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Health and Human Services Committee  
January 20, 2012

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[LB820 LB837 LB871 LB904]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, January 20, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB871, LB837, LB904, and LB820. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and R. Paul Lambert. Senators absent: None.

SENATOR CAMPBELL: Director Adams.

SCOT ADAMS: Yes.

SENATOR CAMPBELL: Are you here for the block grant?

SCOT ADAMS: I am.

KATHY CAMPBELL: Oh, good. Would you come forward? We'll let you get settled, and I'll make the announcements while you're getting settled.

SCOT ADAMS: Okay, thank you.

SENATOR CAMPBELL: I'd like to welcome you to the hearings of the Health and Human Services Committee. I'm Kathy Campbell, and I serve as the senator from District 25, which is Lincoln and part of Lancaster County. And the reason for all of the talking up here is we're trying to figure out...because we have members of the committee who are opening on other bills in other places. So we looked at the agenda and went, aha, there is a matter of business that we could take care of quite quickly. So I'm going to go ahead and do Director Adams, and then we'll come back, and I'll do the, what would I say, all of the instructions for the day. Director Adams, thank you so much for coming, and you are going to talk to us about Nebraska's state plan for Community Services Block Grant funds presented by the Department of Health and Human Services.

SCOT ADAMS: (Exhibit 1) Thank you so much, Senator Campbell. It's good to be here today, and good afternoon to all of you. My name is Scot Adams, S-c-o-t A-d-a-m-s, and I serve as the interim director for the Division of Children and Family Services within the Department of Health and Human Services. I'm speaking to you today concerning the Nebraska state plan for Community Services Block Grant funds for federal fiscal year 2013 and 2014. Nebraska submits a plan every two years to the Office of Community Services in the United States Department of Health and Human Services laying out what the state of Nebraska and community action agencies will do in the specified period. The CSBG Act governs this federally mandated program and requires a legislative hearing at the state level every three years, and that's why we're here today.

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By the way, I have (inaudible). We thank you. CSBG funds are federal funds distributed to states and earmarked by federal law for distribution to eligible entities that in Nebraska are known as the community action agencies. A formula based on each state's poverty population determines each state's grant amount. Nebraska received just under \$4.7 million for federal fiscal year 2012, less than 1 percent of the federal allotment overall. CSBG funding provides a range of services and activities to assist the needs of low-income individuals. Community action agencies are required to provide services and activities addressing key defined areas. Services and activities are determined locally through needs assessments and other community-based assessment tools, and agencies report their outcomes and activities twice a year and send an annual report to the federal funder every February. Nebraska recognizes nine community action agencies serving every one of our 93 counties. The board of each community action agency is comprised of one-third low-income representatives, one-third elected officials or their representative, and one-third private sector representatives, all who live in the community action area. Community action agency board members are responsible for planning, management, and operation of the agency, and the state is responsible for monitoring and oversight of the agencies to ensure compliance with federal laws and regulation. Guidance on the federal fiscal year 2013 and 2014 state plan will come out in April of 2012, so we're coming up to it. Nebraska will submit its state plan to the Office of Community Services by September 1 of this year. Copies of the plan will be available for public viewing and copies provided to this committee prior to the submission, per CSBG Act requirements. We anticipate level funding for the next fiscal year from the federal government. That could change, as we know. Per federal law, 90 percent of the money that we receive go to Nebraska's nine community action agencies. The remaining amount, then: 5 percent the state may use for state administration of the program, and the remaining 5 percent then are available through a competitive grant application. This competitive grant application allows CSBG to support other service providers who are also addressing low-income needs across the state of Nebraska. The Community Services Block Grant is only one funding source for community action agencies and for community action activities. It is the base funding to allow agencies to leverage additional private and public dollars for their programs. Last year, agencies leveraged more than \$66 million, or \$16.50 per Community Services Block Grant dollar, in other federal, state, local, and private dollars. It's a pretty impressive leverage amount, in my opinion. As a former director of a nonprofit organization, this kind of base funding is critical to being able to ensure the stability of the program and to allow and to give credibility to other fund-raising efforts. Thank you for allowing me to present Nebraska's intention to submit the Community Services Block Grant state plan and to provide you with a small sampling of what community action does in our state. If you're not familiar with the community action agency in your district, I invite you to visit those agencies. I think you'd be very pleasantly surprised. I'll be happy to answer any questions and would note that there is an attachment that has some additional examples of what the community action agencies do across Nebraska, just a smattering of highlights. It gives you a sense and

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flavor, I think, of some of the good that is done by these agencies. I will not read that but let you read that at your leisure. That concludes my testimony. Thank you.

SENATOR CAMPBELL: Thank you, Director Adams. Are there any questions from the senators? Senator Gloor.

SENATOR GLOOR: Thank you, Senator Campbell.

SCOT ADAMS: Yes, sir.

SENATOR GLOOR: Director, I have...actually, now that I'm looking at this page, maybe it's on the material you gave me. I haven't had a chance to answer yet, but what are some examples of some of the other programs that public funds...that can be leveraged, or even private funds that can be leveraged, that the community action agencies do?

SCOT ADAMS: Well, it's...

SENATOR GLOOR: Weatherization, is that an example of...?

SCOT ADAMS: Weatherization could be an example of that. State has federal dollars that pass through to other programs. Head Start programming would be another example.

SENATOR GLOOR: WIC?

SCOT ADAMS: I'm not familiar if that's exactly right, but I think there's no reason not to think that.

SENATOR GLOOR: Okay.

SCOT ADAMS: I'm just, off the top of my head, not familiar with that being a possibility.

SENATOR GLOOR: I think it's in here. Now that, you know, I'm...be able to look at the rest of the material you gave us. It may be in here, so I'll peruse this and get my answer.

SCOT ADAMS: Okay. If there are other questions afterwards, please feel free to...

SENATOR GLOOR: Thank you.

SCOT ADAMS: I would also draw attention to the last page of that handout. It gives you a multiyear sense of the dollar amounts available to Nebraska. It's been somewhat declining. The middle column represents the federal infusion of ARRA money for those two years, so there was a little bit of a boost during those tough times. And these are

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the agencies that work with the poor in deep ways. We also note that there are people who are elderly and children served by these funds, and that is, I think, a very important factor to the work being done by these agencies.

SENATOR CAMPBELL: Any other questions from the senators? Thank you, Director.

SCOT ADAMS: Thank you so very much.

SENATOR CAMPBELL: As this is a public hearing on the Community Services Block Grant program, is there anyone in the hearing room who would like to testify in either opposition or in favor? All right, we will close the hearing on the block grants and thank the director for bringing over a report. It always helps us to know what that program does entail. For everyone today, I'll go through the usual instructions, so if you're here every day, you can probably, you know, just sit back and relax for a minute. We try to tell people to turn off their cell phones or to put them on silent, so if you haven't checked your phone, you may want to do that. It's very disruptive for people who are testifying if the phone starts ringing. If you are testifying today, you need to complete one of the orange sheets, bright, bright orange, and as you come forward, you can give them to the clerk, Diane Johnson, who is to my far left. And any handouts that you have, we don't require handouts in this committee, but if you do, we would like 12 copies. And if you need extra copies, you can see the two pages that are again to my left, and they will help you. If you do not wish to testify but you want to at least make a comment of where you are on a bill, there are sign-up sheets in white, I believe, on the sides, and you can feel free to do that. As you come forward and give all your materials to the clerk, the pages will distribute for you. And the second and last thing about coming forward is please state your name for the record and spell it so that we're sure that we have everything. As is our practice here, we have self-introductions by the senators, so I'll start to my far right.

SENATOR LAMBERT: I'm Senator Paul Lambert representing District 2.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, Wayne, Thurston, and Dakota Counties.

SENATOR COOK: I'm Tanya Cook. I represent Legislative District 13 in Omaha and Douglas County.

SENATOR GLOOR: Senator Mike Gloor, District 35, which is Grand Island.

MICHELLE CHAFFEE: I'm Michelle Chaffee. I'm the legal counsel for the committee.

SENATOR KRIST: Bob Krist, District 10 in Omaha and Bennington.

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SENATOR CAMPBELL: And the clerk?

DIANE JOHNSON: Diane Johnson.

SENATOR CAMPBELL: Okay, and our two pages over there are Phoebe and Michael, and we're getting...we're very glad to have the pages. They're always very helpful. Because Senator Howard is in the Judiciary Committee opening on a bill, we will start this afternoon's hearings with LB871, Senator Gloor's bill to provide policies relating to fees and copays related to the Behavioral Health Services Act. So, Senator Gloor, when you're ready, we're ready. [LB871]

SENATOR GLOOR: Thank you, Senator Campbell, and good afternoon, fellow committee members. I'm Mike Gloor, M-i-k-e G-l-o-o-r. LB871 was created through a yearlong negotiation between the Department of Health and Human Services and the regional behavioral health authorities that I'll probably slip and refer to pretty regularly as the regions. LB871 does two important things, as far as we're concerned. It instructs the regions to formalize in policy their methodology for determining a client's financial eligibility on their schedule of fees and copays. Their current calculation method includes taxable income and the number of family members dependent on the income. The bill, per the agreement between the two parties, will add a new factor to the calculation, liabilities of the client. In anticipation of future changes, the division also has added other factors as determined by the division. The governing board of each region will approve the methodology and include it in their annual budget plan to the Division of Public Health. LB871 will also exempt the regions from the methodology being used by the division to determine financial eligibility that includes asset determination. Again, it exempts them from that. The reasons for this exemption is that the service providers who contract with the regions do the calculation to determine the eligibility of the consumers...excuse me, the service providers who contract with the regions and do the calculation to determine the eligibility aren't able to gather or confirm information like assets of a specific consumer. I'd be glad to field some questions. I was on the board of a community mental health center funded by one of the regions, and so I'm aware as a board member and former board chair of one of those entities about some of this fee-setting methodology. But, frankly, I have reps from my region, and there may be others, who are here to speak to it, as well as from the department, and they are our subject experts and will be testifying. Thank you. [LB871]

SENATOR CAMPBELL: Are there any questions for Senator Gloor before we begin the other testimony? Thank you, Senator Gloor. And for the audience, I have asked the committee members, if they are presenting a bill, to return to their seats with the committee. All right. With that, we will start with the first proponent, Director Adams. Good afternoon, again. [LB871]

SCOT ADAMS: (Exhibit 2) Good afternoon, again. Good afternoon, Senator Campbell

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and members of the Health and Human Services Committee. I am Scot Adams, S-c-o-t A-d-a-m-s, director of the Division of Behavioral Health for the Department of Health and Human Services. I'd like to thank Senator Gloor for introducing LB871 on behalf of the department, and I am here to testify in support of this bill. Current law requires that consumers receiving behavioral health services within the Division of Behavioral Health and regional behavioral health authority system are assessed for their ability to contribute to the cost of their treatment, receiving two distinctly different methodologies. For consumers seeking services voluntarily, a financial eligibility method is used which uses the consumer's income and family size to determine payment. This methodology is used by providers in the network who collect the fees and copays from consumers while in care. For consumers who have been committed to care by a mental health board, inpatient or outpatient, an ability-to-pay methodology is currently specified in statute, and this uses an individual or family's income and assets to determine the consumer's ability to contribute to the cost of care. The provider serving the consumer would gather such information, submit it to DHHS, which would then assess the consumer's ability to pay and pursue collection of this payment directly from the consumer. You can see the awkwardness, I hope, evolving here. The ability-to-pay statute was created when most persons who were committed to care were served in state institutions. Today, fewer than 5 percent of all committed persons are served in a state institution. Rather, they are served in community-based private sector providers and care. This is a good statement for Nebraska, and the point of this bill is to help us catch up to that change. Using the two separate methodologies within one system to assess a consumer's ability to contribute to cost of care creates confusion for consumers and providers. It also places an additional burden on the providers to determine the consumer's commitment status to determine which methodology to use. It creates an additional burden on Health and Human Services to determine if the correct method was utilized, conduct the verification of assets, determine a consumer's ability to contribute to the cost of care, and then pursue payment from these consumers at a later date. The intent of LB871 is to harmonize the methodologies to be used to determine a consumer's ability to pay for services, regardless of mental health board commitment status. LB871 specifies the term "financial eligibility" to reference a consumer's expected ability to contribute to the cost of services received, regardless of commitment status. LB871 clarifies the expectation of the regional behavioral health authorities to adopt a financial eligibility policy and schedule of fees created by the Division of Behavioral Health. The Division of Behavioral Health will specify the methodology to be used by the community-based providers to determine a consumer's financial eligibility according to statute to ensure an even system across the state. The methodology proposed in LB871 includes examination of the consumer's taxable income, family size, and liabilities. The consumer's financial eligibility determination will be conducted by the provider of services. The Division of Behavioral Health and the regional behavioral health authorities will monitor to ensure the consistent use of this methodology across their provider networks. LB871 also amends Section 83-368 to exclude the Division of Behavioral Health and the regional behavioral health authorities network from using the

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ability-to-pay methodology specified in that section. DHHS does not have the necessary infrastructure, staff, attorneys, time, court fees, to pursue that payment structure. The department is not attempting to diminish the contribution of consumers here to the cost of the behavioral health treatment. Rather, we are trying to create a consistent methodology to be applied to all consumers in determining the ability to pay and to contribute to their cost of care, to ensure timely access to services for consumers so they're not held up waiting for a determination of what their fee is, and to make the process easier for providers overall. Again, Senator Gloor, thank you for introducing this. I realize this is a little arcane perhaps, but appreciate the consideration of the committee. I would be happy to respond to any questions you may have. [LB871]

SENATOR CAMPBELL: Questions from the senators on this issue? Senator Howard. [LB871]

SENATOR HOWARD: Thank you. Thank you, Senator Campbell. I apologize for being late. I was presenting a bill in the Judiciary Committee. I just have a question, a clarification. This does not apply to children, am I correct? [LB871]

SCOT ADAMS: The department requires that children, as part of their family units, are assessed fees, so it could apply to those folks as well, though the part about commitment is highly unlikely. [LB871]

SENATOR HOWARD: But in other situations, this could be used, this could apply, other than a commitment situation? [LB871]

SCOT ADAMS: Well, we're attempting to, in essence, remove the commitment situation so that it would be...the fee-for-service would be applied based on family size, income, and those kinds of things across the board, regardless of commitment status. [LB871]

SENATOR HOWARD: Well, let me...could I ask you a question? [LB871]

SCOT ADAMS: Sure. [LB871]

SENATOR HOWARD: Recently it came to my attention that a family who is struggling with a youth and had made arrangements for placement of the youth in Boys Town, their insurance wouldn't pay for this, was denied services through the department. The department's attorney went in, denied services, said the family could, in fact, sell their home to pay themselves, to pay for the youth's care. Does that situation...would that be affected by this? [LB871]

SCOT ADAMS: This would not affect that situation. [LB871]

SENATOR HOWARD: Okay. [LB871]

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SCOT ADAMS: This would be because...actually, what we're trying to do would be save that, because it would be a determination of assets. That's an example of the current law that we're trying to move away from. And you can see in that particular example how the uproar caused the time delay with regard to determining whether or not that could happen, but that is the law today. Now whether that applies to children in that particular circumstance, I'm not sure, Senator. I'd be happy to talk with you further about that case. [LB871]

SENATOR HOWARD: Well, yeah, and I appreciate that. And I would say, in my experience in working with families and children, that had never been the case. The way it had been handled in the past when I did social work was that the family, their income and assets were assessed, and then they were charged through child support... [LB871]

SCOT ADAMS: Yes. [LB871]

SENATOR HOWARD: ...when the child was made a ward of the state through no fault of the parent. [LB871]

SCOT ADAMS: Yeah. [LB871]

SENATOR HOWARD: So...but I would appreciate the... [LB871]

SCOT ADAMS: I agree with that, yeah, in terms of what your understanding of that is. And so I'm not quite sure what this particular case is, but that's the kind of thing we're trying to avoid on the adult side for sure, because you can see how cumbersome that is. [LB871]

SENATOR HOWARD: Well, and how unfair. [LB871]

SCOT ADAMS: Oh, boy, tough. I mean, it just... [LB871]

SENATOR HOWARD: I appreciate that, and when you have the time, let's catch up on the other situation. [LB871]

SCOT ADAMS: Okay, thank you. Be happy to. [LB871]

SENATOR CAMPBELL: Senator Krist. [LB871]

SENATOR KRIST: Ditto. It's not an isolated case. I have two that have come to my attention where services have been denied because of the financial capability of the families. And I again had never run into it, so I'd like to see something formally come back to the committee that addresses denial. You can use that as a test case, because



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that's an easy one. [LB871]

SCOT ADAMS: Sure. How about we be in touch with your aide as well so we can get the particulars for both of those cases and talk to all three of those cases. [LB871]

SENATOR HOWARD: Yeah, we could do it at the same time and share information. [LB871]

SCOT ADAMS: Sure. Sure. Be happy to do that. I think that's a great idea. [LB871]

SENATOR CAMPBELL: What we may want to do is, we also need to have a follow-up, and this has nothing to do with you, but a briefing that on a question for Director Chaumont. So what we may do is just do a briefing and come, because Senator Howard shared it with all of us, the material, so we'll see that you get a copy. Those cases are much like Senator Krist...probably be easier just to talk to all of us... [LB871]

SCOT ADAMS: Sure, may be a Medicaid question. Yeah. Yeah. [LB871]

SENATOR CAMPBELL: ...than each one of us one by one. [LB871]

SCOT ADAMS: That would be great. Okay, thank you. [LB871]

SENATOR CAMPBELL: Any other questions for the director today? Thank you. [LB871]

SCOT ADAMS: Thank you so much. [LB871]

SENATOR CAMPBELL: Our next proponent for LB871. Good afternoon. [LB871]

BETH BAXTER: (Exhibit 3) Good afternoon, Senator Campbell...Chairwoman Campbell and members of the Health and Human Services Committee. I am Beth Baxter, that's B-e-t-h B-a-x-t-e-r, and I'm here today representing the Nebraska Association of Regional Administrators, which is a coalition of the administrators of the six regional behavioral health authorities across the state of Nebraska. I am the administrator for Region 3 Behavioral Health Services, which encompasses the central part of Nebraska, and I'm here before you today to testify in support of LB871. I, too, like Director Adams, appreciate Senator Gloor's willingness to introduce this bill, as it does reflect numerous discussions, many, many months of discussions, between the Division of Behavioral Health and the regional behavioral health authorities. And I believe Director Adams provided some really explicit and good background into some of those discussions. We see the need to clarify financial eligibility and establish methodologies for determining fees and copays for individuals who are accessing services through the Nebraska behavioral health system. The regions currently operate within statewide policies and regulations regarding financial eligibility, and the providers contracting with the regions

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are required to serve individuals based upon their ability to pay for services. LB871 seeks to ensure that there is a consistent application of such policies in a uniform manner statewide. LB871 sets the statutory language for determining financial eligibility and fees and copays. However, as the language clearly states within the bill, it's the financial eligibility policy that's set forth by the Division of Behavioral Health that will really determine how this statute is operationalized at the regional, the provider, and ultimately for the consumer. And as I see this, then, it really does behoove the division and the regions to develop and implement a policy and a fee structure that supports individuals and families to access the care that they need and allows providers to operate effectively and efficiently. It's certainly not the intent of this bill to create hardships and barriers for the most financially fragile individuals and families who need behavioral health services, nor is it the intent of the bill to create burdensome requirements for providers collecting financial information to determine an individual's eligibility. However, I realize that these types of unintended consequences may happen if we don't ensure, in this development and application of the policy, that we build in safeguards and measures of flexibility to cover a variety of situations for individuals. The regions look forward to working with the division, the providers, consumers, and other stakeholders who access community-based behavioral health services in developing and implementing a fair and consistent financial eligibility policy that effectively and efficiently allows for the delivery of behavioral health services. Again, I appreciate your consideration of LB871 and would certainly try to answer any questions you might have. [LB871]

SENATOR CAMPBELL: Questions for Ms. Baxter from any of the senators? Ms. Baxter, I just wanted to note an appreciation to you and all the regional directors for the work that you do to help people across the state, and particularly for your longtime service. [LB871]

BETH BAXTER: Thank you. [LB871]

SENATOR CAMPBELL: It's always good to see you. Any other proponents for LB871? Thank you. While Mr. Dugan is making his way to the chair, I was remiss in not saying that this committee does use the light system. So when it's green, you can keep talking. When it gets to yellow, that means you have one minute left. When it gets to red, you'll probably look up, and I'll be going like that, so, in any case...Mr. Dugan, I'm on your time, so you go right ahead. [LB871]

SCOTT DUGAN: (Exhibit 4) Thank you, Senator Campbell and members of the committee. My name is Scott Dugan, S-c-o-t D-u-g-a-n. I'm the president and CEO of Mid-Plains Center for Behavioral Healthcare Services. Our organization serves a full array of individuals in the areas of mental health, addiction, and child welfare in central Nebraska, and we've done so for 40 years. And, actually, my organization was the one that Senator Gloor spoke of, having served on that board sometime in the past. I am

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today testifying on behalf of the Nebraska Association of Behavioral Health Organizations. I am serving as president of that association, and we represent 48 provider organizations across the state. The changes to the Nebraska Behavioral Health Services Act that are proposed in this bill are understood to be an effort to clarify in statute how eligibility for financial assistance and client fees are to be determined when a citizen seeks services from a provider of mental health or addiction issues. While we support clarifying and standardizing the application for the eligibility policy, we are concerned about a few things as the bill stands today. First, the bill states "shall take into account taxable income, the number of family members dependent on consumer's income, liabilities, and other factors as determined by the division." Liabilities have never been a factor in determining eligibility to this day, and without defining what are considered liabilities or at least putting some kind of framework around that term, there could be a heavy burden placed on providers. Currently, a provider spends a significant amount of time trying to gather income information with regards to the consumers that are coming to us for services. So the burden of gathering liability information that has not been defined with parameters would result, potentially, in the delay of consumers entering treatment. Secondly, it's not clear if each regional authority would create their own fee schedule or if the division would create the fee schedule at the state level. We recommend clarifying that the fee schedule should be created by each regional authority and then uniformly applied to providers in their region. With the many differences that exist from region to region, it's unlikely that a single state fee schedule would work effectively for all providers across the state. Additionally, line 14 in the bill states, "Providers shall charge a fee consistent with the schedule of fees and copays." The reality is that the current policy allows providers some flexibility not to charge a fee when the circumstances of the consumer would warrant no fee. It would be important that any fee schedule that is created, or any policy, would include the ability for providers to waive the fee given certain circumstances and situations. Otherwise, providers would be forced to go through a process of charging fees with no expectation of collections, resulting in wasted employee time, additional costs, and possibly trauma to a consumer about how these expenses might burden them when they're given a bill. Again, NABHO is not opposed to this clarifying statute to provide for a consistent and fair application to eligibility process. We just believe that there are some changes necessary to ensure that the additional burdens are not placed on providers and consumers participating in a system that already contains costly expectations that are not often covered in the calculation of rates. And I'd be happy to answer any questions. [LB871]

SENATOR CAMPBELL: Questions? Senator Cook. [LB871]

SENATOR COOK: Thank you very much. I got a little bit confused when we got to, "again, we are not opposed," and then I thought we were still on supportive testimony. [LB871]

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SCOTT DUGAN: Yes. [LB871]

SENATOR COOK: So the way it reads right now, you're supporting it. So later on, let's say we kick it out and we're voting, we won't necessarily experience amendments on behalf of your organization? [LB871]

SCOTT DUGAN: We support the intent of this, and we believe that what's been expressed by the division and the regions in their discussions certainly doesn't give us any reason not to believe this would be operationalized. However, as Ms. Baxter testified before me, it's all in the operationalizing of legislation where the details can come back to haunt us. [LB871]

SENATOR COOK: Okay. [LB871]

SCOTT DUGAN: So we're just making suggestions that these are things to pay attention to as this bill is moved forward. [LB871]

SENATOR COOK: Okay, thank you. [LB871]

SENATOR CAMPBELL: Any other questions? Senator Krist. [LB871]

SENATOR KRIST: Your testimony, then, on...I didn't read your testimony, I was listening to you. It states line by line what recommendations you have for changes to the existing copy? [LB871]

SCOTT DUGAN: There are three suggestions, and it specifies which lines that either need some attention, potentially amended, or at least need to be brought to the forefront for awareness that the implementation of this should be monitored to make sure. [LB871]

SENATOR KRIST: So back to Senator Cook's question, this green copy does not do what you think should be done. These recommendations should be looked at as what you really think the green copy should read. [LB871]

SCOTT DUGAN: It could be. I guess this always goes to that fine line of question what belongs in statute and what belongs in the policy and procedure. I think that there could be just as many concerns writing some of the suggestions into statute, could tie some hands where we don't want to do that. We do support the bill, but we believe that we needed to bring to light that there may be some considerations that are necessary either in intent or just in monitoring and follow-up as things are implemented. [LB871]

SENATOR KRIST: Clear as mud. Thank you. (Laughter). [LB871]

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SENATOR CAMPBELL: Mr. Dugan, I'm going to follow up on that question and say, is there any particular language that you have supplied to Senator Gloor or would be willing to supply? Sort of...I think our questions are, we understand you support the underlying intent and concept of the bill, but if there's specific language, would you be willing to sit down with Senator Gloor and the director and maybe discuss what those are? [LB871]

SCOTT DUGAN: Absolutely. Our organization actually just this morning went through our entire bill review process and talked through, as an organization, these things... [LB871]

SENATOR CAMPBELL: Okay. [LB871]

SCOTT DUGAN: ...and hadn't had a chance, with the quick scheduling of hearings in this short session. We certainly would be more than happy to offer up any changes in the actual bill language, but, as an organization, we would not oppose what is written. [LB871]

SENATOR CAMPBELL: Okay. [LB871]

SCOTT DUGAN: We certainly might be sitting back here at some point in the future if the operation and implementation started causing problems. [LB871]

SENATOR CAMPBELL: But I think, to follow up on the two senators, our job as a committee is to make sure that when that bill goes to the floor, it's as good a form as we can make it. And if there are people who come forward and say, well, I'd like to sit down and talk a little bit about or add language, that's helpful. I mean, we're trying to say we welcome your help. I just think, on behalf of Senator Gloor, and I don't always want to speak for him, by any means, but it's helpful to the introducer, then, if there's language or some specifics. [LB871]

SCOTT DUGAN: Yes, and we will do that. [LB871]

SENATOR CAMPBELL: And I'm sure that's fine. And then, as a director, that would be helpful. Because it may be that Director Adams could say, well, that's something that we could have in rules and regs and that type of thing, which may answer the question. But we appreciate your willingness to make helpful suggestions. [LB871]

SCOTT DUGAN: Thank you. [LB871]

SENATOR CAMPBELL: Any other comments or questions? Okay, thank you. Other proponents to LB871? Anyone in the hearing room who wishes to testify in opposition to LB871? Anyone in a neutral position? Okay, Senator Gloor. Senator Gloor waives

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closing. (Laughter). That's points with his fellow colleagues, I think. (Laughter). Mark it down. We shall all mark this day on our calendar. (Laughter) Okay, we shall proceed. We'll close the hearing on LB871, and Senator Howard is already getting ready, so we will open the hearing on LB837, Senator Howard's bill to create a task force to review use of certain drugs by wards of the state. Thank you, Senator Howard. [LB871]

SENATOR HOWARD: (Exhibit 5) Thank you, Senator Campbell and members of the committee. For the record, I am Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. LB837 would create a task force to review and make recommendations on Nebraska's policies and procedures for prescribing and administering psychotropic medications to state wards. LB837 is very similar to a bill I introduced in 2006 after an interim study revealed that state wards take thousands of psychotropic medications that cost Nebraska Medicaid millions of dollars. Since that time, my commitment to ensuring that these powerful drugs are prescribed only to those who truly need them has not changed. However, public awareness of this issue has greatly increased. Just last month, the federal Government Accountability Office released a statement highlighting the critical need for guidance in this area. The report reiterated many facts we already know. Children in foster care are significantly more likely to be medicated than children in the general public. Although medications can be helpful to treat mental disorders, they often have serious side effects that can range from decreased appetite, weight gain, nightmares to irreversible tics, seizures, and thoughts of suicide. Most importantly, the GAO stressed the fact that much of the research on the effect of psychotropic medication occurs in adults, and the additional risk these drugs pose specifically to children are not well understood. The GAO also reported that some foster children are subject to the kind of prescribing practices that carry an even higher risk of dangerous side effects. Too often, foster kids are prescribed more than five medications at a time, or they are prescribed medications at doses that exceed the maximum under the FDA guidelines. Moreover, the GAO received reports of foster children under the age of 1 being prescribed psychotropic drugs despite the fact that these drugs have no established use for mental conditions in infants. As a better illustration, my office has sent you a link to a December episode of a 20/20 resulting from a yearlong investigation into foster care and psychotropic medications, and I would encourage you to look at that. You probably have. Thank you. When I introduced similar legislation in 2006, I identified several reasons to be alarmed with high levels of psychotropic use among state wards. I believe the turmoil of the reform has only solidified these likely risks. High turnover among caseworkers at Health and Human Services and the lead agencies challenged the ability to monitor behavioral changes or side effects. Drug therapy is generally less-expensive treatment than talk or cognitive behavioral therapy, creating yet another bias that can lead to the misuse of these drugs. In fact, as this committee is aware, payment for therapy, especially when therapy strategies involve training parents, has been an issue recently. Some providers who care for children with behavioral, medical, emotional, or cognitive disabilities who require these medications qualify for a higher level of reimbursement, which may pose a challenge to the objectivity when they

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are determining whether psychotropic drugs are necessary for treatment. Many of the medications prescribed for behavioral modification are not indicated for pediatric use. I want to emphasize one risk in particular that is central to this issue. Children in foster care often have fragmented medical and mental healthcare, making continuity of treatment difficult. In your packet, you'll find a copy of a letter from my office received from the Foster Care Review Board as a follow-up to questions regarding psychotropic medications and state wards. In the very same letter, this agency responded to questions I had regarding critical documentation issues. The board found that, at any point in 2010, between 24 percent and 42 percent of cases reviewed did not have medical reports in the case record. Lack of knowledge of a ward's medical status combined with high caseworker turnover creates a very dangerous possibility of inappropriate treatment, including prescription of powerful psychotropics. Children who are wards of the state are much more likely to suffer from the kinds of mental diseases and trauma that may create a need for medication. But these children, who often are abused, abandoned, neglected, or suffering from serious behavioral and mental health issues, do not deserve to be victimized again because we do not have a coherent and a cohesive policy in place to ensure that they receive the most effective medical care. LB837 will provide critical oversight of how we are prescribing and administering powerful medications to our state wards. I appreciate your time and your attention to LB837. [LB837]

SENATOR CAMPBELL: Questions for Senator Howard on the issue? Senator Krist. [LB837]

SENATOR KRIST: It's a question and a comment. The comment first is, early in January, we think the 5th of January, we had a joint briefing, not a hearing, where the--and I'm sorry that Director Adams left--the CEO, Kerry Winterer, Scot Adams, Director Adams, and Vivianne Chaumont came before us. At that point, I asked the group to get back to us with an answer--and if you're taking notes, Jeremiah--an answer to why a 5-year-old, a person under 5, was being prescribed psychotropic drugs but yet was being denied psychological services or oversight for why those drugs were being administered. This goes to point, I think, and I'll leave you with that question. I think this is going to help solve that issue, and I'd like you to talk to that. But more importantly, I don't know how kids can get well and get off of psychotropic drugs if on one side we're feeding them the pill and on the other side we're not trying to get them well. Can you talk to that for me for a second? [LB837]

SENATOR HOWARD: Well, as always, I appreciate your comments. You always are so able to get to the heart of the matter. (Laugh). I have long been concerned about this because I saw it escalate when I was a case manager. I moved children from a placement to another placement where they were carrying a bread sack full of medications that were prescribed for them, and this surely can't be the best way that we can help young people who come into the system. I think this is the time to address that.

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I appreciate any insight that Vivianne Chaumont may be able to provide to us about this. It's a problem that isn't becoming less of a problem, it's actually becoming more of a problem. It's a way to control behaviors with children who come into the foster care system and have a lot of emotions. And, quite frankly, they're entitled to feel frustrated, lost, scared, angry, hurt, anything you can imagine. And I'll just share, when I started doing social work, I was very puzzled about why we would take a child out of an abusive home, for example, and we would go into juvenile court, and the first thing that child did when they saw the parent was rush to that abusive parent, hug that parent, and cry. Because that's all that child knew, and it was safer the devil you knew than the devil you didn't. That's why these children have all these emotions and they act out, and foster parents call and say, we don't know what to do with this child. What's not normal in that situation? [LB837]

SENATOR KRIST: Thank you. [LB837]

SENATOR CAMPBELL: Thank you, Senator Howard. Any other comments? We appreciate your... [LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR CAMPBELL: ...continuing, ongoing advocacy in this area. [LB837]

SENATOR HOWARD: Well, thank you, and it's so nice to work with a committee that cares. [LB837]

SENATOR CAMPBELL: Okay, the first proponent for LB837. Anyone wishing to provide testimony? Good afternoon. [LB837]

MELANIE WILLIAMS-SMOTHERMAN: Good afternoon. I actually didn't come with prepared testimony, but this is a very important bill. It's something that in prior testimony I have spoken to, and it's very important to me. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e W-i-l-l-i-a-m-s-S-m-o-t-h-e-r-m-a-n. I'm the executive director of the Family Advocacy Movement, which advocates for families and children who are caught up in the child welfare system. I wish to thank this committee, and specifically Senator Howard, for introducing this very important bill. While I was listening to Senator Howard explain why she introduced this bill, it was really a mirror of what I just jotted down and the comments and feelings that we have as we observe the child welfare system every day and hear from families and former foster children who are distraught over this practice. But I had written, before I heard Senator Howard and her explanation, just from reading the brief intent of the bill, was that I implore the committee to not only require investigation into the types of drugs being used on children but also the very practice of forced drugging of children, often very young, who have already experienced trauma for many reasons, including the unnecessary



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removals from everything and everyone they know and love. That is incredibly traumatic, even when there are problems in the home where the state is trying to address those problems. When children are torn away from everyone they know, they experience natural trauma. And the types of acting out that these drugs are being used to address are natural, should be expected, should be treated competently, and not masked with drugging. Many of these children are temporary state wards, yet birth families sit helplessly by watching their children being harmed by these dangerous treatments. Some may legitimately call it state-sponsored child abuse in order to unnaturally cause compliance while in the hands of strangers. But what we are also looking at and concerned about, and I would...I'm sure that this committee is already looking into this or may already know the answers to this. We have struggled to find the answers, but we are worried that the drugging of foster children may also be a method of gaining more federal funding, by labeling children with diagnosed illnesses, behavioral problems by--sorry for the term, but this is the truth--rubber-stamping professionals who will really do anything to keep their relationships and nurture their relationships with the department and those in charge of paying. In turn, we are concerned that drugging is also being used as a method of raising the level of care so that the state can pay more to foster families who are taking in these children and handling them for other people. So again, thank you, Senator Howard. I think this is an incredibly important bill, and I'll be back to speak on the Title IV-E waiver. [LB837]

SENATOR CAMPBELL: Questions today? Thank you for coming. [LB837]

MELANIE WILLIAMS-SMOTHERMAN: Thank you. [LB837]

SENATOR CAMPBELL: Our next proponent. Welcome. [LB837]

CAITLIN PARDUE: (Exhibit 6) Good afternoon. My name is Caitlin Pardue, C-a-i-t-l-i-n P-a-r-d-u-e, and I am the behavioral health policy associate at Voices for Children in Nebraska. I wanted to thank Senator Campbell and the committee for the opportunity for me to speak to all of you today and Senator Howard as well for her continued commitment to these issues that are very important. I've passed around a fact sheet that outlines the national trends of psychotropic drugs in foster care children as well as some more information on new federal laws. The relationship between psychotropic drugs and foster children has been a growing national interest. In a recent congressional hearing which coincided with the release of the GAO report that Senator Howard mentioned, a 12-year-old boy shared his story. He was in foster care since he was the age of 6 and had three homes during that time. But by the time he was adopted two years ago, he had been on 20 different psychotropic drugs, which was sometimes 5 at a time. He said that he was constantly distracted and dazed, irritable, and often had trouble in school. But his adoptive parents wanted him to live a more normal life without psychotropic drugs, and so now, instead of taking these powerful drugs, he's getting counseling and has the continued support of his parents. He is successful in school and

also active in his community. This story demonstrates that these drugs, if not used properly and carefully, create more problems than they solve. But I think it also points to the problems that children have when they're bounced from foster home to foster home and what that looks like, with the impermanence. There is this increased risk of overmedicating kids because foster parents may not be as strongly invested in the child's long-term issues as well. So without this young boy's adoptive parents' continued commitment to his long-term health and well-being, he would most likely still be taking multiple psychotropics to control his behavior. And this is because medication is often seen as a quick fix. For many behavioral problems, meds do appear to fix the problem, but they are only addressing the surface level. And just as people have said before, there are deep-rooted issues that cause these behaviors and mental health issues, and we're finding that foster kids are given more and more medications without careful follow-up or therapy. So we know we can't fix all these problems in child welfare overnight; but at this moment right now, we can take these important steps to create policies that protect kids from improper medication. We know that some kids do benefit from carefully prescribed psychotropic drugs...and can be incredibly helpful in a long-term recovery, but we also know that in the wrong circumstances they can have overwhelmingly negative effects. So a task force, which has been suggested, could really help ensure that medications are only prescribed when they're needed and can also play an important role in addressing the new federal legislations that are in place. Which...in September of last year Congress signed into law, with almost unanimous support from both sides, the Child and Family Services Improvement and Innovation Act, which mandates that each state create specific protocols regarding the use of psychotropic drugs in foster care. So in order for Nebraska to come into compliance with federal law, a task force would be an ideal way to really look at the way that we prescribe psychotropics within the foster care system, so I hope you will consider this. And thank you again for the opportunity to speak with you, and I'd be happy to answer any questions as well. [LB837]

SENATOR CAMPBELL: Questions for Ms. Pardue? I just have a question. In your following of this issue, to your knowledge, I mean, Congress has mandated that states come up with a protocol. Two questions, really. Has the department started any look at this issue internally, to your knowledge? [LB837]

CAITLIN PARDUE: Not to my knowledge, no. But I think that, within these new protocols, that it is important to relook regardless and to make sure that we have mandated and properly executed protocols as well. [LB837]

SENATOR CAMPBELL: And the second question is, to your knowledge, has any of the states completed such a review and have those laws in place? [LB837]

CAITLIN PARDUE: I do...no, I don't have the information with me right now, but I know that there have been some states, and I would be happy to give you a more thorough

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report on that. [LB837]

SENATOR CAMPBELL: That would be terrific if you could do that, because then we'll just make sure that the file on the task force would encompass that. [LB837]

CAITLIN PARDUE: Definitely, um-hum. [LB837]

SENATOR CAMPBELL: Any other questions from the senators? Thank you for coming today. [LB837]

CAITLIN PARDUE: Thank you. [LB837]

SENATOR CAMPBELL: Other proponents for LB837? Those who wish to testify in opposition to the bill? Anyone wishing to testify in a neutral position? Welcome. [LB837]

PAM OLTMAN: Hi. Thank you. My name is Pam Oltman, O-l-t-m-a-n, and I'm a licensed mental health practitioner as well as a licensed alcohol and drug counselor. I'm teaching right now rather than practicing, and part of it is I stepped away and took a look at some of the stuff in the system. This is one of the issues that I was seeing over and over. You know, by nature of being a therapist, we hear about the concerns of individuals, families, parents, foster parents. I heard a lot of concerns that were consistent with the GAO report that Senator Howard had mentioned, with concern that the children are overmedicated, or themselves, the number of meds, you know, and others were satisfied with their providers. But more and more I found myself working to help families, individuals, parents, the kids process concerns of the system itself. You know, for an example, if someone has a dependency on one of the psychotropic drugs because of perhaps a surgery and then there is limited treatment availability, they start leading to crime, and it gets into perhaps the legal system, more and more into the mental health system. Sometimes you can't get to the issues that were there before they entered the system. You know, there's a desire to help the clients gain trust in the system, and yet there's concerns sometimes when you hear, you know, the levels of medication. But as the therapist, I also have to look at scope of practice, and should I be stepping in and saying, you know, this child's overmedicated, because is that within my realm? But yet you hear it from day to day. Often I saw that it was the voiceless and vulnerable people, the people in poverty, that were seen as to blame for some of these issues. But yet, more and more, the medications...it was someone else had mentioned the quick fix. You know, they were getting the quick fix, and then the parents became dependent on it, or they tried to seek medications for their own children to try to fix the problems rather than addressing the problem itself. And I think we have to look at systemic perspective but also an integrative perspective, where we're looking at not only the mental health but substance use and if the system is also contributing to that. I almost got up here as a proponent, but, you know, I think part of it is...I'm sorry, I had to look at the light. I think part of it is, you know, we have to look. Do we need to hold them accountable to it or

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help motivate people to be more responsible, especially those in power? With the children, by nature of them being in foster care, a lot of them have been traumatized, and I often saw that that was overlooked. They were looking at the behaviors, medicating the behaviors, rather than looking at the trauma and understanding the underlying trauma. And also, with children, I have concern about the developing brain. They're young. Like I said, I almost came just as a proponent for this, but I don't know if it's just the children that we need to look at or if it's also all the individuals and the system itself. [LB837]

SENATOR CAMPBELL: Any questions? Thank you very much for coming today. [LB837]

PAM OLTMAN: Thank you. [LB837]

SENATOR CAMPBELL: Anyone else in the hearing room in a neutral position? Seeing no one, Senator Howard, did you wish to close? [LB837]

SENATOR HOWARD: I'll do a brief closing. [LB837]

SENATOR CAMPBELL: Okay. Sure, I'm sorry. Go right ahead. [LB837]

SENATOR HOWARD: Six years ago I sat before this committee and said that it was time to examine how we prescribe and administer psychotropic medications to wards of the state. With the chaos of reform and the increasing recognition of this issue nationwide, it is now far past time--far past time to bring together professionals, parents, foster parents, policymakers, and other stakeholders to examine and advise us on the best way to ensure that we are providing appropriate treatment to our most vulnerable children, and so I ask that you advance LB837. [LB837]

SENATOR CAMPBELL: (Exhibits 7 and 8) Thank you, Senator Howard. And with that, I would like to note for the record that we received letters of support for this bill from the Nebraska Nurses Association and from the Nebraska Pharmacists Association. And we will move to the next hearing, which is LB904, Senator Gloor's bill to change Vital Statistics Act reporting requirements for annulments and dissolutions of marriage. And, Senator Gloor, I have to tell you that one of your major questions is going to be, how did this get to the Health Committee? So we're hoping that you answer that, because several of my colleagues stopped me on the floor today to say, how did we get this bill? So we're counting on you to answer that for us. [LB837]

SENATOR GLOOR: (Exhibit 9) Absolutely. Thank you, Senator Campbell, and good afternoon, members. I'm Mike Gloor, G-l-o-o-r. I will start by answering that question: Because it involves the bureau of vital statistics, which is part of the Division of Health and Human Services (sic). Occasionally, if we senators are lucky, we end up with a bill

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that not only gets our attention but is actually enjoyable to begin to sit down and look through. First of all, one of the reasons is, it was brought to my attention by Judge Jim Livingston and the county district clerk, Valorie Bandixen, both of whom I know have been a member of our community for a long time and are well thought of. So when they call and say there's a problem, we could use some help, you know there's a problem. It reduces the amount of vetting you have to do. Second of all, it deals with basic information like--and this will help by way of explanation as to why we have it--date of birth, place of birth, etcetera, information that gets passed through the courts to Vital Records. And its origins are quaint. It goes back to 1919, and, you know, that would be the dark days of gender equity, I think would be safe to say. And I have this visual image of court clerks who have green visors and arm garters interacting with people in the department who also have visors and arm garters, and these two male egos go back and forth with the folks and, if there was even a department called "vital statistics," whoever was here at the state saying, we're not getting the information we need from the courts. And back in the courts, the clerks saying, I've got plenty to do; I don't need to send in this information to people who I don't think do anything with it in the first place. And I just have this mental image of this back-and-forth going on. So the Legislature in 1919 passes statutes that say, clerks, if you don't get this information, you can be fined \$25; but if you do get that information in, we'll give you 25 cents every time you send the information in. And that's the history behind this. Now we were smart enough at some point in the past to take away the 25 cents, and \$25 must have been pretty imposing if 25 cents was supposed to be an incentive payment. (Laughter) But we took care of the 25 cents, but what still exists in the statute is the \$25 fine and some other components of this. In today's world, with electronic data submission, and, realistically, in this world where we have migrant populations, indigent populations that move from state to state, getting this information like we could back in 1919 is sometimes impossible, even though it may be in the statute that it's supposed to be supplied. One of the third and final reasons that this bill has been pleasing is because, as is often the case when you introduce a bill, it sort of kick-starts people having more serious discussions about reconciling it, and that has happened the past couple of days. The department clerks have found an agreement in some areas, and because of that, I'm willing to offer AM1722, which I may have copies of here. It will strike subparagraph (2) of the bill; it's a large portion of the bill dealing with amendments to a dissolution of marriage certificate after the fact. LB904 still does the following, even with the amendment. It updates language that identifies the person petitioning for divorce: the out-of-date term of "petitioner" is replaced with "plaintiff." It eliminates obsolete language regarding a \$25 fine against the district court clerks for neglect or refusal to forward information to Vital Records. It eliminates language stating that submission of the requested information to Vital Records is a prerequisite for granting a final decree of divorce. And this also has been an issue, and the judges are issuing final decrees for divorce without concern for whether Vital Records records it as such; but, of course, Vital Records has a problem recording it as such because they don't think they have all the information that they would like to have, like date of birth, which may be impossible to get, because if

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someone is no longer in the state of Nebraska...and as far as they're concerned, they're divorced because the judge signed the paper, it went on file with the clerk, and they're gone to another state or perhaps another country. LB904 also clarifies that if this information is not provided to the clerk of the court by the plaintiff or their legal representative, the department will accept the designation of "unknown." It is my understanding that, with the amendment, the department and the court clerks are okay with the bill, although I think there will be some testifiers. I'd be glad to answer some questions, but there will be a few folks who I think speak briefly to some of these points. [LB904]

SENATOR CAMPBELL: Any questions for Senator Gloor? It is a great relief to know that you are not reinstating the 25 cents. (Laughter) [LB904]

SENATOR GLOOR: That might make papers. [LB904]

SENATOR CAMPBELL: That might make the papers, huh? Okay, we'll take the first proponent for LB904. Good afternoon. [LB904]

JANET WIECHELMAN: Good afternoon, Senator Campbell and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I am the Clerk of District Court for Cedar County, and I also am the legislative liaison for the Clerks of District Court Association. I am here in support of LB904. This bill was brought by the request of the Clerks of District Court Association, and we thank Senator Gloor and his staff for assistance in this bill. According to Revised Statute 71-615, petitioner or his or her legal counsel shall present the information for the dissolution or an annulment certification at the time of filing of the petition for dissolution or annulment. When the dissolution or annulment of marriage has been granted by the court, the clerk shall make and return a statement of the action to Vital Records. If no annulments or dissolutions were granted in a month, the clerk shall report such information to the department. Through JUSTICE, the statewide court computer system, clerks provide the statement of annulments or decrees and completed certificates to Vital Records electronically, which began in January of 2007. In the discussions for the development of the electronic reporting, it was noted there would be fields that would include unknown information. The committee who developed this process was staffed in the Court Administrator's office and personnel from HHS. An example of the information that is not available are Social Security numbers, date of births, and places of births. Clerks of district court have made contact with the party or the attorneys to garner the missing information so that a fully completed certificate can be provided. If a clerk does contact the party or the attorney, it is done solely as a courtesy to Vital Records, to request that information. There is no legal requirement or responsibility of the clerk to contact the party or the attorney. We are simply the middleman in this process. If the party or the attorney is not able to provide the missing information, the clerk can only return the statement to Vital Records with the information it has been given. As officials, we always strive to have the

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complete certificate returned to Vital Records. LB904 will allow the clerk to provide the certificate with the information that is unknown, and Vital Records shall accept the certificate as prepared. We are requesting the language regarding the "neglect or refusal" would be stricken for two reasons. The first is that the automated process provides notification of Vital Records if a court does not have a certificate or that the certificate was electronically submitted to Vital Records. There are four ports through JUSTICE that inform the clerk of the district court of this information, so the clerk of the district court can track where a divorce action is at and whether or not a certificate has been sent or whether one needs to be sent. The second reason is that neglect and failure is based only on the evidence of the certificate being presented with the information indicated as "unknown." The fine against a clerk is determined by Vital Records and does not provide the process to afford an opportunity of a hearing or the right of hearing. The Clerk of District Court Association, some of its members, have met first with personnel from Vital Records in the past on several occasions to discuss the issue of the unknowns. The most recent contact was yesterday with Ms. Jenifer Roberts-Johnson, who is the chief administrator of public health. Through this discussion, we have been able to begin the foundation of a bill that will meet the needs of the Clerk of District Court Association and the Division of Public Health. We will continue to communicate with Ms. Roberts-Johnson. In our discussion yesterday, it was agreed that a process was in place for the amending of a dissolution or annulment certificate through Vital Records. A clerk of district court will not be requested to amend a certificate and forward it to Vital Records. Therefore we have asked Senator Gloor to offer that amendment which will strike subparagraph (2) out of the original LB904. I do have two clerks who will be testifying, from Lancaster County and Hall County, regarding their counties and the situations that have occurred with them. We would like to thank you in advance to advance LB904 with the committee amendment, and I thank you for your time and will answer any questions. [LB904]

SENATOR CAMPBELL: Are there any questions? Thank you for your testimony today. [LB904]

JANET WIECHELMAN: Thank you. [LB904]

SENATOR CAMPBELL: Our next proponent for LB904. Good afternoon. [LB904]

VALORIE BENDIXEN: (Exhibit 10) Good afternoon, Senator Campbell, Chairwoman. Senator Gloor, thank you for introducing this. My name is Valorie...the rest of the esteemed committee. My name is Valorie Bendixen, B-e-n-d-i-x-e-n. I'm the Clerk of the District Court in Hall County. I'm here to testify in favor or in support of LB904. Per statute 71-615, the district courts are the...actually made the conduit of sharing statistical information between the parties who have been granted a divorce or annulment and the Department of Health and Human Services. The statistical information provided, as has been mentioned, is provided by the petitioner or his legal

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counsel. Due to the diverse, fluctuating populations that we deal with, it is not uncommon for information to be unavailable or unknown. Maiden names; Social Security numbers; dates of birth; city, state, county, countries of birth are examples of information which is frequently unknown by petitioners or parties. The Hall County Clerk of the District Court's Office, under my direction and in conjunction with the court, make three attempts to collect that information. After those attempts are made, the BVS form, the information, is transmitted electronically to Health and Human Services. Health and Human Services will contact clerks if information remains unknown. In some cases, repeated phone calls and correspondence have been received regarding the same form. One such instance involved the department threatening to sanction me \$25 for neglecting or refusing to comply with my duties. That threat occurred after I had both reported verbally and in writing to the department what my staff and I had done personally to collect that information. In addition, 71-615 states: In all cases, furnishing of the information to complete the record shall be a prerequisite of granting the final decree. Defining this in an arbitrary and capricious manner could lead to a conflict between the judicial and executive branches of government. When a court determines that the parties in a divorce have met their legal requirements, a decree of dissolution is signed, date-stamped, and placed on record. The parties are given certified copies; judgments begin as ordered, child support, etcetera. Petitioners and defendants leave the courthouse thinking they're divorced, rightfully thinking that they are divorced. Again, the courts are dealing with parties who transition frequently from city to city, county to county, state to state, country to country. There are times people are simply served by publication, and no appearance is ever made at a final hearing. According to Vital Records, the department can elect not to file a certificate of dissolution, even if the decree is signed by the court, if information is omitted or unknown on the BVS record. My concern with that is persons who find themselves in need of applying for benefits from government agencies, life or health insurance policies, veterans' programs, the IRS might be in a position to have to prove what their marital status is. If two government agencies have a different record of that marital status, it might be difficult for those individuals to acquire those benefits. Finally, I would like to note that all of these aforementioned concerns are even of greater importance now that we have the number, an increased number, of pro se litigants who are filing and taking care of their own legal actions on their own. In addition, we have an increase in the number of things that are e-filed, and, finally, 42-361 paragraph (3) allows the court to enter a final decree without any party showing up, without a final hearing. I'll entertain any questions.  
[LB904]

SENATOR CAMPBELL: Any questions? Thank you for providing the additional documents, because it helps us to know what we're looking at, so thank you very much.  
[LB904]

VALORIE BENDIXEN: You bet. [LB904]



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SENATOR CAMPBELL: Any other comments? Thanks for coming today. [LB904]

VALORIE BENDIXEN: Yeah. Thank you for your time. [LB904]

SENATOR CAMPBELL: Other proponents for LB904? Good afternoon. [LB904]

SUE KIRKLAND: (Exhibit 11) Good afternoon. My name is Sue Kirkland, S-u-e K-i-r-k-l-a-n-d. I'm the Clerk of the District Court for Lancaster County. And I think, Senator Gloor, that I might have one of those visors in my drawer back in the office (laughter). Haven't worn it in a long time, though. [LB904]

SENATOR GLOOR: I'd have to see some arm garters. (Laughter) [LB904]

SUE KIRKLAND: I have a very brief statement for you today. I am here to help inform this committee of the challenges the clerks of the district court have encountered regarding the gathering of information pertaining to vital statistics for the Department of Health and Human Services. A vital statistic worksheet is attached for your reference. Neb. Rev. Stat. Section 71-615 requires petitioners, attorneys, and pro se litigants to present the worksheet with the complaint upon filing for an annulment or dissolution of marriage. This worksheet may not contain all of the requested information when filed. I have personally assigned two of my employees to obtain as much of the missing information as possible. These employees personally contact or attempt to contact the petitioner or his or her attorney to gather the missing information. Believe it or not, there are petitioners who do not know where they were married, when they were married, dates of birth, especially of their spouse. One employee of mine fills in the information she has gathered on the state of Nebraska court data system. The department then interfaces with the Supreme Court's database to retrieve the vital statistic information, which is then contained in the department's final certificate of dissolution or annulment. Difficulties with the department begin at that point. Placing "unknown" on the worksheet in an empty blank has not been satisfactory for the department. In 2008 and subsequently, I met or conferred with employees of the Office of Vital Statistics (sic) to discuss the complaints the department has had as to its perception of the Office of Vital Statistics (sic)...excuse me...its perception that my office was not providing the appropriate vital statistics. The clerks are asking that the department accept "unknown" as an answer. The clerks are keepers of the record, not researchers for law firms. I thank you for the opportunity to speak to you today. If you have any questions, I would be happy to answer them. [LB904]

SENATOR CAMPBELL: Any questions for Ms. Kirkland? This is great to have a very dear friend, and we won't say old friend. [LB904]

SUE KIRKLAND: Oh, no, no, no, but it's very nice to see you too. [LB904]

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SENATOR CAMPBELL: You did a great job, a professional job, of making the office of the Clerk of the District Court in Lancaster County once again run smoothly, so... [LB904]

SUE KIRKLAND: Well, thank you so much, Senator. [LB904]

SENATOR CAMPBELL: Good to see you. [LB904]

SUE KIRKLAND: Good to see you. [LB904]

SENATOR CAMPBELL: Other proponents. Good afternoon. [LB904]

BETH BAZYN FERRELL: Good afternoon, Chairman Campbell, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I won't repeat the testimony that you've heard today, but we would like to thank Senator Gloor for introducing this bill on behalf of clerks of the district court to help try and clarify what their roles are in the reporting process. As you've heard, clerks are really intended to be a conduit of information, not be responsible for researching that information, and we think LB904 and the amendment make that very clear. As you've heard also, we have been involved in the recent conversations with vital statistics, Vital Records, about how to clarify those roles, and we do appreciate their cooperation in our discussions. I'd be happy to try to answer questions. [LB904]

SENATOR CAMPBELL: Any questions today? Thank you very much for coming. Any other proponents? Welcome to the committee. [LB904]

ELIZABETH NEELEY: Thank you. Good afternoon. My name is Elizabeth Neeley, N-e-e-l-e-y, and I'm here today on behalf of the Nebraska State Bar Association. We'd just like to be on record as supporting LB904 because we believe the current practice potentially impacts the administration of justice. As you've heard, our clerks of the district court are required to accept any claim that's filed, yet a final divorce decree cannot be granted unless the vital statistics form is completed in its entirety. And as Valorie Bendixen indicated, we see a lot of, a growing number of pro se litigants in the court. But those with legal representation, our attorneys, are having the same issues. These people just really, truly do not have this information and cannot make it available. And as you may know, the two populations who are least likely to be either...likely to be able to provide this information are people from our immigrant and refugee communities and also victims of domestic violence, who, because of the dynamic of their relationship, may not have been allowed to have information about their husband's Social Security or other kinds of personal information. So we believe that LB904 improves equal access to the justice system and also may improve timeliness of judgments for court litigants and support the bill. Any questions? [LB904]

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SENATOR CAMPBELL: Any questions from the senators? Excellent points, thank you. Other proponents for LB904? Those in the hearing room who wish to oppose LB904? Those in the room who want to provide, oh, provide neutral? Boy, they're anticipating it. (Laugh) I love it. (Laughter) We will have neutral testimony from the director and Chief Medical Officer. Good afternoon, Dr. Schaefer. [LB904]

JOANN SCHAEFER: (Exhibit 12) Good afternoon. I am Dr. Joann Schaefer, J-o-a-n-n S-c-h-a-e-f-e-r, M.D. I'm the Chief Medical Officer and the director of the Division of Public Health in the Department of Health and Human Services. I am here today to testify in a neutral capacity for LB904. As you've heard, this bill eliminates the statutory requirement that requires the dissolution and annulment form be completed as a prerequisite to granting the final decree. It eliminates the \$25 fine that is available if the clerk refuses or neglects to report the dissolution or annulment information in a timely manner. Now, since the amendment has been dropped, AM1722, to delete subsection (2), that's really what was the problem for us, because it created a fiscal note for us, so that will clear up the fiscal note to this, because it added additional duties to the department, substantial additional duties. So with the amendment dropped, that actually makes it much more favorable. We are fine with the fee being dropped. The thing that we wanted you to understand, the vital stats form that is required by the department contains information which is used in the aggregate for assessing the impact of divorce and annulment on our state and its citizens. A portion of the information, such as Social Security number, is also used within the department for the purposes--and this is the important part--for establishing and monitoring child and medical support obligations. Okay, so that's where the key part is used now. Just so you know, we've estimated it's about 2 to 3 percent of these that come in incompleting, so that's where I think the rub has been when trying to get the forms completed. This last week has been a very productive week. I wish we could have had that productive of a conversation prior to all of this, but it's been a really good week with my chief deputy who oversees, ultimately, vital statistics, so it's been a very good week. And I think that there's been a good process worked out, so in the future, not only with this bill but in the future, there will be good communication on what to do when those really important pieces aren't there. And when they're not there, they're not there. But that's the ultimate part that will be impacted the most, is the establishing and monitoring of the child and medical support. Okay, but just on our own data review, that is a very small number that's impacted. So the department does not object to removing a fine at all, and with the amendment dropped, we're good on that part as well. So if you have any questions for me, I'd be happy to answer them. [LB904]

SENATOR CAMPBELL: Are there any questions from the senators on this, on Dr. Schaefer's testimony? I think that's just great that you've been able to meet with them over the last week, and a lot of problems can be solved with people sitting down, so... [LB904]

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JOANN SCHAEFER: Absolutely. We always love to do that. [LB904]

SENATOR CAMPBELL: Appreciate it. Did you have a question, Senator? [LB904]

SENATOR COOK: I was musing inside my own head whether or not this means as of right now, forgetting one's spouse's birthday or anniversary is unlawful in the state of Nebraska? (Laughter) [LB904]

JOANN SCHAEFER: Forgetting it? (Laugh) [LB904]

SENATOR COOK: So if your spouse (laughter), may be a male spouse from what I understand (laughter), were to forget, then that is against the law right now. [LB904]

JOANN SCHAEFER: (Laugh) Talk to my husband. [LB904]

SENATOR GLOOR: Somebody else gets fined, though. That's the problem. [LB904]

SENATOR COOK: So right now, maybe the punishment should just come down where it belongs. (Laughter) [LB904]

SENATOR LAMBERT: The punishment is much worse than the fine, I'll tell you. (Laughter) I speak from experience. (Laughter) [LB904]

JOANN SCHAEFER: That would be an interesting law to pass. [LB904]

SENATOR CAMPBELL: (Laughter) Personal testimony by the committee will attest to that, Senator Lambert. Thank you, Dr. Schaefer. As always, we appreciate your testimony. [LB904]

JOANN SCHAEFER: You're very welcome. [LB904]

SENATOR CAMPBELL: Anyone else in the hearing room who would like to testify in a neutral position? Seeing none, we'll close the public hearing on LB904, and I will ask Senator Gloor to finish out this afternoon. If you are leaving, just leave quietly and quickly. [LB904]

SENATOR GLOOR: Welcome, Senator Campbell. You're welcome to start whenever you'd like. [LB820]

SENATOR CAMPBELL: Thank you, Senator Gloor, colleagues. For the record, my name is Kathy Campbell, C-a-m-p-b-e-l-l, and I am here to introduce LB820 on behalf of the Health and Human Services Committee. LB820 requires the Department of Health

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and Human Services to apply for a IV-E demonstration waiver. Title IV-E is an adoption assistance and foster care program funded by the federal government. The foster care program funds out-of-home care for children. The Title IV-E demonstration waiver is a program to allow the flexible use of Title IV-E funds to reduce the number of children in out-of-home care. Title IV-E waivers have been utilized by many states across the country in the first round of demonstration waivers to fund a variety of programs. Florida was one of the states that was awarded a five-year Title IV-E waiver in 2006. As a result, Florida was able to utilize their IV-E money to fund an array of community-based services for children. Now for fiscal years 2012 through 2014, the federal government is again awarding Title IV-E state demonstration waivers up to ten states per year waiver. The waivers do not add more money--and we want to emphasize, because that's a question we get asked a lot--the waivers do not add more money to state IV-E funds but provide flexibility in their use. LB820 requires Nebraska to apply for approval for a demonstration project. The goals of the demonstration project are to increase permanency for infants, children, and youth by reducing the time in foster care placements, when possible, and promoting a successful transition to adulthood for older youth. Also, to increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improving the safety and well-being of infants, children, and youth and to prevent child abuse and neglect and the reentry of infants, children, and youth into foster care. Additionally, the federal requirements provide the option for demonstration projects to include long-term therapeutic family treatment centers or programs for children impacted by domestic abuse. I do want to make the committee aware that the green copy of the bill mistakenly uses "and" rather than "or" when listing these options. It is my intent to correct this through an amendment to allow the option for considering these types of programs but does not require that to be the focus of the waiver. The Title IV-E demonstration waiver application process is not simple. It will require collaboration and coordination to meet all of the requirements, show that the state can appropriately implement and be in compliance with the policies of the federal program. As you are aware, LB820 has been introduced as a result of a recommendation in LR37. The LR37 recommendations were the result of a wide array of input and assistance from many, many collaborators and stakeholders across the state. This recommendation is no exception. This bill is in response to our research. There are a number of testifiers here, including representatives of the two lead agencies, who will be able to discuss the specifics of the Title IV-E waiver demonstration projects and answer any questions you may have about the process. And I'm eager to hear from the testifiers today, because I think it will help give us additional information about the waivers and also an appropriate time line. And with that, it completes my opening. [LB820]

SENATOR GLOOR: Are there any questions for Senator Campbell? Seeing none, thank you, Senator Campbell. [LB820]

SENATOR CAMPBELL: Thank you. [LB820]

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SENATOR GLOOR: Can I see a show of hands of those who wish to speak as proponents of this bill? Okay, this is a little bit like going to church. (Laughter) The best parishioners are seated, for the most part, in the back. I would ask you, if you're going to speak, move forward, that will speed things up a little bit. And I'd ask the first proponent to step forward, please. Good afternoon, again. [LB820]

MELANIE WILLIAMS-SMOTHERMAN: (Exhibits 13 and 14) Good afternoon, Senator Gloor. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e W-i-l-l-i-a-m-s-S-m-o-t-h-e-r-m-a-n. I'm the executive director of the Family Advocacy Movement, which has as its primary focus advocating for families and children who have become unnecessarily and/or unjustly caught up in the nets of our child protection or juvenile justice systems. I first would like to offer thanks to this committee for its hard work and promising responses to some of the most important issues raised during the period of LR37 hearings and research. And I especially commend you for offering this particular bill, LB820, which is the first major step toward providing our state with a true opportunity for significant child welfare reform that could genuinely help flip the pyramid on our state's currently obscene rate of child removal and the mistreatment of struggling families and children. It cannot be stressed enough how important winning one of the ten available federal Title IV-E waivers could be for Nebraska. Whenever I have been asked whether I support the privatization of case management, shrewdly called Families Matter, as a means to reform child welfare and keep more kids in their homes, I have always responded with how it really doesn't matter who manages cases. The bottom line is this. The very culture and approach to child protection will not change as long as it's business as usual on the front end. As long as our state continues to rely on federal financial incentives for only removing children from their homes rather than prevention, preservation, and reunification, nothing much will change, no matter what you want to call it. An exemption for our state from the current federal financial rules, which for years have favored foster care over family preservation, is considered by national experts in the child protection reform movement as the single most important first step in effectively helping to turn around the worst problems we see as well as saving significant amounts of tax dollars long term. The Title IV-E waiver has the potential because it provides a way to alter destructive priorities by changing the very culture of child protection from one that financially benefits from taking the child and running to one that prevents unnecessary traumas and unnecessary expenses. I'm skipping through, and if anyone is following, I just want to make sure I get in under my time; but more is in my written testimony. In this case, the suggestion "follow the money" is not just some ambiguous shot at state government for dramatic effect. It truly has been the root of all evil for children. And for Nebraska, that's significant, because our state fluctuates between second and third in the nation for removing children from their loved ones and keeping them needlessly in the system, which is always done in the name of child protection, of course. There is a horrible price to pay for this, too, which cannot be measured in dollars. Foster care has been an open-ended financial entitlement since at

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least 1962. At that time, AFDC, which is, I assume this committee knows what AFDC is (laugh), was changed to allow benefits to follow a child into foster care, and foster care placements then soared from then until 1980. In 1990, Title IV-E replaced the AFDC-FC, as it was known, but the incentives didn't change. It was still an open-ended entitlement for foster care only. There has never been an entitlement funding stream for prevention and family preservation, which is why the Title IV-E waiver is so important. It gives our state flexibility to use the federal monies to help families rather than to only destroy them, which is good for children. And just to comment briefly on a comment that Senator Campbell made in her introductory statement, not only does it not provide more funds, but it doesn't provide less either. It just provides flexibility. Ironically or cynically purposeful, while the federal government's Title IV-E requirements only allow the incentives to be used to take children from their families, it also mandates that the Department of Health and Human Services do all it can to preserve families and/or to reunify them whenever possible. And that is why every DHHS case report and plan you will ever review will have the copied and pasted text in it that claims everything has been done to prevent the need for removal of this child from the home, and everything is being done to reunify this child with his or her family. It's simply not true in most cases that we see. It's unaccountable rhetoric, but it provides the necessary perception of propriety and seems to fulfill necessary legal requirements. This realization of obvious conflict of interest, which has now become very widespread throughout our country, has caused many to legitimately claim there are bounties on the heads of children, especially true for children from poor families, since the federal matching dollars are offered mostly for Medicaid-eligible children, which in turn targets families and children of color at a rate greatly disproportionate to the population. In closing, I wish again to thank this committee for introducing this bill but offer some pragmatic considerations for the long road ahead. You can lead a horse to water, but you cannot make it drink. Even if this bill were to pass, we are not so naive as to ignore the fact that those charged to write the proposal would still need to do a good job at it. If there isn't a sincere desire on the part of the applicant authors, it will be rejected. Also, if our state becomes one of those ten most fortunate to receive the waiver, there is still the question of how the distribution of the incentives would be prioritized. It's entirely possible that Nebraska gets a waiver and those in charge of the result and flexibility decide to use it in ways that are not committed to prevention and intensive family-empowering wraparound services that would be required for real family preservation and reunification. This bill is a huge step, but we must prepare ourselves for the undoubted obstacles still preventing the realization that families really do matter for children and to our state. Thank you. [LB820]

SENATOR GLOOR: Thank you. Are there questions? Seeing none, thank you. [LB820]

MELANIE WILLIAMS-SMOTHERMAN: Thank you. [LB820]

SENATOR GLOOR: Other proponents. [LB820]

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SARAH FORREST: (Exhibit 15) Good afternoon, Senator Gloor, Senator Campbell, members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy coordinator at Voices for Children in Nebraska for both child welfare and juvenile justice policy. We're here today in support of LB820 as an important opportunity for Nebraska for comprehensive reform, for innovation, and for evaluation and research of our child welfare system. This year's LR37 report really revealed that for many years our child welfare system has failed children and families. Why? Well, I would direct you to the second page of the handout that's coming around to you, which is one of our famous or infamous attempts at an infographic at Voices for Children. That breaks down the federal dollars that Nebraska received in 2010 sort of in three different silos: what would be siloed away for prevention efforts, what would be allotted for family preservation and in-home supports, and then finally what would be used for out-of-home care. So you can see that about 85 percent of our child federal welfare dollars are reserved exclusively for out-of-home care. And as has already been mentioned, we remove children at one of the highest rates in the country despite the fact that we know that out-of-home care can be traumatic for children, and that often with proper supports and services early on, not only can we prevent child maltreatment, but we can preserve families, which saves families and children years of suffering. This September, the federal government gave Nebraska and other states and counties a chance to apply to participate in a wonderful reform opportunity. There will be 10 waiver opportunities for the next three years, which means up to 30 states or counties in total can apply. And you know, as your committee report correctly pointed out earlier this year, privatization is a tool, not necessarily reform in and of itself. This is an opportunity for the state to really assess what comprehensive reform would look like. It's not a guarantee that Nebraska will receive a IV-E waiver, and there are challenges to keep in mind that we would have to negotiate the rate of reimbursement that the federal government would give us. So there are challenges that we need to be aware of there. And we would make several suggestions that could really strengthen this bill and, we think, enhance Nebraska's opportunity to be competitive for the waiver process. First of all, we would suggest that the Legislature really focus or mandate that the IV-E waiver application we would put forward focus on prevention and wraparound in-home services. There's a whole list of things we can choose to focus on as a state, but as long as we pick one or more, we'll be eligible. So we really ask that you as a committee consider focusing on prevention and in-home services, which we think have really been lacking in Nebraska. We also think, perhaps, a clear planning process involving all three branches and a specified time line so that this doesn't merely become another project of the Department of Health and Human Services but something where all child welfare stakeholders are brought in to really commit to a process which could keep more children in their homes. And finally, we believe that there will be funds necessary for the department not only for planning but also for data cleanup and eventually for the evaluation and research components of a IV-E waiver which the federal government will mandate. So we ask that you also keep that in consideration, that this should have money attached to it for



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evaluation. But it also represents a fantastic opportunity for Nebraska to really take a step back, have wonderful research, and then apply that in the years to come to provide better for Nebraska's children and families. So regardless of whether we receive a IV-E waiver or not, you are all to be commended for bringing this issue forward, because keeping children out of out-of-home care in the long term is one of...should be one of Nebraska's main goals in considering reform of its child welfare system. We appreciate all the time and energy the committee has put into considering this, and, really, Nebraska's children and families deserve a comprehensive reform, and you're all to be commended for committing your time and effort to making that happen. So thank you very much, and I welcome any questions. [LB820]

SENATOR GLOOR: I have a quick question, Sarah. [LB820]

SARAH FORREST: Yes. [LB820]

SENATOR GLOOR: I'm going to reference the last suggestion, which has to do with allocate funds to DHHS specifically for data cleanup. As you are aware, we share a concern about data or lack thereof. [LB820]

SARAH FORREST: Sure. [LB820]

SENATOR GLOOR: So can you help by way of definition a little better on what data cleanup may mean? [LB820]

SARAH FORREST: Well, I think this in part goes back to whatever the department or the Legislature or a group of stakeholders decide should be the focus of the IV-E waiver demonstration project. So if your data system or your IV-E waiver project is going to focus mostly on prevention and how we keep kids out of home care, the supports we provide for them, we will need to go through and fine-tune a certain range of indicators that will help us measure that. So I think it sort of depends on where we choose to go, but those funds will be necessary whether we focus on expediting permanency or focusing on prevention and in-home supports. [LB820]

SENATOR GLOOR: Okay. Senator Krist. [LB820]

SENATOR KRIST: Thank you, Senator Gloor. Having experience with writing grants, which this is very similar to--and I'm going to ask this question of others that will come up as well--would we be better off employing the particular services of someone who has been successful at the IV-E waiver request program, as though it were a grant writer who potentially would be on staff either in the department or in the foster care review process or somewhere where we can specifically target and measure those performance indicators? [LB820]

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SARAH FORREST: I would say the more expertise on board, the better. I know that Casey Family Programs, who's currently providing technical assistance to the department, has been very involved in IV-E waivers in other states and has done advocacy, in fact, on the bill that was just passed this September, so they may be a resource to you. But I always think that providing funds to the department to do a good job on preparing an adequate plan will put you in a stronger position. I don't think that Nebraska would be a shoe-in for a IV-E waiver, but if this is the route that we want to go, then the more expertise the better. [LB820]

SENATOR KRIST: So would this be a target, potentially, for a contractor or privatization effort targeted towards doing this, rather than keeping it in-house? [LB820]

SARAH FORREST: IV-E waiver. No, the department will have to...whoever administers IV-E dollars in your state would have to be the one to apply, so in this case it would be the Department of Health and Human Services. One thing to put on the radar of everyone on the committee, we've been watching, obviously, the department of children's services proposal that's been put forward. If we were to switch to that being the IV-E administering agency, you just want to keep that in mind in terms of time frames and who would be applying and things like that, because they would be the one who would ultimately be responsible for the IV-E waiver or the research, the evaluation, the distribution of funds. [LB820]

SENATOR KRIST: Okay. Thank you. [LB820]

SARAH FORREST: Um-hum. [LB820]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB820]

SARAH FORREST: Thank you. [LB820]

SENATOR GLOOR: Other testifiers. Proponents. [LB820]

DAVID NEWELL: (Exhibit 16) Good afternoon, Senator Gloor, Chairperson Campbell, and committee members. My name is David Newell, D-a-v-i-d N-e-w-e-l-l. I'm the executive director of Nebraska Families Collaborative. Our mission is to build on child, family, and community strengths so that every child is safe, healthy, and in a forever family. I won't be reading my testimony to you. It's provided in the handouts there, but basically NFC's mission is the reason why we are in strong support of LB820, and we sincerely appreciate all the work that the Health and Human Services Committee has done to put this legislation forward. As all committee members know, this bill is in response to the Child and Family Services Improvement and Innovations Act, which was unanimously approved by Congress in the fall. I don't think it's a coincidence that in this day of contentious congressional votes...to see a piece of federal legislation that

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was unanimously passed I think basically says it all. Basically, what we've learned in child welfare over the last 20, 30 years--and I know this comes as a complete surprise--is that children really do best in families. And this is very much a common-sense solution to some unintended consequences, as previous speakers and Senator Campbell have pointed out, of how federal funding can sometimes have detrimental effects on children and families. The waiver basically allows us to correct that, and I've had personal experience. I came here from the state of California, in which there were two waiver counties in California, both L.A. County and Alameda County, where we saw dramatic improvements as a result of the IV-E waiver in those counties. And also in the state of Florida and through our work with Boys Town, which has operations in Florida. Florida, through the lead agency model, has seen and through the IV-E waiver has seen dramatic improvements, basically, as other speakers have noted, shifting expenditures from out-of-home care, which sometimes is, unfortunately, necessary...but shifting those to in-home and prevention services. So in your handout on the Florida system, basically you see over a period of time that there has been a substantial shifting of expenditures from out-of-home care to family preservation services instead. One of the other things that I would just point out to you, another benefit of the waiver process, and it's on my testimony, is the lead agencies in Florida, there are 20 of them, and one of the things that they've experienced as a result of the IV-E waiver is that it really allows for innovation. And so you see a list in my testimony of different examples of this, programs such as Family Connections, Peaceful Paths, and Family Finding. And I wanted to bring special attention to Family Finding because we are bringing a national expert in Family Finding to Omaha in early February, and all of the committee members will be welcome to meet him. His name is Kevin Campbell. Family Finding has been shown to be yet another way of, really, not only increasing family connections but also increasing permanency for children. So, in closing, I would just like to say that we sincerely thank the committee's work on this bill. We strongly support it, and I welcome any questions. [LB820]

SENATOR GLOOR: Thank you. Are there questions for Mr. Newell? Senator Krist. [LB820]

SENATOR KRIST: Same question. Do we need to bring an expert in that's been successful to get us a jump-start on where we need to go? [LB820]

DAVID NEWELL: I believe that that would be very helpful, and I believe that we could work with the department in that effort. There...as other speakers have noted, there is an intensive stakeholder process involved in the application process. And so having somebody with the expertise, I think particularly from Florida's system, could be highly beneficial. [LB820]

SENATOR KRIST: Thank you. [LB820]

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SENATOR GLOOR: Other questions? [LB820]

DAVID NEWELL: Thank you. [LB820]

SENATOR GLOOR: Thank you very much. [LB820]

SANDRA GASCA-GONZALEZ: (Exhibit 17) Good afternoon, everyone. My name is Sandra Gasca-Gonzalez, S-a-n-d-r-a G-a-s-c-a-G-o-n-z-a-l-e-z, and I'm the president for KVC Behavioral HealthCare, and I really appreciate the opportunity to come before you today and share my perspective on the IV-E waiver. I think you should be commended for choosing to make this a piece of legislation, because it really truly impacts one of the biggest barriers that we've been facing, which is finding ways to keep families safely intact whenever possible. So as a lead agency in the Families Matter initiative, KVC serves approximately 4,700 children in the eastern and southeastern service areas of the state, and we believe that the application of this IV-E waiver would be in the best interest of Nebraska children. These actions will allow the Department of Health and Human Services, as Senator Campbell outlined, to have more flexibility in the funding, which is very much needed. Probably my biggest rationale for wanting to come before you is really my concern around being the second highest in the nation for removing children from their families. I think that that is a very important issue, as Melanie Smotherman also mentioned, that we need to focus on. Research has shown that, in recent years, flexible-funding waivers have been associated with substantial, safe reductions in out-of-home care populations in other states across the country. Those states that have seen a reduction in out-of-home care have used the cost savings to expand an array of child welfare services and make systemic improvements, which I believe through your work in LR37 is what you're attempting to do. So KVC supports the intent of LB820, and we will work with the department in whatever capacity there is to help implement the demonstration project. I would just add that people have mentioned the stakeholder process. It is very important that that occur in a very methodical way, because it does impact providers' business models, which I think is one of the issues that we're facing too. We are very heavy on congregate care in the state of Nebraska, and as we look to serve more children within their homes, we really need to look at how that changes the arrays for the provider community. So with that, I would just say that I provided you some more reading material... [LB820]

SENATOR KRIST: Because we don't have enough. (Laughter). [LB820]

SANDRA GASCA-GONZALEZ: ...because perhaps you may not have enough (laughter), but this is actually a white paper from Casey Family Programs, and it's on the need to reauthorize and expand Title IV-E waivers. I'm sure you've maybe seen it through your research. It's a quick read on a very complicated issue, so I just share that with you, and I'd be happy to answer any questions. [LB820]

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SENATOR GLOOR: Senator Krist. [LB820]

SENATOR KRIST: Same question. [LB820]

SANDRA GASCA-GONZALEZ: Yes. I think that it would be...one of the lessons learned through this reform effort is that we need to use other states' lessons learned, so I think it would be very beneficial. And I believe that there are several experts out there from the Florida area that could really be helpful, and I have names if you ever want to know them. [LB820]

SENATOR KRIST: Thank you. I'd love to. Thank you very much. [LB820]

SENATOR GLOOR: As you pointed out and other testifiers have pointed out, it is amazingly easy sometimes to take children out of their homes but extremely difficult to keep them there and almost impossible, in some cases, to get them back in their homes. And so, obviously, the LR37 process recommendations like this are an attempt to see if we can't smooth the way. Are there other questions? Thank you, Sandra. [LB820]

SANDRA GASCA-GONZALEZ: Thank you. [LB820]

SENATOR GLOOR: Other testifiers who are proponents? Any opponents? Anyone who would like to testify in a neutral capacity? Hello again, Mr. Director. [LB820]

SCOT ADAMS: (Exhibit 18) Hello. Thank you. Good afternoon. My name is Scot Adams, S-c-o-t A-d-a-m-s. I'm the interim director of the Division of Children and Family Services within the Department of Health and Human Services, and I am here to provide neutral testimony in regard to LB820. The department launched Families Matter to support safety, permanency, and well-being of children in their homes and communities through prevention, diversion, treatment, and aftercare services. We are working to improve our federal children and family services review scores. As part of this reform, we listen to the thoughts and experiences of children, families, staff, agencies, consultants, and others. Our recent efforts include an operational plan which outlines statewide priorities, process outcomes, and compliance standards, and we are monitoring performance in six critical areas in order to make adjustments to achieve improvements. Part of the documents you have has the most recent scores on those six scores. And on testimonies related to the LR37 bills, I hope to continue to give you updates on those scores every time. They are also available on the Web site, and so we want to make sure we keep everybody informed and up to date on those scores. All caseworkers will soon utilize the structured-decision-making model, an effective process used in more than 20 states since the '80s, that helps identify children's needs so we can more effectively address them. We are taking advantage of the benefits of our private sector partners to bring to the process such resources and flexibility in services,

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aligning public and private goals and programs for the benefit of children and families, and to increase public awareness of children's needs, improvement in the data to evaluate our system, and lower caseloads. LB820 would require the department to apply to the federal government for approval of a demonstration project in child welfare, also known as the Title IV-E waiver. The bill requires the department to report to this committee by September 15 of this year on the status of the application and to submit the application on or before January 1, 2013. As background, Title IV-E of the Social Security Act provides the states can access federal funds for the cost of out-of-home care and related services for certain eligible children. It's been that way for a long, long time. Sort of like the other bill, where times have changed, this represents a change along with the times. The federal government provides 60 percent of each dollar spent and requires a 40 percent state match to access the federal funds. Approximately one-third of Nebraska's children who are wards of the state and in out-of-home care meet the Title IV-E eligibility criteria. You have a chart on the back over the last several years that reflects that information for you. Basically, the criteria includes an ADC-related income test, financial test, and determination by the courts that meets specific standards. As others have noted, there's complications in here. I won't go into those. The funds can only be used if an eligible child is placed in a licensed facility and only for certain allowable services, including the out-of-home care itself. In the last year, the department spent \$9,647,000 in Title IV-E funds for out-of-home care for eligible children. Of that amount, \$7,363,000 represented the federal contribution, so it's big money. The federal waiver we are discussing today is part of the Children and Family Services Improvement and Innovation Act signed into law this past September. As Mr. Newell noted, that's something of an accomplishment, given the nature of Congress these days, so this is important. The act extended the authorization of new demonstration projects through 2014. A Title IV-E waiver would cap the amount of federal IV-E funds we receive but would allow us to use the funds more flexibly. It does not provide the state with new or additional funding, but it does cap it at a level. So the federal government's share in this, if you will, is they can control their costs, they know what it's going to be, it's going to stay stable. Our version is to be able to use that in new ways. DHHS is very interested in exploring the possibility of an application for a IV-E demonstration waiver. We share the goal of this committee to serve children in-home or in a homelike setting wherever possible. In fact, having sought and received external consultation on this waiver, we are sending a team of people to a national meeting next month to learn more about the requirements for this waiver itself. The deadline for application for the federal waiver is the end of the federal fiscal year, which is September 30. Even with the deadline as required by LB820, to submit the application by January 1, 2013, the application would not likely be considered by the federal government until September of 2013. One of the key questions we have is about the timing of the waiver. With the right timing, we have the potential of maximizing federal funds and decrease the use of out-of-home care. That is one of the most attractive elements of this waiver. However, with the wrong timing, we may miss an opportunity to increase our current claiming of IV-E funds and therefore miss the opportunity to get the

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right cap on funding at the higher amount. Per federal requirements, the waiver also requires a comprehensive evaluation, which is a new cost to the state. We're concerned that the wrong timing might result in a loss of federal funds and may even cost the state additional funds as a result of the evaluation. It's not that we're against that. It's just we wanted to point out some of these factors. We're happy to continue to share information with you and with the committee and to stay in communication with you about what we learn over the course of the next several weeks and months about the IV-E waiver, and we will stay in a process of close communication with the Chair in learning about this. However, we are concerned with the mandate for LB820 and the application to be submitted by January 1, 2013. We've got far more to learn, and we would caution the committee that such a mandate could lead to unintended consequences or missed opportunities. On a related note, you also have a correction to a phrase used in the bill concerning long-term therapeutic family treatment centers, which we think improves the bill. And thank you for your time. Happy to respond to any questions you may have. [LB820]

SENATOR GLOOR: Thank you, Scot. Scot, in the handout, there is a blank page, and I don't know if that was intended as a marker to separate it from the attachments or whether there was intended to be something with it. [LB820]

SCOT ADAMS: There should be three pictures, three graphs. [LB820]

SENATOR GLOOR: Yeah. There are. Thank you. [LB820]

SCOT ADAMS: Okay. Okay. Then you got it all. Thank you, sir. Any other questions? [LB820]

SENATOR GLOOR: Yes. Senator Krist. [LB820]

SENATOR KRIST: Scot, I appreciate the fact that the department is heading out in a direction to do something, but in the words of Ronald Reagan: Trust, but verify. I think if we don't set a deadline down between the Legislature and the Department of Health and Human Services, we can't expect performance. So if you have a problem with the deadline, then I'd suggest you come back and tell us what a proper deadline would be, how that deadline would fit into your goals. But I think that unless we lay down some kind of a guideline and deadline and mandate that something happen, we will watch our opportunities potentially go away, because as you've said many times, "I'm an interim guy." What verification do I have that the next guy coming in has that same kind of commitment? The second concern that I would have on this matter is that I've heard from the department that they were not interested in these waiver attempts in the past. Yet today you're telling me that you're making that movement. So again: Trust, but verify. The final concern or point would be...I think you've heard the other testifiers. This might be one that you want to pull in an expert, if only as a consultant. Because you can

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go to all the meetings you want to, but if you don't take away the right information, you're not going to be successful. Grant writing, as you know from your Catholic Charities days, is an art. [LB820]

SCOT ADAMS: Yeah. [LB820]

SENATOR KRIST: And this particular thing is probably more artful than anything else. So let's get an expert. Let's get moving. Let's decide on a proper deadline and date. Let's work together to give this an opportunity to succeed. That would be my comment, and you're free to comment on it. [LB820]

SCOT ADAMS: Senator Krist, thank you for those comments. With regard to me being the interim guy, that's still a true statement. However, in each of the cases of our interviews of the candidates for the permanent selection, we have asked about the IV-E waiver and the person's background, interest, and knowledge, and so that has been part of the interview process. As I said in my testimony, the division and the department remain very interested in exploring and doing this in the right way. [LB820]

SENATOR KRIST: Good. Good to hear. [LB820]

SCOT ADAMS: So it's bigger than me. [LB820]

SENATOR KRIST: Okay. [LB820]

SCOT ADAMS: Secondly, I'm not sure about the interest in the past. I have really...cannot speak to that. I don't know that. With regard to the consultant, I fully agree. Part of my days at Charities was as a grant writer, and I do understand the art that goes into that. This one in particular has a great deal of hair on it, if you will, in terms of the complexity. And in those cases, it's clearly important to have somebody who knows what they're doing. And with that, we're open to the idea of a consultant. Secondly, it is also necessary that the department, who's going to be the receiver and the catcher, understand its roles, function, purposes, and activities to work cooperatively for the best effort. And so we're very open to that idea. We want to explore, learn more, and today I think our concern mainly rests with the area concerning the mandate. I think the law opens it up to 2014, and so we're open to that as a time frame in there. We just want to make sure we get the right number at the right time. If we cap it where we're low, you know, that would be a shame. We want to make sure we're able to capitalize on Nebraska's opportunities and to make that a good thing overall. [LB820]

SENATOR KRIST: Thank you. [LB820]

SCOT ADAMS: Yes, sir. [LB820]



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SENATOR GLOOR: Other questions for Director Adams? Seeing none, thank you very much. [LB820]

SCOT ADAMS: Thank you very much. [LB820]

SENATOR GLOOR: Other members of the audience who would like to testify in a neutral capacity? [LB820]

SARAH HELVEY: (Exhibit 19) Good afternoon. My name is Sarah Helvey; that's S-a-r-a-h, last name H-e-l-v-e-y. I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. Appleseed has long been concerned about how the federal child welfare financing structure makes the goal, that I think is a widely shared goal, of safely reducing the number of children in out-of-home care in Nebraska more difficult. And as other testifiers have indicated, this is because the bulk of federal funds that are available to support children are available to support children only once they have been removed from their homes, instead of supporting families and preventing children from having to face the trauma of being removed from their homes in the first place. Title IV-E waivers, as previous testifiers have indicated, are seen as a solution in that they provide more flexibility to states. While we agree that IV-E waivers present a number of positive and important opportunities, we want to emphasize that because they are required to be cost neutral, waivers have a limitation in their ability to expand the continuum of services such as front-end and wraparound services and supports when they are needed to achieve the goal of reducing the number of children in out-of-home care. This can create sort of a chicken-and-the-egg situation, in that it's difficult to reduce the number of children in out-of-home care if an adequate array of in-home services do not exist. On the other hand, these services won't be in place when they are needed if the state is waiting for the dollars freed up by reducing the foster care population in order to invest in the in-home services. And I think that's what we've seen also over the course of the past two years with the reform efforts. Therefore we believe that new investments in prevention, wraparound, and treatment services are needed up-front and should be part of comprehensive child welfare finance and reform. At the federal level I know advocates nationally are talking about that and also something that we need to look at at the state level. We would also caution that IV-E waivers are not a panacea for Nebraska's funding challenges. Again, there must be an investment and strategic plan at the state level to re-create and build an adequate service array in the state and address existing gaps in the system in order to achieve the goal of safely reducing the number of children in out-of-home care. That is, we can't sort of flip the pyramid simultaneously. We have to do some planning up-front, and I appreciate the aspects of LR37 that reflect that and the fact that the LR37 and HHS Committee, you know, have prioritized and recognized that issue. We also have concerns the state is not in the best position to apply for demonstration projects at this time because of some of the lack of data that we have on baseline costs and, given the instability of the system, that it may be difficult to predict future costs. It doesn't mean that that's

impossible, I would just flag that challenge. In addition, Nebraska has historically had a low Title IV-E penetration rate, meaning the percentage of children in foster care who are eligible for that federal reimbursement. For example, in 2004, it's a little bit outdated, but Nebraska had the second-lowest penetration rate in the country, with the state only receiving federal matching funds for less than a third of children in out-of-home care. My understanding is that that rate hasn't increased substantially, although I know that there are some folks looking at ways that we can improve that. So to the extent that the IV-E penetration rate would be used to calculate funding under the waiver, that could be an issue for...could be a disadvantage for the state. And so I think that would underscore the need to really have, if Nebraska would be chosen for waiver, looking into it...to really have an expert at the table that could maximize that the funding and the data in that process. And then I want to just mention as I'm talking about penetration rates and sort of federal financing, attached is an article from [The Nebraska Lawyer](#). It's a little bit old too, but it goes through just some basics about federal foster care financing and how that works and includes some perspective from Nebraska; so that's attached to my testimony. Assuming Nebraska does pursue a demonstration waiver, we urge the state to develop an effective method of assessing the full cost of providing services and supports under the waiver, including assessing expenditures from other federal funding streams, state and local funding sources, as well as private funding. This is important so that we know the actual cost expended to achieve the outcomes that we hope to see if the state gets a demonstration project. Then we also wanted to raise the importance, as others have, of evaluation, including ensuring that we track a range of outcomes and services so that reform efforts...as we've learned through LR37 as well, we can learn from what has worked and what hasn't. And so, in conclusion, thank you for the opportunity to testify. Thank you all for your hard work in doing comprehensive assessment through LR37, for your commitment to improving the system, and your effort to put forward really comprehensive solutions. So I'm happy to answer any questions. [LB820]

SENATOR GLOOR: I note that, with some surprise, that we know the author of this article you attached. (Laughter). [LB820]

SARAH HELVEY: Well, yes. (Laugh). Like I said... [LB820]

SENATOR GLOOR: When did you write... [LB820]

SARAH HELVEY: ...I would like to update it, but I know we've gotten feedback. That article, just to give some background...we had a law clerk, Matt Neher, who spent a summer with us, and, really, the background of that is that I wanted to better understand how does federal child welfare financing work, and so I asked him to do research. And then after that, we wrote up that article, and we've gotten feedback from other people that that's been helpful. Just kind of a real basic understanding of that, so that's why I wanted to share it. (Laugh). [LB820]

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SENATOR GLOOR: And the fact that it was 2008, there's no update, necessarily, as relates to the information in it. I mean, it's still current as of 2012? [LB820]

SARAH HELVEY: For the most part. There are some statistics in the beginning that are not. [LB820]

SENATOR GLOOR: Sure. Okay. [LB820]

SARAH HELVEY: And, you know, it was before the waiver was reinstated. [LB820]

SENATOR GLOOR: Senator Krist, did she answer your question? [LB820]

SENATOR KRIST: She did. Thank you very much. [LB820]

SENATOR GLOOR: Are there other questions? Seeing none, thank you. [LB820]

SARAH HELVEY: Thank you. [LB820]

SENATOR GLOOR: Other testifiers in a neutral capacity? Seeing none, Senator Campbell, would you like to close? [LB820]

SENATOR CAMPBELL: I would. I just have a couple comments. I'd like to thank all the testifiers, because I think the more that we learn about the Title IV-E waiver, the more we can see it as a component piece. And I totally agree that it's not meant to be the panacea here, but it is meant to be one piece of it; but we have to make sure that that piece is done correctly. One of the things that we may want to look at as a committee is to sit down with the department and see if there's some kind of a work team that could be put together so that we get the best of what an expert could be, so that we're following along with that and understanding that ourselves, which may be one piece that we could add to the bill in terms of the date and when it's turned in. We just took our very best guess, as you all know as we sat around, as to what dates to put in. So we can work with the department, I think, there. But a work team, perhaps with that expert that Senator Krist has talked about, but maybe some major stakeholders here might be very helpful, because I think that everyone today provided some good information and reading material to increase our knowledge. But I think we probably have a little bit more work to do in making sure that we're ready. So that concludes my remarks. [LB820]

SENATOR GLOOR: I think you're very correct in those comments. Other comments or other questions for Senator Campbell? Thank you, Senator Campbell. [LB820]

SENATOR CAMPBELL: Thank you. [LB820]

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SENATOR GLOOR: And that concludes the hearing on LB820 and concludes hearings today. Thank you all, and have a safe and good weekend. [LB820]