backed away from this. In fact, Oregon is one of only 15 states to have passed legislation to create an exchange, and now it looks like additional legislation that they may need to pass actually get the thing, to really get the thing going, is being bottled up in the legislature, because I think that they are having second thoughts, and they were very gung ho about an exchange in the first place. But you do have states like South Carolina, Georgia, North Dakota, New Hampshire, Virginia that have moved in this direction, looked at the details and said, whoa, we need to pull back, because this is actually a raw deal for us. [LB835 LB838]

SENATOR CHRISTENSEN: Thank you. [LB835 LB838]

SENATOR PAHLS: Senator Pirsch. [LB835 LB838]

SENATOR PIRSCH: So, I appreciate your testimony here today. So you're saying that I understand in terms of employers, the way that the ACA is written, for them to penalize, there would be a two-step analysis that would first of all have to fail to provide minimum benefits, and then the second prong that you're describing is that they must receive or be eligible for dollars from an exchange. [LB835 LB838]

MICHAEL CANNON: One of...it's actually either be eligible or receive, but it's one of their employees...one of the employees must be eligible for or receive health insurance subsidies through an exchange. [LB835 LB838]

SENATOR PIRSCH: And the way that they've defined exchange then in the Affordable Care Act, you're saying, is such that it only applies to state-run exchanges... [LB835

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LB838]

MICHAEL CANNON: That's correct. [LB835 LB838]

SENATOR PIRSCH: ...not federal, the federal, I guess, default exchange. [LB835 LB838]

MICHAEL CANNON: That's correct. Supporters and opponents of the law agree on this much. The law clearly says that the subsidies are available only in state-run exchanges. Now, I have to let you know that the administration has proposed a rule through the IRS that says, we're going to offer that, we're going to offer those subsidies in federal exchanges anyway. In effect, what they propose doing is creating a new entitlement program by fiat, without going through Congress in federal exchanges. They have claimed they have the legal authority to do so. Supporters of the law who are outside of the administration are a little more iffy about that. And in fact, they don't because they're...they don't have the authority to do so, because they are usurping Congress' power to make the laws. And if they were to try to do that, then every employer in the state of Nebraska who might be penalized under the employer mandate, because those subsidies would all of a sudden exist, would have standing to sue the federal government to block them from creating this new entitlement program without congressional authorization, including religious employers who are then subject to the contraception mandate, and the state of Nebraska itself in its capacity as an employer would have standing to bring suit against the federal government. [LB835 LB838]

SENATOR PIRSCH: An interesting twist. Thank you. [LB835 LB838]

MICHAEL CANNON: I'll also notify, Mr. Chairman, I have an appendant to my testimony, an opinion piece in The Wall Street Journal that a colleague and I wrote about this very issue. [LB835 LB838]

SENATOR PAHLS: Okay. I just have one question. Have you spoken to our Department of Insurance? [LB835 LB838]

MICHAEL CANNON: We had, I've had a discussion with them about this. [LB835 LB838]

SENATOR PAHLS: Okay, and I'm just curious. Your role as a member of this institute is to go around to different states and just say, whoa, slow it down, is that what you are? [LB835 LB838]

MICHAEL CANNON: My role at the Cato Institute is to try to educate the public and lawmakers about the benefits of free markets in the area of healthcare. And in this instance, what that means is pointing out the downsides of implementing what is

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effectively a federal takeover of the healthcare sector and the downsides for states in assisting in that federal takeover, so I've been doing a lot of what you say, going around to states trying to convince them that this is a bad idea. [LB835 LB838]

SENATOR PAHLS: Okay, thank you. Oh, Senator Schumacher. [LB835 LB838]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you for coming from Washington to talk to us today. Just a couple questions. We heard earlier today that there's 2,000 pages in this bill. There's 1,000 pages of regulation per page, so by my calculations, that's just 2 million pages that somebody's got to read. Assuming that something, regardless what the Supreme Court does, holds it up or strikes it down, anything that takes 2 million pages of regulation is probably unworkable. That being, if we assume that, we do know that we have big healthcare problems. Anybody who's had employees saw their premiums go through the roof. If you don't have employees, you insure yourself, you see your premiums go through the roof. You see people lined up at emergency rooms as a way to get care to stop themselves from dying. We've probably made a social decision that just don't want people who show up at emergency rooms or need care, we don't just wheel them out into the parking lot and let them die. And we've got a bunch of baby boomers who are going to be wanting more and more of their share of the good medicine. And so, you know, in that setting, I looked in your testimony, yours to what the alternatives are, and the alternatives purchase health insurance from other states, lower or change the scope of practice so people are cared for by mid-level clinicians, tell all the judges that they need to do medical malpractice reforms and change liability rules, and then apply for a waiver to put half of the poor people in a group that gets Medicaid coverage and half that's not and see what the difference is. In addition to those recommendations, how do you, from the perspective and work that you've done, see that we've solved the healthcare problem or at least are able to avoid these escalating costs. What do we do? [LB835 LB838]

MICHAEL CANNON: The reforms that you mentioned that I have at the end of my testimony are my advice to state legislators about what they can do. Unfortunately, most of the problems in our healthcare system are created by the federal government, and there's just not anything that state legislatures can do to fix those problems. That has to be done by Congress. And I'm talking about the problems created by the Medicare program. I'm talking about the problems created by Medicaid, by the federal tax preference for employer-sponsored health insurance, and other smaller, but still significant distortions that the federal government has created. That is, that has really separated...I think the major problem the federal government has created is it has given control over the healthcare dollars to someone other than the consumer. And I don't care what kind of system you're talking about, capitalist, communist, anything in between. The economic system is going to serve the people who control the money. And right now, the people who control the money are employers, and that's because of the federal government's tax preference for employer-sponsored insurance, and the

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government itself. So I think the number one thing we have to do is change that reality so that the money is controlled by the individual patient, then the system will begin to serve the patient. Beyond that, I think that both the federal government and states need to deregulate so that patients can choose from more, have a much broader choice of health insurance options, healthcare options, and innovators have a lot more room to innovate to lower, reduced costs and to improve the quality of care and make access to care more secure. [LB835 LB838]

SENATOR SCHUMACHER: Thank you for your testimony. [LB835 LB838]

SENATOR PAHLS: Thank you, appreciate your testimony. [LB835 LB838]

MICHAEL CANNON: Thank you. [LB835 LB838]

SENATOR PAHLS: Next opponent. [LB835 LB838]

JOHN McCOLLISTER: (Exhibit 19) Senator Pahls, members of the committee, my name is John McCollister, M-c-C-o-l-l-i-s-t-e-r. I'm the executive director of the Platte Institute in Omaha, Nebraska. The Platte Institute is a free market think tank based in Nebraska, and we promote free enterprise, limited government, and personal responsibility. I've got to take this gentleman to the airport, so I'm simply going to drop off my testimony. We would appear in opposition of these bills. The testimony is before you. Usually I stay and answer all the questions, but I'm going to have to leave today, so thank you for your attention, and I appreciate the opportunity to submit testimony. [LB835 LB838]

SENATOR PAHLS: Thank you. Have a safe trip. [LB835 LB838]

JOHN McCOLLISTER: Thank you. [LB835 LB838]

BRAD STEVENS: Good afternoon, Senators. My name is Brad Stevens, B-r-a-d S-t-e-v-e-n-s, and I'm the Nebraska state director of Americans for Prosperity, a statewide advocacy organization committed to free markets and limited government, and we are strongly opposed to both LB835 and LB838. Let me start by making an important distinction. A healthcare exchange in a free market system could be a positive thing. It could provide customers with access to better information to make price comparisons and improve purchasing options. Unfortunately, we do not have a free market system under the President's healthcare law. This is a top-down system where the federal Department of Health and Human Services will retain important decision-making rights. Under the Patient Protection and Affordable Care Act, responsibility to define what is insurance transfers to HHS. Currently, the role of determining what constitutes a basic comprehensive plan is the responsibility of the state. Now it is a responsibility of the federal government, regardless of Nebraska

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implementing an exchange. It is irresponsible to argue that an exchange will give Nebraska autonomy or flexibility when the decision rights are retained in Washington. Worse, creating an exchange now would be irresponsibly premature. Currently, the Office of Information and Regulatory Affairs is reviewing seven proposed rules from HHS that affect the Affordable Care Act and state exchanges that have yet to be finalized that are deemed economically significant by the department. Beyond these seven rules, there are more rules waiting to be reviewed by OIRA. There are multiple rules that govern the exchanges that have yet to be finalized. To implement an exchange now would be putting blind faith into the Obama administration on this issue, and I do not believe Nebraskans support that. Creating a state exchange within the framework of Obama's healthcare law will not provide flexibility to Nebraska. HHS is giving you, our legislators, an ultimatum. Create an exchange, or we will do it for you. Any proposal that begins with an ultimatum does not signify relationship trust or willingness to extend autonomy to the states. The federal government does not know how to implement the new law. The President's healthcare law is unprecedented in size, scope, and cost. Implementing a state exchange would be state government offering to do the heavy lifting of implementation while the federal bureaucracy retains the power, and that is a bad deal for Nebraska. I'm happy to answer any questions you may have. [LB835 LB838]

SENATOR PAHLS: Again, you're president of a local group? [LB835 LB838]

BRAD STEVENS: Yes, Chairman, it's Americans for Prosperity. We're a Nebraska statewide advocacy group for free markets. [LB835 LB838]

SENATOR PAHLS: Okay, thank you. Thank you for your testimony. [LB835 LB838]

BRAD STEVENS: Thank you very much. [LB835 LB838]

SENATOR PAHLS: Two more? Good afternoon. [LB835 LB838]

JAN MCKENZIE: Good afternoon, Senator Pahls, members of the Banking, Commerce and Insurance Committee. For the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e. I'm here in kind of an odd spot. I'm here in opposition to one particular section of LB835. I've been authorized by my legislative committee, and remember, I represent multiple insurance interests. We have talked to Senator Nordquist about the fact that we think the section 14 on page 16 dealing with the use of premium tax to fund the exchange in his legislation is too broadly drafted and includes insurance that would not normally be considered health insurance, but it would be other versions like disability insurance and supplemental insurance, and we believe that's drafted too broadly. We are in support of a Nebraska-run exchange, so in that regard, we are not opposed to LB838, but have a neutral position on that. Thank you. [LB835 LB838]

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SENATOR PAHLS: I have a question. [LB835 LB838]

JAN MCKENZIE: Yes. [LB835 LB838]

SENATOR PAHLS: For the audience, you know, the word premium tax has been tossed around. Could you just give us a sort of an idea what that actually is? [LB835 LB838]

JAN MCKENZIE: Oh, health insurers are required by the state to pay a tax on the premium written. So whether they're writing health insurance or property casualty insurance or life insurance, whatever their gross premium collection is, they pay a percentage that's a premium tax that's collected by the state. Part of that is used to fund the CHIP program. Part of that is used often by Appropriations Committee for other purposes. [LB835 LB838]

SENATOR PAHLS: Just for clarification, where does this tax come from, I mean, how does the tax...? [LB835 LB838]

JAN MCKENZIE: The insurers pay the tax on the premium written. [LB835 LB838]

SENATOR PAHLS: Okay, the insurers pay the tax. Okay, thank you. [LB835 LB838]

JAN MCKENZIE: Thank you. [LB835 LB838]

SEAN MCGUIRE: (Exhibit 20) My name is Sean McGuire, spelled S-e-a-n, last name M-c-G-u-i-r-e. I'm here on behalf of my Web site, [Health Reform Explained.com](http://HealthReformExplained.com), it's a new Web site. I'm from the Omaha area, and I come to you with experience working for the Senate Finance Committee for Senator Grassley's staff, as part of the team that actually sat here and developed a lot of the concepts that made their way into the Affordable Care Act. And for the past two years I've been following the law as it went through the legislative process, and now as rules and regulations are being written. And I have a Web site that is aimed towards policy makers, the public, and the medical community trying to like break down some of this government jargon, and you know, I have prepared testimony, it's before you. But as I was sitting back, you know, waiting for my opportunity to talk, I heard a lot of questions that I think I have the answers to that I could maybe offer myself as a resource to you to answer some questions, or I can go into the testimony, it's up to you. Senator Gloor, for example, your question about whether there were enough individuals to support an exchange. We have 220,000 individuals uninsured in Nebraska right now, and as we know, the intent of the Affordable Care Act was to provide insurance for them. So half of those people are going to be provided insurance through Medicaid expansion, okay. The federal law expands Medicaid up to 133 percent of the federal poverty level, and that's standard now. Each state, in the past, had different Medicaid eligibilities, so that gets us half the

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way there, and the other one is going to be the insurance exchanges. So we're talking about a pool of about 120,000 individuals. I'm not an actuary. I can't really speak on whether that is going to be cost effective or not, but you know, Nebraska's a small state. I think one point that I'm going to try and make, you know, in my five minutes that I have, is I think Nebraska should take a little bit of a different step, and I think we should start working with our friends to the south and the east in other states and look at some regional collaboration opportunities, because we are a state of such small population, if we could work with Iowa, Wyoming, Kansas, and perhaps the Dakotas, we could get a larger risk pool together, develop an exchange where you could, you know, bring both sides together and sell policies over both lines, but still have the opportunity to have a big risk pool which would, in theory, bring low premiums down. So that was my answer to your...Senator Pirsch, I see you're back. Before I just wanted to give you my experience. I worked for the Senate Finance Committee when this law was being enacted. I noticed your question on some of the legal arguments that you had about the Affordable Care Act. I believe one thing that the administration is making the argument on the, let's see, it's the anti-injunction argument. And basically what that says is that you can't challenge something that hasn't already taken place, so in this case, you can't challenge something which in this case would be a tax, okay. So individuals are taxed if they decide not to purchase their insurance coverage under the law. So if they're taxed, that's the penalty that the IRS plays. Now you can't really challenge something like that until it's actually levied, and in that case, it will be 2014, okay. So it's 2012 now. We have three years of a lot of rate rules, regulations, requirements, a lot of responsibilities that you folks are going to have to do. I think that is a very, very strong legal argument. I think it's being ignored quite a bit by the media, and I think at the end of the day, it may be one that the administration may win on, and then ultimately, we're left with the huge responsibility and time running out with the June '12, 29th deadline. So I see my green light is on. I can take any more questions you may have. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. Thanks for your answer to the question, and I would tell you that, and you should be encouraged by this, that I think there already are some efforts to look at opportunities to work with surrounding states. I understand today at about 1:00, CMS issued a list of organizations that are receiving, I believe, some degree of planning grants to look at insurance cooperatives, and it includes both an Iowa-Nebraska cooperative that is in its infancy at this point in time, or at least the Nebraska side of it is. So, outside PPACA, there are entities that are looking at ways to do more of a collaborative approach towards providing opportunities for insurance for the uninsured and small employers. [LB835 LB838]

SEAN McGUIRE: Correct. Another point I would like to make on that, Senator Gloor, is the fact that access, and that's ultimately what this law is about, is providing access. Access to coverage only guarantees coverage. Coverage only guarantees coverage. It

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doesn't guarantee access to affordable quality care. You can have health insurance in rural western Nebraska. If you don't have the provider there to take care of it, you know, what good does it really do in the end? And I think work force shortages are going to be exacerbated because of this law as well. [LB835 LB838]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB835 LB838]

BRUCE RIEKER: (Exhibit 21) Senator Pahls, members of the committee, my name is Bruce, B-r-u-c-e, Rieker, R-i-e-k-e-r. I'm vice president of advocacy for the Nebraska Hospital Association. I know I was up here in support of (LB)835, and I'm here to assure you I'm not schizophrenic. (Laughter) I'm here in part to represent the Hospital Association in opposing LB838 for a couple reasons, but then also to address a couple things that have been said in the opposition testimony. First and foremost, you know, just to reiterate the reasons that the Hospital Association supports LB835 or contends it's the preferred method, is the governance structure. Almost with any entity, the better the governance structure or the more accountable and more transparent the governance structure, the better the organization will be. And so we think that there's a great deal of merit in the governance structure proposed by (LB)835. As far as the funding mechanism goes, I appreciated Jan McKenzie's explanation of the premium tax. Under the proposal under (LB)838, it's our understanding, our interpretation of the bill, that those premium taxes would not go away, but all of those monies collected would find their way into the general fund, and that there would be a fee charged against the participants or the insurers, and in the case of insurers, they may be passed on to the insured. But based upon the numbers we've seen in the fiscal notes, if it's going to take \$20 million to operate the exchange on annual basis, and it's going to take somewhere between 83,000 and 100,000 people to make that financially sustainable, each person that participates in that exchange is going to pay somewhere between \$200 and \$250 in addition to their health insurance cost, for participation fee, tax, assessment, call it whatever you want, but they are going to pay more for that. So this family of four that we've been talking about or I shared with you earlier that's under 400 percent of the federal poverty level that participates in the exchange will incur an addition fee of somewhere between \$800 and \$1000 per year to participate in the exchange if LB838 is the method that is taken or the approach that's taken. There's a lot of merit and beneficial things in LB838. There's a lot of good sections that Senator Pahls has incorporated in that. However, when it comes to governance, funding, and interoperability, interactivity with Medicaid and the other state agencies and federal agencies that would be involved, we contend that LB835 is the best route to go. A couple of other things, with regard to the options that were presented to you by the Department of Insurance, with all due respect to them, they are correct that the Governor could form an exchange via an executive order, no doubt about it. And that's been recognized by the federal government, executive order has been used elsewhere. They could also, you can also use a special session. However, our contention is that

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that option, the executive order option, removes all of the legislative component or the debate. It removes all transparency and removes all accountability in the formation of the exchange and places it in one entity. Not only that, I heard the strength of the code agencies as being the way to go, not that I would ever submit that the Department of Insurance has these problems, but I submit to you that if we go across the hall during the HHS Committee hearings, I don't think that a code agency, per se, when it comes to Health and Human Services, is a guarantee that things are going to work the correct way. And that's part of why we are adamant that there should be an independent governing board to help bring the public perspective to these particular exchanges. I've heard a lot about what ifs and deadlines. I've heard a lot about arguments. With respect to the gentleman from Cato, everything he told you is just a legal argument right now. No court has decided any of those things that he told you were in agreement. So we're still waiting for the Supreme Court to rule on more than 19 different issues, and some of those are the exact issues he presented to you. However, there has not been a judicial resolution of those, so I caution you to think that this domino effect will take place and that all of this will be ruled invalid because of not forming an exchange. So several comments there. If you have any questions of me, I'd be more than happy to try to answer those, but appreciate the opportunity to comment on that. [LB835 LB838]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you again, Bruce. You mentioned that the federal government will honor an executive order, a validly-issued executive order by a governor of a state. [LB835 LB838]

BRUCE RIEKER: They have already. [LB835 LB838]

SENATOR SCHUMACHER: Okay, what under Nebraska Constitution and Nebraska law gives the Governor of Nebraska the authority to issue such an executive order? [LB835 LB838]

BRUCE RIEKER: Well, that one I can't answer. I'm not aware of whether it's in the constitution or statute, what gives him the authority, but the federal government has recognized executive orders from other states. That's correct. [LB835 LB838]

SENATOR SCHUMACHER: So when you say the Governor has authority by the federal government, the federal government is assuming that the Governor under the laws of the state he governs has the authority. [LB835 LB838]

BRUCE RIEKER: Yes. [LB835 LB838]

SENATOR SCHUMACHER: Okay, thank you. [LB835 LB838]

SENATOR PAHLS: Thank you for your testimony. That ends all of the opponents. Any neutral? One, two, okay, if you're neutral, I'll have you come to the front. I see, just a

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second before we start, I see four people who are neutral? Okay, please. [LB835 LB838]

RON SEDLACEK: (Exhibit 22) Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name's Ron Sedlacek, and that's R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce, and we do appear in a neutral capacity. We had adopted a statement of principles and general statement in regard to the establishment of health insurance exchanges back in our December board meeting which were somewhat adjusted and reaffirmed in February. And I say that because it seems that is a moving target, as you can tell by the testimony you heard before us. We're waiting for a number of other issues, other shoes to drop, so to speak; adoption of federal regulations, when are the effective dates, will they be delayed, the potential outcome of court decisions. We've talked about what is in essential care, enrollment issues, multi-state employers, how it's going to affect the implementation of this issue. So we continue to evaluate this, and we take a neutral position at this point. We certainly have taken a position that is in favor of a state-based exchange, if there needs to have a state exchange, as opposed to deferring to the federal government. Our membership includes providers or carriers, as well as other members, and everyone has a little bit different opinion. In being a very broad-base group, we've been trying to gather these together and to examine the new information that seems to come about on a weekly or sometimes daily basis or sometimes conflicting information and trying to resolve those. In that light, we have been trying to be somewhat of a clearing house for business community members in regard to informing them as to what you, the Legislature, as well as others face in trying to implement this type of policy. We do stand ready, however, too, and are committed to assist if you should call upon us in formulating, we are certainly taking part in formulating a...a program as of this nature. And what I'd like to do is share with you at least the statement of principles, but as I say, they seem to continue to evolve as times goes on. With that, I'll conclude my testimony. If there are any questions, I would be happy to take them. [LB835 LB838]

SENATOR PAHLS: Seeing none, thank you for your testimony. [LB835 LB838]

RON SEDLACEK: Um-hum. [LB835 LB838]

JESSICA KOLTERMAN: Hello, Senator Pahls. Jessica Kolterman for Nebraska Farm Bureau. J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I come before you today in a neutral capacity merely because we aren't in a position to weigh in on the specifics of the bill. Our member-adopted policy states, while we oppose the federal Patient Protection and Affordable Care Act, should this law be implemented, we believe the state of Nebraska should establish a state healthcare exchange rather than participate in a federal healthcare exchange. We recognize that this is an ongoing issue and that this is a moving target and you're all working very hard along with other members of the body to

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figure out how this is all going to play out, and we just want to offer our support and happy to be involved as the process evolves. [LB835 LB838]

SENATOR PAHLS: Thank you for your testimony. [LB835 LB838]

JESSICA KOLTERMAN: Thank you. [LB835 LB838]

MICHAELA VALENTIN: (Exhibit 23) Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name is Michaela Valentin spelled M-i-c-h-a-e-l-a V-a-l-e-n-t-i-n, and I'm the registered lobbyist for Blue Cross and Blue Shield of Nebraska. I'm also the director of government affairs. We are testifying in a neutral capacity on LB838. Blue Cross/Blue Shield of Nebraska provides healthcare coverage or benefits administration to more than 700,000 people. As the state's largest insurer, we support the development and implementation of a state-based health insurance exchange in Nebraska. We encourage the Banking, Commerce and Insurance Committee to support Governor Heineman's position to wait until the Supreme Court issues its ruling on questions concerning PPACA before passing state-based exchange legislation. The state is aware of the constricted time line and subsequent need to continue planning for an exchange should the court uphold the Affordable Care Act. Last year, the Nebraska Department of Insurance applied for a level one establishment grant to aid its ongoing planning efforts. Nebraska is not standing still. There is a concern about the June 29, 2012, application deadline to receive a level two establishment grant from the federal government. This grant would provide funding for initial build-out costs and the first year of exchange implementation. Based on recent regulatory trends, we are confident this deadline will be extended giving states more time to produce the legal authority required to receive the grant after the Supreme Court rules. Blue Cross and Blue Shield of Nebraska supports the creation of a state-based exchange. We are encouraged that the Legislature has introduced legislation to start the discussion on exchanges and by the Governor's comments that Nebraska will not default to a federal exchange. We look forward to working with the Department of Insurance and the Legislature on an exchange proposal that best fits Nebraskans' needs. I'm happy to answer any questions. [LB835 LB838]

SENATOR PAHLS: Senator Gloor. [LB835 LB838]

SENATOR GLOOR: Thank you, Senator Pahls. Michaela, if I'm correct in my reflection, Blue Cross originally was in support of establishing the exchange and trying to do so to meet deadlines, and then there was a change about six or seven weeks ago on your stand. Is this an explanation of why you were, why you're comfortable delaying making a decision until we see what the ruling is? [LB835 LB838]

MICHAELA VALENTIN: We've always been for the establishment of state-based exchanges. We just feel that with our experience in dealing with the federal government,

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that they have delayed so many regulatory guidelines, that we really feel strongly that they will delay the grant guidelines as well. We do think the Legislature needs to start the discussion, but we do understand why Governor Heineman wants to wait until after the Supreme Court rules. [LB835 LB838]

SENATOR GLOOR: Okay, thanks. [LB835 LB838]

SENATOR PAHLS: No, I want to read a statement. I want to read a statement. The Governor's comments that Nebraska would not default to a federal exchange, he has told you that personally? [LB835 LB838]

MICHAELA VALENTIN: He said that in the State of the State address, and he's said that also in the paper. [LB835 LB838]

SENATOR PAHLS: Okay, and to Blue Cross. [LB835 LB838]

MICHAELA VALENTIN: Not to me personally, but I feel like it's a well-known statement. [LB835 LB838]

SENATOR PAHLS: Okay, well, I just thought this was from you, so I didn't know... [LB835 LB838]

MICHAELA VALENTIN: No, not me personally. (Laugh). [LB835 LB838]

SENATOR PAHLS: Okay, okay, thank you. [LB835 LB838]

MARK BOWEN: (Exhibit 24) Good afternoon. I think I might be your last. My name is Mark Bowen. I'm the director of government relations for the University of Nebraska Medical Center. My comments here are made as an individual, not reflecting any policy or position of the university itself. In 2010, I testified with a group of folks from UNMC on the interim study, and we testified as our organization had put together a small group of folks to analyze the development and evolution of the healthcare legislation that turned into the healthcare law. We looked at it from the impact of being the state's academic health provider providing most of the state's major, or most of the state's health professionals, as well as being a major employer in Nebraska, as well as being a significant deliverer of health services in Nebraska. I think we've come to be viewed as fairly objective on the topic and fairly knowledgeable on the topic of health reform. We are pleased to see the Legislature is advancing legislation dealing with the establishment of an exchange. It makes logical sense to create an exchange with the involvement of the Department of Insurance. The department has the knowledge and authority to best deal with standing up with an exchange since it already deals with the insurance industry and their agents. Determining eligibility of individuals will be key to that function of the exchange, and since that, since determining eligibility as an existing

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function within the state Medicaid office, having the state insurance exchange and the state Medicaid office integrate eligibility in the same consistent manner would be cost efficient and effective both for the state and for consumers. It would be beneficial to have the state insurance department and state Medicaid collaborate as much as possible through the exchange and its functions on a unified method to perform eligibility as individuals try to buy private insurance or get enrolled in Medicaid. Additionally, confidence in the exchange and transparency of its operation and the efficiency of it will be essential in creation of a governing oversight board as mentioned in LB835 and as a diverse membership board, which could include representative of the state's academic health university, could help provide both transparency and confidence in the mission of the exchange. Also, if the exchange is temporarily exempted from the state's hiring and procedural rules as is recommended by the state insurance exchange planning overview recommendations report, it is even more important that an oversight governing board be established to provide that transparency and confidence for the consumers and customers being served by that system. Last, it is important that the state establish a plan to proceed. We do feel that federal grants are available, and deadlines are approaching and can be used to help offset the cost for setting up that exchange in Nebraska, so it's very important that the state not miss that opportunity to apply for federal grants. And I'll end at that point unless there's any questions. [LB835 LB838]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB835 LB838]

MARK BOWEN: Thank you. [LB835 LB838]

SENATOR PAHLS: (Exhibits 25, 26, 27, 28, 29, 30, 31 and 32) Any more testifiers? Okay, well let me just read a number, we have several letters to read into the file, to the pages over here. The Nebraska Rural Health Association supports (LB)835. The Public Health Association of Nebraska supports (LB)835. Friends of Public Health, (LB)835. Nebraska Pharmacists (LB)835, and they also support (LB)838. Ameritas Life Insurance support (LB)838. Nebraska Nurses Association support (LB)835 and (LB)838, and Nebraska Nurse Practitioner Association, they're neutral on (LB)835 and (LB)838. Seeing no more testimony, that concludes the...oh, did you want to say anything? [LB835 LB838]

TIFFANY SEIBERT: May I? [LB835 LB838]

SENATOR PAHLS: Yes, you may. [LB835 LB838]

TIFFANY SEIBERT: Okay. So, thanks for the hearing today. Thanks for your patience in allowing me to represent Senator Nordquist on this important bill. I just, I don't feel that it's my position to comment on a lot of the things that were mentioned today, but I do feel that the Senator would be comfortable with me commenting on a few, I think valid

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questions raised in the Department of Insurance testimony. One, they mentioned the dubious constitutionality, I believe, of the composition of the board as it's written into LB835. I can assure this committee that we worked closely with bill drafters to work on that language so that they were fairly comfortable with the constitutionality. Also, it's based on some previous AG's Opinions that have said you clearly...the Legislature, clearly, cannot unduly restrict the Governor's ability to appoint, but the AG Opinion goes on to clarify that three or fewer options is an undue restriction. So we give the committee the ability to provide at least five options to the Governor to appoint. On another concern raised by the department, and I think it's a valid one, that this committee, the Senator would be happy to work with is about the funding in the CHIP pool and some question about the transition in 2014 and how we would make that work. I think I mentioned in my testimony that we'd like to clarify the language so that we're not taking any more money than is currently invested into the CHIP pool, and take that money, and even less, in fact, based on the budget that is set out in the fiscal note, and direct that towards the exchange. That being said, we may need to look at how we transition and what sort of funding happens in 2014. And then, all that's to say I think Senator Nordquist is willing to, to have a conversation with this committee about the composition on the board, who's represented on the board, but the main thing that's important to the Senator is that there is an independent board of governance, that this conversation is conducted in an open and transparent manner. And with that, I appreciate your attention today. Thank you. [LB835 LB838]

SENATOR PAHLS: Thank you, again. Seeing no questions, thank you. That closes the hearings on (LB)835 and (LB)838. [LB835 LB838]