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Health and Human Services Committee
February 27, 2015

[LB28 LB346 LB557]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, February 27, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB28, LB346, and LB557. Senators present: Kathy Campbell, Chairperson; Sara Howard, Vice Chairperson; Roy Baker; Sue Crawford; Mark Kolterman; and Merv Riepe. Senators absent: Tanya Cook.

SENATOR CAMPBELL: Good afternoon and welcome to the hearings of the Health and Human Services Committee. I'm Kathy Campbell and I serve as the Chair for the committee and I represent District 25 here in Lincoln. Before we start the hearings, we do self introductions here so, Senator, start us off.

SENATOR KOLTERMAN: My name is Mark Kolterman. I'm senator from the 24th District, Seward, York, and Polk Counties.

SENATOR HOWARD: I'm Senator Sara Howard. I represent District 9 in midtown Omaha.

JOSELYN LUEDTKE: Joselyn Luedtke, I'm committee counsel.

SENATOR RIEPE: I'm Merv Riepe. I'm the state representative, state senator from the fine people of Millard, Ralston.

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

SENATOR CAMPBELL: And we have two pages with us this afternoon that help. And Brook-- Brook is at the corner there--Brook is from Omaha going to UNL and majoring in advertising, marketing, and political science. And Jay is over there. Jay is Dalton, Nebraska, at UNL also and majoring in ag economics. And you all need to know what a great job these two pages have done for us. We really appreciate it. All right. We'll go through some procedures for the afternoon. First of all, if you plan to testify today, you need to complete one of the bright orange sheets that are located on either side. Try to write as legibly as you can. If you have a phone or an iPad or something that makes noise, would you, please, silence it or turn it off? If you're planning to testify and come forward, you do not need to have handouts. If you do, we would like 15. And if you have a problem with the number, see the clerk or one of the pages. As you come forward, you can hand any of the handouts you might have and your orange sheet to the clerk and the pages will distribute anything that you need to us. We do use the light system here. Everyone has five minutes. You'll start on green. It will seem like green forever. And then it will go to yellow

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and that means you have one minute. And then it will go to red and I'll be trying to get your attention. Did I forget anything? Do we have any letters for the record?

BRENNEN MILLER: (Exhibits 1, 2, 3, 4, 5, 6) Yes, Senator. On LB28, letters of support from the Nebraska State Education Association; Nebraska Medical Association; Nebraska Building Chapter, Associated General Contractors of America; Randall Jantzen; Nebraska Chapter of American Institute of Architects; and a neutral letter from the Department of Health and Human Services. Thank you, Senator. [LB28]

SENATOR CAMPBELL: Okay. All right. We will open the hearing on LB28, Senator Krist's bill to adopt the Radon Resistant New Construction Act. And we're always pleased to have Senator Krist who was a member of the Health and Human Services Committee and really kind of is an honorary member always. [LB28]

SENATOR KRIST: Thank you. [LB28]

SENATOR CAMPBELL: So welcome, Senator Krist, and feel free to start. [LB28]

SENATOR KRIST: (Exhibit 7) It's an honor to be an honor role member. Good afternoon, Senator Campbell and members of the Health and Human Services Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha along with north-central portions of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB28. I want to make sure that I cover a few things in my opening today, specifically why LB28 is important as well as a little bit of history in the revisions and where we've come to today including an amendment that I'll discuss shortly. LB28 is important because it is a public health bill that moves Nebraska forward to address the dangers and health risks associated with the exposure to radon gas. Awareness of these dangers has increased over the past several years and in many ways reminds me of the concerns we saw that were raised a couple of decades ago regarding the exposure to asbestos. I have introduced LB28 because it is a policy measure that sets in motion a process that will allow us to help mitigate these costly and dangerous impacts of radon gas. Radon is an odorless, colorless, tasteless gas. It occurs naturally in...is radioactive and created by uranium decaying in the soil and it causes cancer. You'll hear debate on that today, I'm sure, but the Cancer Society is here. And I...from what I have read, I don't think that there's any doubt radon is the leading cause of lung cancer in nonsmokers and the second leading cause of lung cancer overall with smoking as the leading cause. This should be an even greater concern for families in Nebraska as our state has the third highest emission of radon gas in the country because of the concentration of uranium in our soil. You would be shocked at the concentrations around particularly the eastern side of the state. LB28 is a policy framework where over the next year we

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will develop minimum standards for radon resistant construction so that new construction in Nebraska will incorporate radon reduction techniques so that we can save lives of Nebraskans and reduce health costs of this very real and preventable, dangerous health risk. I want to digress from the script for just a second to tell you that I believe it's very important, in some cases, that the Legislature act with oversight and move forward. I also believe that it's time that the other branches of government, particularly HHS, take an active role in identifying health risks and in mitigating those risks. So that's what this bill has evolved into. I introduced legislation similar to this two years ago and found that there were many parties interested in the bill. I've worked with the Department of Health and Human Services along with the interested parties over the past year to get to an amendment that I'll share with you today. I propose that this compromise amendment would become the bill, incorporating the changes that we have agreed to. The amendment version adopts the Radon Resistant New Construction Act. This sets up a task force which will work on the issue of radon resistant construction standards over the next year and then make recommendations back to us in the Legislature in December. These recommendations would then be used as a basis of statutory changes I would introduce to be taken up in the 2016 Legislative Session and would serve as the baseline for local radon resistant construction standards across the state. I did introduce this into...you should have it on your gadgets, but I do have copies if you have not seen this. Have you seen this amendment? Okay. So as it's being passed out, I'll just hit the highlights. Rather than saying we're going to do something, I am saying to our Chief Medical Officer, you need to put together a team and tell us what needs to be done to mitigate it. I think it's a much more reasonable approach. I think the fiscal note will reflect that it's not going to cost us that much. And the steps we will take will define clearly for all the builders and all the real estate folks and all the folks who would like to participate in this or should participate in this to reach a reasonable point of mitigation. You'll see that the Chief Medical Officer is the chair and that the...if you start on page 2, Section 4, line 26, actually: Radon Resistant New Construction Task Force is created. The task force shall consist of the Chief Medical Officer of the Division of Public Health of the Department of Health and Human Services who will serve as the chairperson of the task force, and the following individuals/ members to be appointed by the Governor. As you can expect with so much interest from so many different places, the task force is a bit large but it's the representation that we came to after two years of negotiation. Who needs to be there: Three representatives of home builders; a representative from the home inspectors; two representatives from commercial construction; a representative of Nebraska realtors; one representative of a respiratory disease organization; a representative from the cancer research and prevention organization; a rep from the League of Nebraska Municipalities; three community public health representatives, one from each district; a professional engineer as defined in Section 81-3422; an architect as defined in 81-3404. If they can't figure out what we need to do to mitigate the problem, we're in more trouble than we think we are. And I would leave that at my introduction and take any questions that you might have. [LB28]

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SENATOR CAMPBELL: Okay. Thank you, Senator Krist. Senator Kolterman. [LB28]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Senator Krist, I appreciate you bringing this bill. I have a couple of questions. I understand the amendment but under the general bill itself, there was a...so if I understand this, if this gets passed, they come up with ideas, all new construction going forward. If you sell a house right now, it has to be tested for radon. [LB28]

SENATOR KRIST: Correct. [LB28]

SENATOR KOLTERMAN: So that's not an issue anyway. [LB28]

SENATOR KRIST: Right. [LB28]

SENATOR KOLTERMAN: But my question really deals with the second part of your bill which kind of alludes to the fact that it could cost us several million dollars more for the property that we're building out in--what is it?--Kearney? Is that correct? [LB28]

SENATOR KRIST: The veterans' home? [LB28]

SENATOR KOLTERMAN: Yeah, is that correct or am I reading that wrong? [LB28]

SENATOR KRIST: Yeah. The fiscal note that we were given by the Department of Administrative Services is being reworked. [LB28]

SENATOR KOLTERMAN: Okay. [LB28]

SENATOR KRIST: My question to them was, where did those figures come from? And the question comes legitimately from someone who, in residential construction, has just put in the top-of-the-line radon mitigation system. And for a 4,500 square foot home, it's less than \$800. Understanding that the VA hospital is going to be much bigger, \$2.5 million to me...I just wanted a reasonable estimate from a commercial installer to make sure that we had the right number on that. But at the same time I will say, if you're building a school, you're building a church, you're building a veterans' home--which is near and dear to my heart--we should be protecting the people that are in there if we have the capability of doing that. And there's several different kinds of construction that are in a passive nature and an active nature. So...and that's, I think, what these experts are going to tell us. This is the minimum standard available, so... [LB28]

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SENATOR KOLTERMAN: Well, I appreciate that. I just, it's not...it's a lot cheaper to do it up front, through, than it is to come back in and retrofit... [LB28]

SENATOR KRIST: Absolutely. [LB28]

SENATOR KOLTERMAN: ...or try and fix the problem after it already exists. [LB28]

SENATOR KRIST: Absolutely. [LB28]

SENATOR KOLTERMAN: So thank you. [LB28]

SENATOR KRIST: Thank you. [LB28]

SENATOR CAMPBELL: Okay. Senators, what the whispering up here is about is the fact that we don't have the fourth page. [LB28]

SENATOR HOWARD: Second or fourth. [LB28]

SENATOR CAMPBELL: Second or fourth. So it is on...it has been put on... [LB28]

SENATOR KRIST: It's on the gadget. [LB28]

SENATOR CAMPBELL: ...by the legal counsel, yes. [LB28]

SENATOR KRIST: And I apologize. They probably just didn't flip flop. I'm sorry. [LB28]

SENATOR HOWARD: Yeah, it's the flip flop. (Laugh) [LB28]

SENATOR CAMPBELL: That's okay. That's okay. [LB28]

SENATOR KRIST: My fault. [LB28]

SENATOR CAMPBELL: So, Senator Krist, we're basically to the development of this group of folks who will bring forth recommendations. [LB28]

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SENATOR KRIST: That's it. The action for this year is just to empower a group of those individuals that I read that will study it and give us those standards to put into legislation. And the discussion over the last couple of years has been, why does the Department of Health and Human Services tell people how to build houses? That should be a building code issue and we deal with that in Urban Affairs all the time. The reason is, if it's a demonstrated health risk then it falls back to policies/procedures that are promulgated by the department. So they would need, I would think, a change of statute and help...maybe they don't. Maybe at the end of this whole thing they say, here's the new standard and they issue their own, which is probably another way to approach this. [LB28]

SENATOR CAMPBELL: Okay. Any other questions, Senators? Senator Riepe. [LB28]

SENATOR RIEPE: Senator Krist, thank you very much. I notice in your remarks here it says that Nebraska is the third highest emission in the United States and also talks about the number one cause of lung cancer in nonsmokers. Within Nebraska--and you said it's more focused on the east side of Nebraska as opposed--is there any breakdown further within that eastern? Is it more what we would call near the river or is it just sort of randomly... [LB28]

SENATOR KRIST: (Exhibit 8) Thank you for the question. And last year, I had...I gave...two years ago, I gave out a map. I will get that map to the committee legal counsel so you can see it. I can tell you that in the looser soil parts of Nebraska, the Sandhills of Nebraska, etcetera, there is less concentration. And in the harder packed on the eastern side and across our interstate are the more compacted and there's a greater chance there. So the metropolitan area, for example, has a large concentration. And the real problem with this gas is that, you know, the question has been asked several times, I'll just go out and test the property I'm going to build my house on and make a decision whether or not to put a mitigation system in. And you just...until you put a structure up and capture the gas within the structure, you can't really tell if radon is going to be a factor. So as in my case, I bring a personal note to it, top of the line active system was less than \$900, \$800 and some odd change during construction. If I went back and did that same thing afterwards, you can pretty much double that price. [LB28]

SENATOR RIEPE: May I ask, too, with the density of the urban, it's...would it be logical to assume that it's going to have less opportunity to escape? You talked about the Sandhills with loose soil. You know, if everything is concrete and roads and that it... [LB28]

SENATOR KRIST: Sure. I think the bigger dynamic involved here is, how airtight is your home? And we all try to insulate our properties to make sure that we're saving our air conditioning and our heat. And the tighter that is and the less air that is exchanged, the tighter the concentration.

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And so the active mitigation continually circulates the air and exhausts the air which keeps any concentration down at its lowest level. [LB28]

SENATOR RIEPE: Yeah. Thank you. [LB28]

SENATOR KRIST: Yep. [LB28]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Krist. Will you be staying? Yes, you have the second bill. [LB28]

SENATOR KRIST: Absolutely. [LB28]

SENATOR CAMPBELL: All right. Our first proponent. Good afternoon. [LB28]

DAVID HOLMQUIST: (Exhibit 9) Good afternoon, Senator Campbell. And good afternoon, members of the Health and Human Services Committee. It's a pleasure to have the opportunity to appear before you today. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t, and I am a registered lobbyist representing the American Cancer Society Cancer Action Network. I appear before you today in support of LB28. We first brought the issue of radon exposure and lung cancer to the attention of Senator Krist in 2012 and he introduced a bill in 2013 that addressed radon abatement in new residential construction. During the intervening time, Senator Krist has worked with us, with builders and contractors, and with radon specialists to draft the bill and amendments which he has presented today. The reason we support this bill is very clear. Nebraska has the third highest levels of radon incidence in the United States after Iowa and North Dakota. Radon is the second leading cause of lung cancer after primary and secondhand tobacco smoke. And radon exposure is the leading cause of lung cancer in nonsmokers. Looking at state-specific data on the presence and dangers of this naturally occurring, odorless, and tasteless gas, it's clear that we should not ignore this issue. High levels of radon occurrence are not limited to small areas of Nebraska. Seventy-two of our 93 counties have radon concentrations in excess of the recommended 4.0 picocuries per liter action level stated by the Environmental Protection Agency. And the findings in Nebraska were done by a random test in each of the 97 counties conducted a number of years ago to determine what the levels were. And that's how they came up with 72 of the 93 counties having a high level of radon exposure potential. The information I've provided details the recorded levels in each county. That's not here. I apologize. We will get you a map with recorded levels for each county. But each of the counties you represent has high, elevated levels of radon. These high levels of radon could be a time bomb of sorts ticking away and exposing our citizens and your constituents to high levels of radon in homes, schools, businesses, and other public buildings. Recent numbers from the American Cancer Society's 2015 "Cancer Facts and Figures" show our growing need as a state to

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act on preventing lung cancer. Data from "Cancer Facts and Figures" projects that lung cancer will be the deadliest type of cancer in Nebraska this year with 890 deaths likely to occur. While the leading cause, as I mentioned before, is still smoking and exposure to secondhand smoke, you have the ability to make great strides in reducing lung cancer due to radon exposure. Implementation of reasonable actions like the creation of the task force included in LB28 and the adoption of the recommendations will go a long way in protecting Nebraskans from high levels of radon exposure both in their own homes and in public buildings. Children can be exposed to radon in schools; doctors, nurses, patients in hospitals...the list goes on and on and we need to do something about it. And when I think about education on the dangers of radon exposure, I'm reminded of TV commercials that we see, I think fairly frequently now, seeking individuals and family members of those who were exposed to asbestos in the past. There have been large class action lawsuits and, you know, sort of, dial 1-800 and get your piece of the pie. And my concern is that absolutely we need to save people from downstream effects of radon as we have done from asbestos, but we also need to protect ourselves, government entities, and individual builders and so forth from the potential of exposure legally down the road, I think. I think it's just a sensible way to go. And as you know, asbestos exposure has created an enormous number of deaths from mesothelioma, a form of lung cancer, and so we...I...it just underscores the necessity to address the issue head on early. While continued public education about the dangers of radon exposure is important, a more proactive approach can help prevent cancer and improve long-term health outcomes. This proactive approach is a commonsense solution to a growing problem. Each year that we fail to act on the dangers of radon exposure, we simply put more of our citizens at risk. So I ask you to advance LB28 as amended to General File and ask for your support on passage of the bill. I'd be happy to take any questions that you might have. I handed out a sheet that gives you some of the details about studies that have been done and so forth by the American Cancer Society. This is an emerging issue, I will tell you. If we adopt these kinds of things in Nebraska, we will be leading the nation. And given the fact that we're third highest in the nation, I think we need to lead the nation in addressing the issue. [LB28]

SENATOR CAMPBELL: Thank you, Mr. Holmquist. Questions from the senators? Senator Riepe. [LB28]

SENATOR RIEPE: Senator Campbell, thank you. Mine is, I'm trying to determine how onerous this task is. Is this simply a matter of soil testing, of taking tabs down and... [LB28]

DAVID HOLMQUIST: No. [LB28]

SENATOR RIEPE: No. [LB28]

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DAVID HOLMQUIST: What happens is, if you own a home, you get a test kit. They're about \$25. There are two kinds of test kits. There's a short term and a long term. Start with the short-term test kit. You put it in your basement at a place where it's most likely to be able to show what the radon levels might be. So if you have a sump pump it would be near the sump pump opening because the gases can come up through that opening. If you look in your basement and there are cracks in the basement floor, that is a place for the radon gases to come up through from the soil into the house. So you do the test kit and if the test kit comes back showing radon levels in excess of 4.0 picocuries per liter--and don't ask me to explain that, I'm not a scientist (laugh)--then it demonstrates a need to do one more test just to be sure that you didn't have a false positive test. If we find, if the test finds that you have a high level of radon--and there's somebody behind me who is a radon abatement specialist--then they go in and they determine a way to mitigate the radon in your home. And what generally happens is they have to drill down. If it hasn't had preparation previously, they have to drill down below the slab in the basement--or on the slab, if you have a grade-on-slab (sic) home--and put in piping. And then that pipe runs up through your house somewhere, usually through the walls, goes into the attic in many cases, and in the attic they can install a fan that will pull that gas out of the soil up through the pipe and then out into the air. And once it's in the air, it's...you know, there's parts per million in science, that reduces the exposure greatly so that we aren't all harmed by it. You know, I live in Omaha and if you drive through a neighborhood near me, it looks like about every other house has a radon fan hanging on the outside. And in those instances, what they've done is they've run the piping through an exterior basement wall and up the side. And you'll see the fan is about this big and this big around and then there's a pipe that goes on up from there. And then they're plugged into an exterior...in that instance an exterior plug. If you put one inside the home and you put it in your attic, the fan runs up in the attic. It's quiet. And when you build the home, you have to make sure that there's an electrical outlet in the attic far enough away from the eave fall that in order to be able to get to the...get the plug and the fan in there. So it's not rocket science but it is science. It is architectural and engineering to make sure that it's done. How it works in commercial buildings, I've never seen pictures of that. I'm sure that that's...there, you know, there are people with a lot more expertise than me that know how it's done with a commercial building. There are things that can be done, however, to the soil before a foundation is put down that will help mitigate the radon. [LB28]

SENATOR RIEPE: Thank you. [LB28]

SENATOR CAMPBELL: Any other follow-up questions? Thank you, Mr. Holmquist. [LB28]

DAVID HOLMQUIST: Thank you so much. [LB28]

SENATOR CAMPBELL: Our next proponent? Good afternoon. [LB28]

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CURTIS DREW: Good afternoon. I'm Curtis Drew, C-u-r-t-i-s D-r-e-w. I am from Omaha, Nebraska. I am the president and founder of National Radon Defense. We are a company based in Omaha and we are a network of radon testing and mitigation companies across the country and also in Canada. And so what we do is we are basically the contractors that do the testing and mitigation work. So a couple of points I'd like to make before questions: First off, just trends across the country. There's several states that already have legislation such as this in place and have for many years. Just to read off a few of those: Illinois, Michigan, Pennsylvania, Maine, Minnesota, Washington, Ohio all have radon resistant new construction requirements in building new residential properties. And Iowa is at a similar stage as Nebraska right now with legislation being put forward to require radon resistant new construction in Iowa. So there's a few states that have had activity. Quite frankly, you know, radon was discovered in the United States as a health risk. And it was discovered in Pennsylvania. And so they're one of the most advanced states in the U.S. around radon and so they've been requiring radon resistant new construction for years in Pennsylvania. And then, you know, it...you know, from Pennsylvania, and now we know about radon and we've learned about it in the early '80s. And so about 35 years, you know, we've known that radon is a health risk across the world. You know, in 2009, the World Health Organization did a study. And these are health professionals and scientists from around the world that...the outcome of that study came out in 2009 that concluded that radon causes lung cancer. And so this is a world problem, not just in the U.S., and it's a product of our soil. And so they estimated on their study that between 11 and 15 percent of all of the world's lung cancers are caused by radon. So that was a significant move in the trends around radon. It's a...you know, gave it a lot more credibility. And the more, you know, studies and science that's gone on to prove that radon causes lung cancer then now you see the trends around legislation to prevent exposure. In 2014, so January of last year, the Department of Housing and Urban Development passed a requirement for anything...so HUD is the acronym. They are, in essence, a department of the government that backs loans for developers building apartment complexes, multifamily structures most of the time. And they require radon resistant new construction now in those buildings in areas where there's a propensity for radon. So what that means is, it's a Zone 1 area and Zone 2 area which is what Nebraska is. Anytime an apartment building is being built now or refinanced, bought and sold with HUD financing, they are required to test for radon. And if it's being built, it's required to be built radon resistant new construction. So that's a really positive trend and legislation that's been put forward. So we're excited about that. And so we're seeing a lot of activity around the country in fixing apartment complexes for radon in larger buildings and as well as homes. So that's been real good. And then I can also talk about the techniques a little bit around fixing homes and how radon resistant new construction works. You know, houses naturally draw in this gas because in the lower areas of a home, there's negative air pressure. And so there's a natural phenomenon called the stack effect that basically draws air from the lower levels of the home up through the home. And so a house actually draws air in the lower levels and then up through it. And that's what's pulling radon into a house, okay? So if you ever opened a window in your basement, you can feel the air blowing in from the basement. And up on the

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upper levels of the house, if you opened a window the air actually flows out. And this is just a natural flow. And that's why radon is higher in homes versus outdoors, because it's actually getting pulled in that way. So the radon resistant new construction we build in into the homes and try to prevent that stack effect as much as we can and create a path for the gas to travel versus it being sucked up into the home. So in a nutshell, that's the technique that we're talking about here. [LB28]

SENATOR CAMPBELL: Okay. Questions? Senator Kolterman. [LB28]

SENATOR KOLTERMAN: Thank you, Senator Campbell. I'm curious when you put it in new...do you do new construction as well? [LB28]

CURTIS DREW: I personally do not. I'm more of a consultant... [LB28]

SENATOR KOLTERMAN: Okay. [LB28]

CURTIS DREW: ...and our network of companies does. [LB28]

SENATOR KOLTERMAN: Do you know...well you've probably seen it though. [LB28]

CURTIS DREW: Sure. [LB28]

SENATOR KOLTERMAN: When you put it in new construction, do they put piping under the floor or, like...and then bring it to this fan that sucks it out into the... [LB28]

CURTIS DREW: Yeah, so the technique is, you want to first off have a permeable layer underneath the concrete slab so air can travel underneath the concrete. And what I mean by permeable layer, like, a layer of gravel, crushed gravel. And then you put a layer of plastic above that and then concrete is poured. And in doing so, you're putting a pipe down through the plastic into that gravel bed. And that pipe is a PVC pipe, like a three- or four-inch PVC pipe, that would run directly then from that slab all the way through the roof. [LB28]

SENATOR KOLTERMAN: So is it like a...it's like a drain tile? [LB28]

CURTIS DREW: It's...well, I guess it's similar to that but it's really just a gas...an area for the gas to travel out of there, a path of least resistance versus...you know, otherwise it will get sucked through the concrete like through cracks, maybe through a sump pit. If you create a path like a

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pipe that's...runs straight up and down out of that plastic, the air will travel naturally to that versus coming through the concrete. Now, I will tell you that that's a passive format. So it's effective but not as effective as an active system where you actually have a fan on that like a radon mitigation system that was described earlier where it's actually sucking towards that suction point. Now, that's going to reduce the levels significantly versus a radon resistant type of strategy. [LB28]

SENATOR KOLTERMAN: So then...I assume then once you get that barrier set up and you draw it up through a flue type of an arrangement just like you would through a... [LB28]

CURTIS DREW: Yeah, just like you see a plumbing pipe... [LB28]

SENATOR KOLTERMAN: Right. [LB28]

CURTIS DREW: ...through your roof, you'd see another pipe through your roof. You wouldn't know what it is. It's a radon pipe. And it's...basically has radon going up through the...to the atmosphere. [LB28]

SENATOR KOLTERMAN: And where I'm going with this is, the additional cost associated--we talked a little bit about that--on an average home is about \$1,000, \$900 to \$1,000. [LB28]

CURTIS DREW: I think that's fair. I think that's fair. Now, one of the things to consider in Nebraska, and this is where the, I'm sure, the committee will come up with ideas around...many states in the country, their building codes require crushed gravel before you pour concrete. That is not a requirement currently in Nebraska. And it would be an additional cost probably that might elevate the number above that. So I'm sure that's going to be considered when they're doing this bill. Now also, in Nebraska our water table is kind of high. So we require sump pits now with drain tile in new construction. So that might be the best path to do this type of system where you actually require the lid on that sump pit to be sealed and attach a pipe to that. And that strategy, I think, will be really effective and very cost effective as well. [LB28]

SENATOR KOLTERMAN: All right. Thank you very much. [LB28]

CURTIS DREW: Sure. [LB28]

SENATOR CAMPBELL: Any other questions? Senator Riepe. [LB28]

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SENATOR RIEPE: Thank you. I have a quick question in the sense that you said it was about \$1,000 a home. And where I'm trying to run to is say, okay, once we're aware that there is the existence of radon, you know, do we run into a state policy then of...I'm thinking of, you know, low-income people who aren't able to retrofit their houses and then do...you know, where does the state play into this? And then maybe that's something that's going to have to be looked at down the road or never. But, you know, we're almost going to invent a social problem of, how do we take care of those individuals? Can we just sit there and let them live in a radon "infested" area? I don't know. That's...I'm not saying that we should be blind to it. [LB28]

CURTIS DREW: Right. [LB28]

SENATOR RIEPE: I still...you know, it's just a conundrum that we're going to have to face, I think. That wasn't really a good question. It was just kind of a brain dump. [LB28]

CURTIS DREW: I...and this may be a different point to interject, though. A lot of responsible homebuilders in Nebraska are already doing this, by the way. I mean, radon resistant construction is an option for everybody buying a house pretty much. And a lot of these builders are running into this problem. They're building homes and then people are testing high and they come back to them and say, hey, I have high radon in my house and you built this house for me. So that's been going on for years. So many builders already do this technique. And so I think this bill would actually level the playing field for homebuilders and require all of them then to do that same responsible type of construction, so. [LB28]

SENATOR RIEPE: Hmm. Okay. [LB28]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. Drew, very much for your testimony today. [LB28]

CURTIS DREW: Sure. [LB28]

SENATOR CAMPBELL: Our next proponent. Good afternoon. [LB28]

CAROL O'NEILL: Good afternoon. Senator Campbell and members of the Health and Human Services Committee, my name is Carol O'Neill, C-a-r-o-l O-N-e-i-l-l. I'm representing myself today as a concerned citizen and speaking in support of the radon resistant new construction, LB28. I've worked as a registered nurse for 32 years, currently in a cancer center facilitating survivorship programs for cancer survivors and conducting education on cancer prevention and early detection. I've learned a lot in three decades of nursing, certainly that we live in an

imperfect world but also that resiliency, adaptability, and tenacity often trump vulnerability. I've also learned that, just as our mothers preached, an ounce of prevention truly is better than a pound of cure. Experts tell us one-half of American men and one-third of women will hear the words, it's cancer, during their lifetime. These are sobering predictions. While you and I were inconvenienced by a slow line at the coffee shop this morning, others were inconvenienced by hastily made doctors appointments that culminated with conversations about cancer. By day's end, the following proverb will be unexpectedly irrelevant to them: Those with health have a thousand wishes, those without have but one. Cancer survivors often ask, why did I get cancer? It's a reasonable question. Ninety (percent) to ninety-five percent of cancers arise sporadically, not due to genetic mutations inherited from a parent, but from mutations that occur during normal cell division or after exposure to a carcinogen either known or unknown. Back in the mid-1800s, a London physician noted an alarmingly high incidence of scrotal cancer in young male chimney sweeps. His investigation revealed an intriguing commonality: soot embedded in their skin. And his recognition of soot as a carcinogen played a part in the enactment of child labor laws. While the current list of known carcinogens is long and ever growing, it is still incomplete. And it's hard to evade danger when we don't know what it looks like. But information on some carcinogens is clear and compelling. We know radon causes cancer. We know it seeps into closed spaces. We know it accumulates. We know it releases radioactive energy deep into our lungs when we inhale. We know radon causes lung cancer. Lung cancer for me is personal. When I was 46 I went to the Mayo Clinic for tests to donate a kidney. I was the picture of health, a never-smoker with a healthy body, a healthy mind, and a healthy spirit. But instead of receiving a green light to donate, I received a diagnosis of lung cancer: non-small cell adenocarcinoma the size of a key lime. I had surgery to remove the tumor along with the lower lobe of my left lung and received chemotherapy. Nine years later, I am well and fully cognizant that I dodged a bullet. Christy (phonetic), the woman who needed my kidney, never received another transplant opportunity and she died four years later at 33. Christy's death is not reflected in the Nebraska cancer mortality statistics. Perhaps it should be. Unlike my coveted early diagnosis, most lung cancer is found late in the game after a nagging cough and insidious symptoms of fatigue and weight loss can no longer be ignored or blamed on this or that or everything else. For nonsmokers who have no reason to suspect serious lung disease, symptoms are often ignored while the disease progresses. Lung cancer diagnosed at a late stage is devastating and its place atop the cancer mortality charts for both men and women is no fluke. After my diagnosis, doctors quizzed me repeatedly about possible radon exposure, but I barely knew the term back then and I had no idea if I'd been exposed. Fortunately for our family, our current home and our previous one tested below that action level. While I cannot assume radon caused my lung cancer, 20,000 Americans die each year because radon caused theirs. I am here today because they cannot be. I am speaking on their behalf. We live in an imperfect world. But what we cannot change or control, we can surely influence. Please support LB28. [LB28]

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SENATOR CAMPBELL: Thank you, Ms. O'Neill. Questions from the senators? Okay. Thank you very much for your testimony. Our next proponent. Good afternoon. [LB28]

DON WISNIESKI: Good afternoon, Senators and staff. My name is Don Wisnieski, W-i-s-n-i-e-s-k-i. I'm the president of the Nebraska State Home Builders Association representing associations across the state of Nebraska here to reaffirm our support for this bill as amended. We feel this is going to be a very workable bill to work with. The bill will be a very important and positive step to lower the risks associated with radon. And the Nebraska State Home Builders Association has always been a proponent for safe and affordable housing. I would like to address one issue on the amendment. Now, some of you may not have it in front of you because you said page 4 was missing, but on page 4 at the top, number (ii) states a requirement that: installation of a radon resistant new construction only be performed by a builder/contractor and his or her subcontractor or by a radon mitigation specialist. We are perfectly fine with that and agree with that, but the very next line states a requirement that only a radon mitigation specialist be allowed to install a radon vent fan or upgrade a passive new construction pipe to an active radon pipe. We would simply like that to state that a radon mitigation specialist or a contractor would be allowed to do such items. In my community where I'm from--it's Norfolk--we've been installing a passive system in all of the houses. It's a requirement within the city for a number of years already, so our contractors are very capable of doing such item. If a radon test proves that an active system may need to be installed later in life, the contractors are very capable of doing so. As stated before, the cost of a passive system in the house is very, very reasonable. We have an estimated cost, somewhere around \$250, to install it in a home, very, very inexpensive and a very safe way of doing things. Upgrading it to an active system is simply going to add just a few hundred dollars and it would be nice to be able to allow our contractors just, you know, that have already installed the systems to be allowed to upgrade. So with that being said, I'd entertain any questions if there are any. [LB28]

SENATOR CAMPBELL: Questions from the senators? Thank you for your direct and brief testimony. (Laughter) [LB28]

DON WISNIESKI: I thought you'd appreciate that. [LB28]

SENATOR CAMPBELL: Boy, direct. Thank you. [LB28]

DON WISNIESKI: Have a good day, folks. [LB28]

SENATOR CAMPBELL: You too. I have to be nice to those people from Norfolk because that's my hometown. Our next proponent. Good afternoon. [LB28]

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VICKI DUEY: (Exhibit 10) Good afternoon. My name is Vicki Duey, V-i-c-k-i D-u-e-y. I am a local health director. Today I am testifying on behalf of the Friends of Public Health, the advocacy organization representing district public health departments. Public health has long recognized radon as the leading cause of lung cancer in nonsmokers. It has been proven that low to moderate concentrations of radon are usually responsible for these cancers. Nebraska has a very high prevalence of radon in homes. One out of every two radon tests conducted in Nebraska is...conducted at the state is elevated. Homes with an annual average radon level at or above 4 picocuries per liter should be mitigated to reduce radon levels. And that's set by the Environmental Protection Agency who says there is no such thing as a safe level. But above that, we know that there are increased dangers. In Nebraska, 12 of the local public health departments are providing testing kits, education, or ensuring that radon testing is available in the rural areas. Statewide there have been 73,280 homes tested for radon. This is according to the Department of Health and Human Services and is available on their Web site. Of those, 59 percent or 43,565 have test results suggesting mitigation based on the EPA recommendations. We support LB28, viewing it as a step in the problem that plagues many Nebraskans. While it doesn't address problems in older homes, it will provide safer environments for new homeowners and dwellers. We further applaud the presence of the public health on the task force since we have been boots on the ground with recognition on the prevention of disease for many years and specifically of radon. Thank you for this opportunity to share information on radon prevention. I have attached several examples of things that public health departments across the state are doing. We have provided training for contractors and new construction and radon resistant new construction. We have provided either free or a very reduced cost kits, the short-term kits, so that people can test in their homes. And if you'll look at the Four Corners area that I personally serve, last year--and you test over the winter because that's when the home is closed and so you get the best...the highest, not the best, the highest level of radon testing--we...of the...we gave out close to 400 radon test kits. But of the 216 test kits that were completed and returned, 154 of those, 71 percent, were at or above that level where...the action level of EPA. Lots of public health awareness information has gone out working with all levels of the population incomewise and trying to make people available so that they could make an appropriate decision on whether or not mitigation is needed in their home. And I thank you. [LB28]

SENATOR CAMPBELL: Thank you, Ms. Duey. Senator Kolterman has a question. [LB28]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Welcome back, Vicki. [LB28]

VICKI DUEY: Thank you, Senator. [LB28]

SENATOR KOLTERMAN: Question for you, and it kind of dovetails along Senator Riepe's question a while ago: I know you guys are doing a great job of getting those test kits out. [LB28]

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VICKI DUEY: Thank you. [LB28]

SENATOR KOLTERMAN: And you do them at fairs and you do them at county fairs and things of that nature. But you also deal a lot with low-income housing type of...people that live in low-income housing. Is there any federal programs that can help people with low income mitigate this by grants or whether...the type of thing that we do with weatherization and things like that? [LB28]

VICKI DUEY: Right, and I am not aware of a specific grant. One of the things we do, and I think most health departments do, is we do case management or now we're referring to it as patient navigation and so that we are looking and working with individuals. Often the individual, the home that may need mitigation could be owned by someone else other than the person who is living there. And so we work with the owner as opposed to the lower-income person who is living within. But we will work with that individual to find other sources of funding. We have been able to do that in extreme cases in the past. But I don't know of a single specific source. [LB28]

SENATOR KOLTERMAN: Okay. Thank you. Thanks for coming back. [LB28]

VICKI DUEY: Thank you. [LB28]

SENATOR CAMPBELL: Senator Howard. [LB28]

SENATOR HOWARD: Thank you, Senator Campbell. Thank you for your testimony today. I was curious about the training that you're providing to contractors. [LB28]

VICKI DUEY: Yes. [LB28]

SENATOR HOWARD: Is there a certification program that goes along with this program, sort of proof that they've received this training and they're ready to do this type of work? [LB28]

VICKI DUEY: Our...the programs that we have provided aren't specifically under the state as a certification program. But often it's someone from the state that is providing the training. We bring experts in who are already building radon resistant homes and/or someone who is doing that training, so. [LB28]

SENATOR HOWARD: Thank you. [LB28]

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VICKI DUEY: Yes. [LB28]

SENATOR CAMPBELL: Anything else? Thank you, Ms. Duey, for your testimony. [LB28]

VICKI DUEY: Thank you. [LB28]

SENATOR CAMPBELL: Our next proponent? Anyone else? Okay. Those who are opposing the bill? Good afternoon. [LB28]

ALLEN STEINER: Hello. [LB28]

SENATOR CAMPBELL: You can go right ahead, sir. [LB28]

ALLEN STEINER: (Exhibit 11) Okay. Hello. I live two miles south of Waverly, Nebraska, and my name is Allen Steiner. [LB28]

SENATOR CAMPBELL: Could you spell your name, sir? [LB28]

ALLEN STEINER: Sure. A-l-l-e-n S-t-e-i-n-e-r. [LB28]

SENATOR CAMPBELL: Thank you. [LB28]

ALLEN STEINER: I am a family utilitarian. Hopefully, I am here today to help you discover the truth in this matter. The Environmental Protection--whether you need it or not--Agency observed something similar to this: Minors exposed to 1,000 units of radiation over the course of as little as one year had contracted lung cancer and then assumed that anyone exposed to the same 1,000 units, whether over a period of 1 year or a period of 50 years would have an equal chance of contracting lung cancer albeit as much as 49 years later. This is akin to saying that since a person died of alcohol poisoning after drinking 50 shots of their favorite liquor in 1 day then another person who drinks one shot of the same liquor every day for a period of 50 days will have an equally high chance of dying of alcohol poisoning. And yet that ridiculous assumption by the EPA is why we are all here today even though the EPA itself admits in highly technical, scientific, "easy for the layperson to miss the meaning of" language that none of the radon studies that specifically look at the effects of low levels, perhaps below 20 microcuries per liter--and actually, I see I've made a mistake, that's 20 picocuries per minute...per liter...on lung cancer incidence indicate a need for concern. In order to make an informed decision, please take time to read what forensic industrial hygienist Caoimhin Connell has written on this subject. He has a

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highly analytical mind and a way of being able to communicate hard-to-understand technicalities to the layperson's level of thinking. Plus, other than standing up for his conclusions, he seems to be quite objective and not the least concerned with being politically correct. I will always respect the right of my fellow citizens to build or to buy a new home with radon mitigation. All I ask today is that my fellow citizens do not take away my right to build or buy a new home without radon mitigation. One hundred years ago, some traveling salespersons would scare people into buying lightning rod protection systems for their homes. Many homeowners purchased these systems hoping to protect their homes. Why do we not see many lightning rods today? Well, perhaps the truth eventually prevailed. Thank you for being here. [LB28]

SENATOR CAMPBELL: Questions? Any questions, Senators? Senator Riepe. [LB28]

SENATOR RIEPE: Thank you for being here. You had mentioned a study in your remarks. You talked about...I thought you'd mentioned someone who'd...do you have a copy of that that you'd be able to share with us? [LB28]

ALLEN STEINER: No, I don't. [LB28]

SENATOR RIEPE: Okay. [LB28]

ALLEN STEINER: What I would recommend is that you put in something along the lines of "the myth of radon" and...on the Internet, just...you know how to Google, right... [LB28]

SENATOR RIEPE: Yeah. [LB28]

ALLEN STEINER: ...or search engines and find the article by Caoimhin Connell? [LB28]

SENATOR RIEPE: Connell? [LB28]

ALLEN STEINER: Um-hum. In fact, I e-mailed each one of you with a link. And you get a lot of information you hear from proponents and that's fine and that's well. But it doesn't mean that one person coming up here who is an opponent might not see things more truthfully as all the folks behind me. And I think it's very imperative that you folks look into this because I think you got...well, you are way far ahead of where you need to be. I don't...I think you're assuming that this needs to be done especially at the low levels that they're talking about. And there's plenty of information out there that looks at these studies and translates the results of these studies in a scientific way. [LB28]

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SENATOR CAMPBELL: Okay. Any other questions? Thank you for your testimony today.
[LB28]

ALLEN STEINER: You bet. [LB28]

SENATOR CAMPBELL: Our next opponent? Anyone else in opposition to the bill? Those in a neutral position. Good afternoon. [LB28]

JAY DAVIS: Good afternoon, Senator Campbell, members of the committee. I'm Jay Davis and I'm assistant planning director for the city of Omaha. I'm here on a neutral basis only because, first of all, I just looked at the makeup of the committee. I'm probably the one guy in the room that has no financial gain in whatever happens one way or the other with this. But as a life safety professional, we do look at different codes and how they apply to this. And currently the LB540 that Senator Crawford has up contains language now that moved the radon mitigation systems from an appendix chapter to an actual language...body language of the code. So for this point, I'm pretty neutral but only because we know that if we adopt a code, either that...or the city of Omaha is moving forward with theirs. Those were already brought into that code. There has been talk of amending that part of it. While amending it is possible, the thing that I think that we're looking at secondarily is, what do we do with the in-place drain tile system that's in there for our sump systems? We recognize it's a problem. I heard somebody mention the studies in Pennsylvania. I hate that my home state keeps finding all these things out. We went from asbestos to this. But the reality is, in Pennsylvania, where there's large numbers of coal mines and both strip mining and underground mining, it became very apparent very early on that this was a problem. The state of Nebraska is unique because, on the eastern end of the state, we do have clayey soils that do not allow air to escape whereas in the central parts of the state and the Sandhills have sandy soil that allow the gas to escape naturally. Just sold my house last year and, yes, I had to put a radon system in. My new house doesn't have one and now I'm beginning to ask myself what I didn't do right here. But the reality is, we're fighting two different things. We want to make our houses more affordable. We want to make our houses more energy efficient. And when we do that, we stop the one thing that has always made houses not be a problem for us. It's called airflow. There are ways to do this, there are ways to increase our airflow in our houses by bringing in more fresh air. But again, that's at a cost as well. So from my neutral standpoint, I would love to be part of the committee. I didn't get to read all the bill so I apologize for that. But like I said, I'm the guy that has the least amount of financial burden in this. We just enforce the rules and move forward to ensure life safety for the people and the citizens of Omaha and obviously the state of Nebraska when we can. I want to be very short today, Senator. I'm done. [LB28]

SENATOR CAMPBELL: You certainly are. [LB28]

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JAY DAVIS: Yeah, I'm trying to get an award. (Laughter) [LB28]

SENATOR CAMPBELL: Any questions from the senators? Mr. Davis, I think you've testified almost every time we've had one of the bills related to radon. [LB28]

JAY DAVIS: Radon, let's see, carbon monoxide, building codes, yeah, I...you guys are probably getting tired of seeing me on here, so... [LB28]

SENATOR CAMPBELL: No. No, no, no, no. [LB28]

JAY DAVIS: Thank you. [LB28]

SENATOR CAMPBELL: No, we always welcome testimony. Absolutely. Anyone else in a neutral position? Okay. Senator Krist, I think we're circled back to you. [LB28]

SENATOR KRIST: I did get you a copy of the map and I think that it's pretty telling in terms of spots around the state that we have a hazard and need to mitigate the system. Just...I don't normally talk to any...in any rebuttal and I won't do that today. But I will tell you, from a homebuilder's perspective, that amendment is absolutely fine, I mean, to do what the homebuilders want to do. And so I will consider that extremely friendly and make it a committee amendment. I think this is the best course of action. You know, we could very well come back or they could come back with a report back to you that says, we don't need to do anything. Builders are doing it now. And I...to be honest, I really don't care how it gets done. But I think that those...the mitigation systems need to be offered to people. They need to have an option. I was lucky enough to get involved with this while we were building the house and my system is absolutely...it's built into the sump pump. The tiles are there. It was built into the system before while they were building the house. And the fan runs and I never hear a thing. And it's a peace of mind for me. But it is...it was my choice. So I thank you for your attention and I thank everyone for coming in whatever capacity to testify today. [LB28]

SENATOR CAMPBELL: Okay. Any final questions from the senators? Okay. That concludes our hearing today on LB28. If you are leaving, please leave as quietly as you can, because we're going to move ahead. And could we know, who was the group visiting today? [LB28]

_____: We're from Bryan School of Nurse Anesthesia. And we're just down looking and watching some of the hearings and we wanted to be here for some of the (inaudible). [LB346]

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SENATOR CAMPBELL: Oh. Thank you for coming. [LB346]

_____ : Thank you. [LB346]

SENATOR CAMPBELL: All right. We will proceed on to the next bill this afternoon for the hearing on LB346 which would require a Medicaid state plan amendment to cover children's day health services. And before we start, Brennen do we have any letters? [LB346]

BRENNEN MILLER: (Exhibit 1) A support letter from the National Association of Social Workers, Nebraska Chapter. That's all. Thank you. [LB346]

SENATOR CAMPBELL: Okay. All right. Senator Krist, go right ahead. [LB346]

SENATOR KRIST: Good afternoon, Senator Campbell and members of the Health and Human Services Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha along with north-central portions in Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB346. Some years ago, Terri Fitzgerald of Omaha realized the need for a specialized children's care and development center to meet the needs of some very special children. That realization led to the establishment of the Children's Respite Care Center which meets the needs of the variety of children with physical and intellectual disabilities. Actually, Children's Respite Care Center meets the needs of children with disabilities as well as their families, allowing the parents to be in the work force, attend to the needs of siblings, and effectively discharge a usual variety of family responsibilities. And because Children's Respite Care Center...at the end of the day, these children go home to be with their families. They sleep that night in their own home with their families as opposed to receiving care in one of or another 24-hour care facilities at a cost generally in excess of \$600 per day. And without the CRCC, that's exactly where most of these kids would wind up. That's the good news about the Children's Respite Care. It's better and it's cheaper than institutional care. The unfortunate news is that as innovative as CRCC is, and as I am...pointed out to me, five other facilities across the state, officials of the Nebraska Medicaid Program have never been quite sure how to approach reimbursing it for those children who are CRCC Medicaid clients. The result has been that CRCC is paid through several funding silos which is confusing. And somehow, when these various components are added up, the total generally misses the cost of providing this most important and very valued service. The 2010 session of the Legislature enacted legislation establishing the children's day health service as a licensed healthcare service in the state of Nebraska along with requirements for licensure. At that time, there were two such services in the state, both of them in Omaha. Unfortunately, that legislation did not establish children's day health service as a service covered by the Nebraska Medicaid program, and the other children's day health services has...the other one has ceased to

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exist. I might add that that other one was located at Children's Hospital and could not sustain at the funding level that they were being paid. That's what LB346 would do. The officials responsible for the Medicaid program have over the past four years consistently objected to previous versions of this legislation for a variety of ever-changing reasons. Those objections notwithstanding, the Medicaid staff has worked with us to improve funding to the CRCC and we are deeply appreciative of that. Today, we are encouraged by changes that have taken place at both the state and the federal levels over the past couple of years and believe the way is now open to including CRCC in a Medicaid plan or waiver. Those who are following me understand this dynamic better than I, although I will talk to it in my closing. In short, I think there is a need here. We believe the time is right. And we would ask you to support LB346. I want to start out by saying, though, there are no children that are currently qualified for Medicaid or those that could be. There is no increase in that number of people. It is across the state certainly a finite number unless children are born with the kind of infirmity that would cause them to be there. I will draw your attention to the fiscal note. I believe the legislative fiscal note says it quite well. I'll let you read Liz Hruska's comments. I cannot for the life of me figure out how it's going to cost \$24 million more than it's costing us right now to take care of these same kids, because the payment schedule is basically what we're talking about. And Senator Campbell and those who have been on this committee for the past few years understand, bundled, unbundled. Silos of money not...you know, it's just...it's incredibly cumbersome. And so we'll talk about the specifics on the technical side here in this testimony. And I would ask this committee to put this to bed this year. Let's get it a good run, because it's been a few years of trying to solve this problem. [LB346]

SENATOR CAMPBELL: Questions? Senator Riepe. [LB346]

SENATOR RIEPE: Thank you, Senator Campbell. Senator Krist, my question goes to the fiscal note a little bit. And I'm not going to challenge it too much, but my question is, is this for the one center there in Omaha or is this for the five centers that you mentioned? [LB346]

SENATOR KRIST: I can only...yeah, I think...let me not...I'm looking for the exact number. I think there are six such organizations around the state, and I think that is... [LB346]

SENATOR RIEPE: So it's not limited strictly to the one in Omaha. [LB346]

SENATOR KRIST: There's actually two in Omaha. There's one in my district and one in your district that are CRCCs. But, no, it's not just those two. There are some across the state, six total. And so there's...within those six programs, they're having the same issue that this particular program is having. The way I became involved with this, obviously, is my daughter is a person with special need. She has not been in this program. She's been in our program and in Madonna

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School. My son does, though, sit on this board and brought this issue to me along with Terri in terms of the way that these funds have to be...that the bills have to be submitted and how they're reimbursed. And I'll...for the record, I also want to tell you, Children's Hospital went under trying to provide this same service. Children's was actually getting a higher rate than CRCC was getting during this process. So we have a problem and a disparity. And I can only say that it is not an expansion of those Medicaid services. It is paying for it in a different way if we can get to that point. And it is a proper funding mechanism that keeps those kids in day services and back at home where their family can go out and work during the day as opposed to putting them in the care facility. [LB346]

SENATOR RIEPE: May I ask a follow-up question? [LB346]

SENATOR CAMPBELL: Senator Riepe. [LB346]

SENATOR RIEPE: Thank you. Senator Krist, my question, my second question is on eligibility. So it's not driven by income? Or...and it's driven by need? Is that the way it is? And then those that can pay more do sliding scale? [LB346]

SENATOR KRIST: And I would like the folks who follow me to talk to that issue. [LB346]

SENATOR RIEPE: Sure. Okay. [LB346]

SENATOR KRIST: But I'll...if they don't answer your question during their testimony, I'll come back and answer it. I just want to make sure that I'm on solid ground. [LB346]

SENATOR RIEPE: Okay. [LB346]

SENATOR CAMPBELL: Senator Kolterman. [LB346]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Senator Krist, obviously you've been here a lot longer than I have. And as we see these bills come through and we start to look...I mean, you can't just look at the fiscal note without knowing what's transpired in the past... [LB346]

SENATOR KRIST: Sure. [LB346]

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SENATOR KOLTERMAN: ...because we're talking about the new biennium now. Do you know, are...is there significant increases over the last couple years to fund this type of a program, because the program is ongoing already? All we're trying to do is clarify how it's paid and... [LB346]

SENATOR KRIST: We're trying to put, I think, the right amount of dollars for the right services out there. And the problem when this program started and the programs across the state started, there was no rate attached to the services but rather drawing from other services and putting things together. [LB346]

SENATOR KOLTERMAN: Okay. [LB346]

SENATOR KRIST: So I would say at the present time there's been no increase other than the annual cost of living type increases that would go into it. [LB346]

SENATOR KOLTERMAN: So this is really not a new appropriation other than for the new biennium. [LB346]

SENATOR KRIST: Right. Right. So and my argument or my concern with the fiscal note is that it assumes that every child that would be capable of...my child would be capable of going to this, but they have to assume that every child would go to these programs and that would... [LB346]

SENATOR KOLTERMAN: And apply? [LB346]

SENATOR KRIST: Right. That would raise it up. And that's ludicrous, in a word. [LB346]

SENATOR KOLTERMAN: I appreciate you helping me understand that a little better. Thank you. [LB346]

SENATOR CAMPBELL: Senator Krist, I noted in Ms. Hruska's note the revision, number one--let's put it that way--is that additional information is needed to determine the fiscal impact. I'm assuming that we're listening to this hearing and then retalking to Ms. Hruska. [LB346]

SENATOR KRIST: Absolutely. Yeah. [LB346]

SENATOR CAMPBELL: Okay. All right. Any other comments or questions? [LB346]

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SENATOR KRIST: And you know the confidence I have is Liz Hruska. She's right on target. [LB346]

SENATOR CAMPBELL: Absolutely. She's been helping us a lot this year. And in fact, we're going to try to find some time next week. And I kind of shake my head at that. But we're trying...we're going to do a briefing on fiscal notes here so that we have some understanding of how they come and then what does the Legislative Fiscal Office do with them. So we'll get back to her, I know we will. All right. Thank you, Senator Krist. [LB346]

SENATOR KRIST: Thank you. [LB346]

SENATOR CAMPBELL: Are you staying? Or are you going back to Judiciary? [LB346]

SENATOR KRIST: Yeah, I think I will stay. [LB346]

SENATOR CAMPBELL: Okay. All right. We will start with our first proponent. And as that person is coming forward, Brennen, do we have letters for the record? [LB346]

BRENNEN MILLER: Already did them. [LB346]

SENATOR CAMPBELL: We did that. I'm sorry. I'm sorry, Senator Krist. Oh, I hope I'm thinking better by the time I hit the Judiciary Committee. (Laughter) [LB346]

SENATOR KRIST: You haven't seen us. [LB346]

SENATOR CAMPBELL: Okay. Good afternoon. [LB346]

TERRI FITZGERALD: (Exhibit 2) Good afternoon. I'm Terri Fitzgerald, T-e-r-r-i F-i-t-z-g-e-r-a-l-d, founder and CEO of Children's Respite Care Center. CRCC came about because in 1988 my sister, a nurse, and myself, an educator, recognized a need, a lack of options, for specialized services for children with special needs. And these would be medical, developmental, behavior needs, these children who, for most of them, time won't resolve their issues. So we opened in 1990 as a nonprofit organization. We serve children birth to 21 who have medical needs, cognitive delays, functional impairments, behavior disorders, or any combination thereof. This would be premies, traumatic brain injuries, cerebral palsy, Down syndrome, genetic anomalies, autism, tubes, traches, central lines, seizures, oxygen, anything short of a ventilator. We are staffed with nurses, teachers, therapists, and aides. We have a low adult to child ratio. And we

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provide care full time, part time, before/after school, summers, weekend, overnight respite, and we do it in a natural care environment. These children all go home at night to their parents and they all go to their home schools. We have two locations in Omaha and we're licensed as a children's day health service since 2011, childcare center, and a respite center. We serve an average of 180 children a month. CRCC is unique to Nebraska. We are the only ones that offer this broad array of services with an integrated approach. There are two agencies which I'll talk about later, one that just does behavior services. Our present funding matrix is a confusing, inefficient conglomeration. I call your attention to the first handout in your folder...or in your packet titled "Funding Relationships with DHHS." I'm hoping you can follow along here because I don't have a lot of time. We have fee-for-service contracts in first four silos. Each of the first four silos has different rates of reimbursement, different eligibility requirements, different reporting requirements, and different authorization requirements, yet all of the children require that specialized service and are considered CDHS clients. All require CDHS regulated coordination and documentation of services which includes integrated plans of care written by and delivered by each professional team member involved: registered nurses; mental health practitioners; physical, occupational, and speech therapists. The first one, Medicaid/managed care: We are reimbursed for medically based childcare, outpatient mental health therapy not governed by children's day health service, and rehab therapy. The Aged and Disabled Waiver: we're reimbursed for special needs childcare, for skilled nurse needs, and respite care. The block grant subsidy, which we call Title XX, is special needs childcare and behavioral health childcare. Then DD, developmental disabilities, waiver: We are a nonspecialized provider and reimbursed for habilitative childcare and respite. Being in the state plan would simplify reimbursement, but it would also prevent us from being overlooked for increases. Why doesn't the present funding matrix work? Rate disparity: inadequate reimbursement of the complexity of services we provide. Because of the multiple silos and cumbersome nature of the matrix, the department funds pieces of the now licensed CDHS. We're not reimbursed for any of the additional requirements. And we are essentially reimbursed for nursing services or childcare. There is no consistency between the cost of service and the reimbursement rates. Our expenses have increased annually by \$325,000 simply to be in compliance with the CDHS regs. Now, more regulations and multiple licenses is costly, yet these standards have made us better. But Senator Krist talked about the other CDHS agency that is now out of business. But they went out of business, so we're really the last man or woman standing. So I'm here to fight for our long-term survival. And I'd be happy to answer any questions that you have. [LB346]

SENATOR CAMPBELL: Senator Kolterman. [LB346]

SENATOR KOLTERMAN: Thank you for coming. [LB346]

TERRI FITZGERALD: Sure. [LB346]

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SENATOR KOLTERMAN: On your graph, the funding relationships, there's a section in there, that developmentally disabled Medicaid waiver. Under covered services it deals with habilitative childcare. Would you explain to me what that is? [LB346]

TERRI FITZGERALD: That is for children with special needs who might need...well, that need specialized care whether it's...when they get older toward the 21 range, they're going to be looking at vocational and functional life skills. So we do things like that with our kids. That silo is specifically...which really doesn't...is not Medicaid at all. It's a different pot of money. That...those children, their main diagnosis has to be developmental disabilities. They don't have any medical needs. [LB346]

SENATOR KOLTERMAN: And again, the only reason I'm asking that is, is we sell insurance on the general marketplace today. Under the new Affordable Care Act, there is coverage for habilitative services. And I always wondered what that was, so I thought I'd...I mean, maybe there's a way we could get funding. [LB346]

TERRI FITZGERALD: That's the best I can do to explain it. [LB346]

SENATOR KOLTERMAN: Maybe there's a way we can get some of this paid by that. [LB346]

SENATOR CAMPBELL: But...and maybe Senator Howard is going to cover this. There's a difference between rehabilitative and habilitative. [LB346]

TERRI FITZGERALD: Habilitative, yes. [LB346]

SENATOR KOLTERMAN: I know that. [LB346]

SENATOR CAMPBELL: And that's a critical difference here for the clients that Ms. Fitzgerald would have. [LB346]

TERRI FITZGERALD: Serves. That's right. Correct. [LB346]

SENATOR CAMPBELL: Okay. Is that where you were going, Senator Howard? [LB346]

SENATOR HOWARD: I actually had a second question. [LB346]

SENATOR CAMPBELL: All right. You get the go then. [LB346]

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SENATOR HOWARD: Thank you for your testimony today. [LB346]

TERRI FITZGERALD: Sure. [LB346]

SENATOR HOWARD: So is the intent of this bill that all of the services that you provide be covered by Medicaid so that you wouldn't have to utilize the other blocks? [LB346]

TERRI FITZGERALD: I don't...it wouldn't...our private pay section wouldn't change. [LB346]

SENATOR HOWARD: Right. [LB346]

TERRI FITZGERALD: Our developmental disabilities probably wouldn't change. So the only three that...would be these three, the first three silos. [LB346]

SENATOR HOWARD: Okay, so you would sort of try to shift your billing more into the Medicaid block because it's easier, because... [LB346]

TERRI FITZGERALD: No. No. It would just...it would reduce the number of silos, but Aged and Disabled Waiver is under Medicaid. [LB346]

SENATOR HOWARD: Right. [LB346]

TERRI FITZGERALD: So, children are usually...for us, when we do an intake on a child, sometimes if they're...if it's an income-based need then Medicaid is normally the silo that they will fall under. If it is not an income-based and it's a waiver, they have to have medical needs just...so their eligibility is the same as Medicaid really. It's just the funding silo is different. [LB346]

SENATOR HOWARD: So is the hope that the different components of the work that you're doing would be sort of bundled together in a day rate? [LB346]

TERRI FITZGERALD: Right, or an hourly rate, just a rate, just one rate. [LB346]

SENATOR HOWARD: And you would bill that through Medicaid? [LB346]

TERRI FITZGERALD: Through Medicaid, probably, yes. [LB346]

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SENATOR HOWARD: Okay. Okay. [LB346]

TERRI FITZGERALD: Kind of like we do now. [LB346]

SENATOR HOWARD: Okay. Thank you. [LB346]

SENATOR CAMPBELL: Okay. Senator Crawford. [LB346]

SENATOR CRAWFORD: So just to make sure I heard and understand correctly, then you're talking about some kind of rate for the first three blocks and you would still probably have the other two blocks as separate things you're having to pay. [LB346]

TERRI FITZGERALD: Correct. [LB346]

SENATOR CRAWFORD: So really we're talking about these three blocks. [LB346]

TERRI FITZGERALD: These...the first three, yeah. [LB346]

SENATOR CRAWFORD: Thank you. [LB346]

TERRI FITZGERALD: But I just wanted to describe all the different ones that we have. [LB346]

SENATOR CRAWFORD: Thank you. Okay. Okay, thank you. [LB346]

TERRI FITZGERALD: Now, the childcare subsidy is Title XX, so but all of those...I mean, they're also Medicaid eligible. They have to be due to their low income. So... [LB346]

SENATOR CRAWFORD: Thank you. [LB346]

SENATOR CAMPBELL: Senator Riepe. [LB346]

SENATOR RIEPE: Thank you, Senator Campbell. You had talked a little bit about 21 and I was just trying to get an idea of the age range. Is 21 kind of the endpoint? [LB346]

TERRI FITZGERALD: Yes. [LB346]

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SENATOR RIEPE: And starting at... [LB346]

TERRI FITZGERALD: About six weeks. [LB346]

SENATOR RIEPE: Six weeks? [LB346]

TERRI FITZGERALD: Um-hum. [LB346]

SENATOR RIEPE: Do some of these require one-on-one attention? I mean, it's incredibly expensive if that's... [LB346]

TERRI FITZGERALD: Right. It's very labor intensive with a lot of staff. Maybe some children with, you know, some medical and some behavior needs might. It's...one to two would be probably the lowest that we would go. So we...it's not like we...we don't normally do one-on-one, no. [LB346]

SENATOR RIEPE: Okay. Thank you. [LB346]

SENATOR CAMPBELL: Any other questions? Thank you. [LB346]

TERRI FITZGERALD: Sure. [LB346]

SENATOR CAMPBELL: Our next proponent. Sorry, I'm going to sneeze. [LB346]

TERRI FITZGERALD: That's okay. Bless you. [LB346]

SENATOR CAMPBELL: And I keep thinking I'm going to sneeze and I'm not, here. (Laughter) Our next proponent? Whenever you're ready. [LB346]

MELISSA HANSEN: (Exhibit 3) Okay. Good afternoon, Senators. My name is Melissa Hansen. It's spelled M-e-l-i-s-s-a H-a-n-s-e-n. I am a parent and would like to tell you what Children's Respite Care Center means to our family. I asked Dillon, my 11-year-old, to tell me why he likes CRCC. His response didn't surprise me: I like all my friends--he named at least eight friends that range in age from 5 to 20--the fun activities, the games they have, the fun stuff they buy for us to play, and the field trips in the summer. I asked Tyler, my nine-year-old, the same question. And said, it's fun, the nice teachers, and they have playground and the plaza...typical answers from boys about their day care, right? Well, not exactly. Dillon and Tyler were diagnosed with

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Duchenne muscular dystrophy six years ago. When they were diagnosed, the signs of progression of the disease weren't nearly as pronounced as they are today. Duchenne is a terminal disease that slowly takes away--usually boys--the ability to walk, run, jump, play, and just do typical boy stuff like throwing a football, swinging a bat, swimming, skipping rocks, sledding in the snow, and just being a kid without any barriers. Duchenne is a muscle wasting disease without a cure. On average, boys are in wheelchairs by the time they are 12. Dillon got in his at age eight. Tyler fights us to use his wheelchair with what limited ability he has left to relinquish his independent walking capabilities. This particular type of muscular dystrophy is diagnosed in early childhood, and the life expectancy is late teens/early 20s. With the short time we have with Dillon and Tyler, we have strived to make their childhood as normal as possible. Dillon and Tyler are in the 6th and 3rd grades now, and both are above average academically for their age. They go to regular school and attend regular classes with their peers. Dillon and Tyler in the past have been enrolled in before- and after-school programs at their school of attendance. When Dillon was in 4th grade, the program director wasn't comfortable with the high-care demands of my...that my son requires. I had to find another after-school program to take Dillon while I worked. This was very stressful. Then I found a place for Dillon to attend: Children's Respite Care Center, finally a place where Dillon felt like he fit in. He saw that there were kids just like him where his needs could be met and he didn't have to try so hard to do activities that were such a struggle. He liked art at the other program, but he didn't want to admit that he couldn't do the activity without assistance. He liked free time in the gym, but none of the kids knew how to play with Dillon since he couldn't throw or catch a ball or play the organized games. When Dillon went to CRCC, Tyler was still able to participate at the regular school activities and they weren't together. This was hard as their brotherly bond was special and they looked out for each other. Tyler joined Dillon at CRCC this last summer. Since Dillon and Tyler have been attending CRCC, they feel included and valued. I feel relieved to know that they are getting great care by staff who understand their medical needs. Along with parenting my two boys, I'm a teacher and their primary caregiver. I work full time to have insurance and to support my family to the best of my abilities. I have benefited from the state waiver program and Medicaid but also have been thrown many curveballs trying to maintain assistance from these programs. In September of 2013, our lives were spun into a whirlwind of chaos. I received a letter from Department of Health and Human Services stating that I had less than a month to start paying childcare fees if I wanted to continue care at CRCC. This was not something I could afford, but I had to have specialized care for my sons. In order to make it work, I had to break my lease, move into an apartment with cheaper rent. Moving with two boys in wheelchairs is no easy feat. It has to be ground-level accessible, big enough space for two wheelchairs, and accommodate bathing and toileting needs. The bathroom had to be remodeled as well as making the entry to the apartment complex handicap accessible. During this time, I was not able to have the boys utilize the respite care center. CRCC knew that I was struggling and helped me find a way to access funding assistance so I could finally get my head above water again and the boys could get their special care. Dillon and Tyler's normal childhood that we strive to give them

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wouldn't be possible without CRCC. Dillon currently receives physical and occupational therapies at CRCC which is critical to helping Dillon recover from a major spinal surgery he recently had to have. Tyler is needing therapy now that the progression of Duchenne is greater. I'm grateful they can get the therapy at CRCC, because driving them to these appointments would make keeping my job impossible. CRCC is the best care Dillon and Tyler can get next to doing it myself, but even parents need a break sometimes. Please forward LB346 out of committee so that CRCC can continue to provide the great services to families like mine. Thank you. [LB346]

SENATOR CAMPBELL: Thank you for your testimony. Questions, Senators? Senator Riepe. [LB346]

SENATOR RIEPE: Thank you, Senator Campbell. This may...you may or may not have a response but...on this. I'm always concerned with the tax-exempt 501(c)(3)s that are out raising money, like the muscular dystrophy funds, and whether they do, in fact, fund some, you know, organizations like the respite center or does 90 percent of the money go to the fund-raising organization? That's...we see them here quite a bit asking for us to spend taxpayers' monies for things that...I personally think that they should have some skin in the game too. Now, you may not know enough about where muscular dystrophy money goes. I don't know. I just wondered whether you have an opinion or thought on that. [LB346]

MELISSA HANSEN: I know that MDA sponsors a clinic that we go to every six months to monitor the progression of the disease that Dillon and Tyler have. I do know that they can...they pay for that clinic appointment. [LB346]

SENATOR RIEPE: Okay. [LB346]

MELISSA HANSEN: And they also can reimburse any medical equipment that I need up to \$500 per child per year. But as far as if they can provide payment from the MDA to help fund Dillon and Tyler to attend CRCC, I'm not aware. I don't know. [LB346]

SENATOR RIEPE: Okay. But they're doing something. [LB346]

MELISSA HANSEN: Yeah. [LB346]

SENATOR RIEPE: You're a good mom. [LB346]

MELISSA HANSEN: (Laugh) Thank you very much. Thank you. [LB346]

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SENATOR CAMPBELL: Any other questions, Senators? Thank you for your testimony and your story about your two sons. [LB346]

MELISSA HANSEN: Thank you. [LB346]

SENATOR CAMPBELL: It's very special. Good afternoon. [LB346]

RON JENSEN: (Exhibit 4) Senator Campbell and members of the Health and Human Services Committee, my name is Ron Jensen. I'm a registered lobbyist. And I spell it R-o-n J-e-n-s-e-n. I'm here this afternoon representing the Children's Respite Care Center. I've really kind of been in a quandary as to what to say about this today. I thought I had it all set. And I get a sinking feeling that maybe what I'm prepared for isn't what we're going to be talking about this year which is a little bit of a downer. This is the third time this bill has been before the committee. The first time out, we tried to get it licensed as a state service in the Division of Public Health and as a Medicaid service under the state plan so that it could be reimbursed at a rate whether that's hourly or per diem and something that is understandable and would also bring them somewhat closer to the cost of providing the service. We achieved that. We have not achieved the second objective as yet. We're hopeful this might be the year. I do want to say, and be careful to say, that Courtney Miller, who is one of the deputy directors of the Division of Medicaid and Long-Term Care, and Courtney is here today. And even though I know she's here to oppose our bill, I want to say that she was extremely helpful to us last summer in addressing an anomaly in the way hours are billed by the center. And she was open and flexible and cooperative and we got that resolved in a way that was beneficial to CRCC. And I heard from Courtney what seemed to me...it seemed like the objections to the bill change a little each time around. But Courtney raised the issue of the fact that as all states, we have in our Medicaid program state plan services and we have waiver services. And by federal law and regulation they can't duplicate each other. And Courtney's concern that she raised was that if we move this under the plan, that would basically throw out of service many children who are receiving childcare for children with disabilities. And that's something none of us want to happen. So we spent some time on that and did some research. And what I did come prepared today to say is I don't think that has to happen at all. Section 1915(i) of the Social Security Act has been amended by ACA, whether you like it or love it. In that particular instance it has given the states additional flexibility to be creative to consolidate services and payment as we are seeking to do in this particular instance. And also, we found a publication of the department's that I've had distributed and I'll try to find here among my notes that has to do with two services that are supported by the department under the Medicaid program, one under the plan, one under the waiver. The plan service is personal assistant services. The waiver service is home-care chore service. And we've highlighted on this copy for you a sentence in the home-care chore service regs that says, "This service is identical to what may be provided through Medicaid personal care aide except that nonlegally responsible relatives are allowed as waiver providers even though" etcetera, etcetera. We certainly think that

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the difference between a children's day health service--and I've included the statutory definition of that--that a case can be made with CMS that that is indeed different from childcare for children with disabilities. So that's my story and I'm sticking to it. (Laughter) I...you know, my distinct impression over the past three hearings has been that the division just doesn't want to do this. And I'm not exactly sure why they are not. We calculate the fiscal impact for CRCC at something south of \$1 million, maybe \$800,000 a year. It may be a case of saying, hey, we're buying this for \$1.8 million; why should we pay \$2.6 million for it? The answer to that, of course, is we want it to continue to be provided. I think this is very much like balanced incentive payments. If you recall, in the 2013 session, the division didn't want to do that and had a lot of reasons why. But the Legislature said to them, no, you want to do that. And they did...they know their job. They're good at what they do. And they wrote a very workman-like application, got it approved by CMS, and we now have those additional federal resources to make a creative use of. We think that if the Legislature would give the department the same little nudge with respect to Children's Respite Care, we could get the same result. I'll try to answer questions if there are any. [LB346]

SENATOR CAMPBELL: Questions, Senators? Mr. Jensen, I hate to tell you this, but you probably can't use the BIP example, because in my understanding in talking to Senator Bolz, who has talked to all of us who are serving on the aging, is that basically we found out that it would almost cost us more to get ready for the whole thing and that there are some funds that are available. And so Senator Bolz has concurred with the department not to proceed to asking for the BIP funds. [LB346]

RON JENSEN: Well, and... [LB346]

SENATOR CAMPBELL: So just so you know... [LB346]

RON JENSEN: Well, and I'm not... [LB346]

SENATOR CAMPBELL: I understand the rationale. [LB346]

RON JENSEN: Okay. [LB346]

SENATOR CAMPBELL: But I just want you to know that it has changed. [LB346]

RON JENSEN: Well, I appreciate that. And I'm not going to say that if...and we'd like to work with the division on getting this done. If we get into it and indeed it is a case of, you know,

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throwing a bunch of children out of service or moving them over to the state plan, so then we stop. Okay? No one wants that to happen and we'll look for another way. [LB346]

SENATOR CAMPBELL: Okay. I just...I want to go through your argument just to make sure I understand it. So you are saying that what happens at the Children's Respite Care Center is not the same as what happens in a childcare facility providing care for children with disabilities. Am I being accurate there? [LB346]

RON JENSEN: You're...I...so far as I know. And I...but I think a good deal--and Courtney could respond to this--of childcare for children with disabilities is provided in home as well. [LB346]

SENATOR CAMPBELL: Yes. [LB346]

RON JENSEN: So, you know, if you look at the statutory definition of a children's day health service, I think it goes significantly beyond actually what is provided to children of disability...childcare for children with disabilities. And I think the distinction can be drawn for CMS as the department has drawn it in these two services that I cited as an example. [LB346]

SENATOR CAMPBELL: And basically, what you're drawing our attention to is the array of services that are available there... [LB346]

RON JENSEN: Yes. Right. [LB346]

SENATOR CAMPBELL: ...versus what is required and available at a childcare facility. [LB346]

RON JENSEN: Sure. [LB346]

SENATOR CAMPBELL: Am I... [LB346]

RON JENSEN: Right. [LB346]

SENATOR CAMPBELL: I don't want to put words in your mouth or try to... [LB346]

RON JENSEN: No, I... [LB346]

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SENATOR CAMPBELL: ...but I just want to make sure I understand what you think is the distinction here. [LB346]

RON JENSEN: That's the point I'm trying to make. (Laugh) [LB346]

SENATOR CAMPBELL: I got it. [LB346]

RON JENSEN: You can ask Courtney. She may tell you I didn't get it made. But that's the parallel that we see, yes. [LB346]

SENATOR CAMPBELL: Okay. Senator Howard. [LB346]

SENATOR HOWARD: Thank you, Senator Campbell. If a concern is is that by putting in the state plan to do this service we would harm the A and D waiver, would it be possible or should this bill--and this may be a better question for Ms. Miller--should this bill also authorize changes...the department to make changes to the waiver so that the waiver wouldn't go away? [LB346]

RON JENSEN: I think that would be ideal. Yeah. [LB346]

SENATOR HOWARD: Okay. Thank you. [LB346]

RON JENSEN: Okay. Thank you. [LB346]

SENATOR CAMPBELL: Any other questions? Thank you, Mr. Jensen. [LB346]

RON JENSEN: Thank you very much. [LB346]

SENATOR CAMPBELL: Okay. Other proponents? Okay. Those in the hearing room who are opposed to the bill? Good afternoon. [LB346]

COURTNEY MILLER: Good afternoon. Senator Campbell... [LB346]

SENATOR CAMPBELL: Go right ahead. [LB346]

COURTNEY MILLER: (Exhibit 5) Thank you. Members of the Health and Human Services Committee, my name is Courtney Miller, C-o-u-r-t-n-e-y M-i-l-l-e-r, deputy director of the Division of Medicaid and Long-Term Care for the Department of Health and Human Services. I am here to testify in opposition to LB346. LB346 will increase Nebraska Medicaid expenditures by adding children's day health services as a service category. Our state is currently dealing with the General Fund impact in the Medicaid program due to the federal government's change in our state's federal match rate or FMAP. Nebraska Medicaid already covers many of the services provided by children's day service providers...sorry, children's day health service providers. For instance, Medicaid covers skilled nursing, behavioral health services, rehabilitation services, and other state plan services listed in the licensing regulations for this provider type. Expansion of this service to all Medicaid eligible children as a state plan benefit will increase the number of children utilizing the service. The consequence is higher Medicaid spending. There are also children who meet nursing facility level of care and participate in the Aged and Disabled waiver, or the AD waiver program. These children can receive the extra care for children with disabilities services--or extra care to shorten--which provides for the medically necessary portion of assistance related to the physical, medical, or personal care need required by a child while his or her parent or guardian works, seeks employment, or attends school. The AD waiver program can only offer services which are not available as mandatory or optional under the state plan. LB346 would cause roughly 300 children to lose access to this specialized care and treatment as many of these children receive the service in an in-home or licensed day care setting. Providing children's day health services as a state plan service would require Nebraska Medicaid to amend the AD waiver and eliminate the extra care service to remain in compliance with federal law. Additionally, federal law requires that state plan services must be provided statewide and with all six facilities in Nebraska possessing a license to provide children's day health services being located in the Lincoln and Omaha metropolitan area, access related assurances could not be made to CMS. Another unintended consequence involves fundamental Medicaid eligibility of specific children. LB346 would cause eight current Nebraska Medicaid recipients, all children, to lose their Medicaid eligibility. When determining Medicaid eligibility for a child who will be receiving services under the AD waiver, Nebraska Medicaid does not consider the income of the child's parents. This waiver of the income requirements allows children who would not otherwise be eligible for Medicaid to receive needed medical services and medications. In order to retain Medicaid eligibility, each child must have at least one AD waiver service need. For those eight children, the only AD waiver service need is the extra care service. If the extra care service is terminated in favor of the children's day health services, these eight children will no longer have a waiver service need. Their parents' income will be factored into the Medicaid eligibility determination, and as a result, each of these eight children will lose that Medicaid eligibility. In closing, LB346 creates a significant fiscal impact on Nebraska Medicaid, reduces access statewide, and causes unintended consequences leading to the loss of Medicaid eligibility and service setting options, creating a significant impact on Nebraska families. I would be happy to answer any questions. [LB346]

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SENATOR HOWARD: I'm ready. [LB346]

SENATOR CAMPBELL: You ready? Got a question? [LB346]

SENATOR HOWARD: Okay. I'm ready. Okay, can you remind me of the federal mandate for access for children under Medicaid? [LB346]

COURTNEY MILLER: For access? [LB346]

SENATOR HOWARD: Yeah, you mentioned that. [LB346]

COURTNEY MILLER: We are required to have access for all services. It's in the code of federal regulations. [LB346]

SENATOR HOWARD: Okay. Is that same requirement for the A and D waiver? [LB346]

COURTNEY MILLER: Correct. [LB346]

SENATOR HOWARD: Okay. And so when you say that many of these children are served in an in-home or licensed day care setting, would there ever be the possibility that we would have sort of a higher-level day care setting or a higher-level provider category, because to me it seems like they're doing more than just a licensed day care? They're sort of meeting this higher level. Would it ever be possible for us to have sort of a provider category that looked like that and would we have to have that provider category across the state to meet access? [LB346]

COURTNEY MILLER: We currently have that. [LB346]

SENATOR HOWARD: Okay. [LB346]

COURTNEY MILLER: We have...for the extra care... [LB346]

SENATOR HOWARD: Right. [LB346]

COURTNEY MILLER: ...under the AD waiver, we have in-home services which are...it's a friend or family member that's been trained by the family and comfortable that they have

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received...the child remains in the home during the day. And we have three categories of out-of-home care. We have the individual provider where they go to the provider's home. [LB346]

SENATOR HOWARD: Okay. [LB346]

COURTNEY MILLER: We have a licensed day care provider where we give them the extra care rates for...maybe they need a little personal assistance or nursing. And then we have CRCC, and they generally provide service to the more medically complex. So there's three rate levels for out-of-home that we currently do now. [LB346]

SENATOR HOWARD: Okay. [LB346]

COURTNEY MILLER: And just as a point as well... [LB346]

SENATOR HOWARD: Sure. [LB346]

COURTNEY MILLER: ...we make payment to CRCC and we recognize them as the childcare licensure. We can't recognize the children's day health licensures, that's not a covered service. So we pay them as under the respite license and the childcare license. So that's why their rate doesn't seem comparable to what the big children's state health needs are of the extra services under that. [LB346]

SENATOR HOWARD: And so this bill would recognize children's day health services? [LB346]

COURTNEY MILLER: Correct. [LB346]

SENATOR HOWARD: Okay. I'm going to work on my next question, if anybody else wants to ask their questions. (Laughter) Sorry. [LB346]

SENATOR CAMPBELL: Okay. Other questions? Senator Crawford springs to your help. [LB346]

SENATOR CRAWFORD: Well, I'm going to ask you a question that is inspired by one of Senator Howard's earlier questions. I hope I can get it right. And maybe you can clarify if I don't get it right. [LB346]

SENATOR HOWARD: Yes. [LB346]

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SENATOR CRAWFORD: So as I understand it, if we create a waiver...excuse me, if we put something in a plan that's currently in a waiver, then the problem is we can't do that because that could be conflicting, from what I understood. But the question is, could we put all of these services in a waiver and just adjust our waiver so that by changing these no one gets kicked out? [LB346]

COURTNEY MILLER: I'm absorbing your questions. (Laughter) Just a second. Yes, you could put it in as a waiver service. But again, the unintended consequence is it would be duplicative then within the waiver because all children that are receiving...their parents have chosen for the in-home would be eligible for the children's day health service. And you can't duplicate the service as they provide the same benefit. It's just the children's day health is more. [LB346]

SENATOR CRAWFORD: So it might require some editing or changing of what's already in as opposed to just adding this new thing? If you just add this new thing and don't make other adjustments you create that unintended consequence. If you're careful to make adjustments when you add it, you could avoid those consequences? [LB346]

COURTNEY MILLER: We have researched this pretty extensively in the 18 months that I've been working on this particular subject, and it is complex. Many of the services for children's day health are...I mean, if you look at...in the licensure, for instance, you have the mental health services and the medical services and equipment, rehabilitative services. Those are all state plan services. [LB346]

SENATOR CRAWFORD: Okay. [LB346]

COURTNEY MILLER: And so, therefore, to put children's day health in a waiver, you would be duplicating the state plan service list. [LB346]

SENATOR CRAWFORD: Right, so we have to be very careful not to duplicate from a plan to a waiver. Is that right? [LB346]

COURTNEY MILLER: But if you put it in a waiver, you're duplicating the state plan services... [LB346]

SENATOR CRAWFORD: I hear you. Thank you. [LB346]

COURTNEY MILLER: ...of the components that are there. [LB346]

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SENATOR CRAWFORD: Right, right. So that's a very careful balance we need to have. I appreciate that. Thank you. [LB346]

SENATOR CAMPBELL: So what if we wrote a whole new waiver? [LB346]

SENATOR HOWARD: Right, what if we did like an 11... [LB346]

SENATOR CAMPBELL: Thirty-two. [LB346]

SENATOR HOWARD: Yeah, or a 16? Like an innovation? [LB346]

SENATOR CAMPBELL: At this point, Ms. Miller, I mean, that's what I...the question listening to all this is, why wouldn't we just write a whole new waiver for everybody... [LB346]

COURTNEY MILLER: That's an alternate solution. [LB346]

SENATOR CAMPBELL: ...okay, rather than a state plan amendment, right? I mean, we'd go for some waiver classification through CMS. I mean, we'd have to write the waiver and then apply for it, but saying instead of the current waiver that we do have, we're going to write a whole new waiver that incorporates all of the kids. So it wouldn't be duplicative because we're writing a new one. I...that's in the form of a question. (Laughter) I'm not saying I know that you can do that. I am not the Medicaid expert here. [LB346]

SENATOR HOWARD: Right. Me neither. [LB346]

COURTNEY MILLER: Well, and I have not put thought into creating a whole new waiver program. I mean, we talked extensively about how to make it work within the state plan or the current home- and community-based waiver. And the home- and community-based waiver, it's an institutional or a nursing facility level of care those kids need. And so there are some state plan children that receive children's day health service...let me back up. They don't receive children's day health services. They receive the home health or the private duty nursing services through the fee schedule and we pay them based on their...I'm sorry, the childcare licensure. And so it would be difficult because they do not meet nursing facility but they're medically complex. I mean, there's a difference. [LB346]

SENATOR HOWARD: Right. [LB346]

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COURTNEY MILLER: I'm not a medical professional, but there's a difference. And so they...would they fit in in a...at a different waiver? And I...not having thought about that, I don't have an answer for that. I'll put more thought into it. [LB346]

SENATOR CAMPBELL: It just comes from a person who believes that if you can't put the square peg in a round hole, you just create a whole different mechanism. (Laughter) And I have...I mean, I just don't know whether..at this point, Ms. Miller, who would we ask? I mean, you certainly have the expertise, not us--but to find out whether that is the answer here, because I understand--at least usually when we're going through this--I do get that you can't be duplicative. I get that. We know that from the federal. [LB346]

COURTNEY MILLER: Right. [LB346]

SENATOR CAMPBELL: But on the other hand, there has to be a way in which we write a waiver that addresses the needs of all these children. And that is, I think, Senator Krist's frustration having worked on this and all the people and you're well aware of that as many times as we've gone around the block here trying to find an answer. And I'm looking for some kind of a new answer perhaps. Yeah, I know. Any other questions here? Ms. Miller, do you want to comment on any of that or do you want to think about it? [LB346]

COURTNEY MILLER: I think I want to think about it. (Laughter) But I would like to say that, I mean, this is clearly...would be an expansion of Medicaid. And the department's position is the Governor's position is the code agency that they're...we're in opposition of expansion. That's... [LB346]

SENATOR CAMPBELL: So, and it's an expansion because of...in the fiscal note. Is that what you're saying, how we get to the \$24 million... [LB346]

COURTNEY MILLER: Well, the... [LB346]

SENATOR CAMPBELL: ...or the whatever? I'm not... [LB346]

COURTNEY MILLER: Yeah, I would like to take a second if I could speak to the fiscal note. [LB346]

SENATOR CAMPBELL: Absolutely. I think we should. [LB346]

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COURTNEY MILLER: We are collaborating with Liz Hruska to make revisions to the fiscal note. I know on hers she indicated there were the six providers. Her assumption was that they were throughout the state. And we have determined through public health that they are not. But also this number accounts for the children currently appropriate to receive children's day health services that are on the waiver. So it's the 406 kiddos that currently receive services through the waiver if it were a state plan and the waiver went away...that service, not the waiver itself, but the service. And if there was adequate access statewide January 1, 2016...because remember, if there's not adequate access, we cannot implement it and we would be very unlikely to get CMS approval. So on some assumptions that it would...we would have provider enrollment, providers available January 1, 2016, that these children would no longer receive services in the waiver and then transition over to a children's day health facility. What it doesn't account for is physician referrals. If it's under the state plan under, to read this: Early and Periodic Screening, Diagnosis, and Treatment," which I know as EPSDT. It's the shortened version. (Laugh) That's available for all Medicaid children under a physician referral if there is a screening in which there is a service determined that may ameliorate or correct a condition. And so those are children that may not be nursing facility level of care. Or they may determine that any of the components of children's day health may be medically necessary for that child. You've now expanded beyond the nursing facility level of care children to all Medicaid eligible children. So that is not taken into account here. [LB346]

SENATOR CAMPBELL: Oh, that's a quantum leap there. [LB346]

COURTNEY MILLER: Yeah. [LB346]

SENATOR KRIST: That's huge. Sorry. [LB346]

SENATOR CAMPBELL: We'll have no comments on that. (Laughter) But that is. Isn't that a... [LB346]

COURTNEY MILLER: But we don't...that number is not...does not account for the physician referrals under EPSDT. [LB346]

SENATOR CAMPBELL: Oh, okay. [LB346]

COURTNEY MILLER: This is the cost of taking the actual payments for the children in the extra care program and moving them into a state plan with the enhanced amount for the children's day health service package. So right now we pay on average \$70 a day for in-home care. Let's say a grandmother is trained on taking care of the child, comes into the home, the

child doesn't leave the home and receives that service. The family has chosen that. If that right or decision is taken away for that option and they have to go to a facility, you're going to pay a facility cost. So we're looking at roughly half those children receive services in home. They're in their homes. And some of those children in the waiver program actually have medical conditions where their physicians strongly recommend that they not be in a facility, that they remain in their home. [LB346]

SENATOR CAMPBELL: So moving everybody to a state plan amendment then opens up the greater eligibility numbers... [LB346]

COURTNEY MILLER: Under EPSDT. [LB346]

SENATOR CAMPBELL: ...under EPSDT, which drives... [LB346]

COURTNEY MILLER: Correct. We could not limit nursing facility level of care as a medical necessity criteria. [LB346]

SENATOR CAMPBELL: And that's what drives the \$12 million in the first fiscal year--I'm talking total here--under the department's estimate and then \$24 million for the full year of the biennium. [LB346]

COURTNEY MILLER: No, the \$12 million in the first fiscal year accounts for the children who currently receive services under the AD waiver program, taking in the amount that we pay for them, whether it's in the categories of in home with an individual versus a day care center versus the CRC rate, and moving them to a daily rate at the current CRC rate. That's the actual there. [LB346]

SENATOR CAMPBELL: You know, for the sake of explaining all of this, I think that--and I hesitate to even say this--but it seems to me, Ms. Miller, that what we need to do here...I feel like I'm trying to...I'm back teaching English and trying to help students understand how to diagram sentences with four phrases and three clauses and an intransitive verb. I mean, it became impossible to try to figure this all out until you diagrammed, until you really kind of got into this. But I'm frustrated because I just feel like we cannot seem to get to a point at which we're looking, if we have to do something new, what would that be? And that's really the question. And I don't know. Senator Krist may have a solution as to how we get to that point. But I'm ready to say, can we sit down, like, the beginning of next week, and can we begin to take a look at what would...new options might be, understanding that any new option may be more expensive than what we're doing now, but if it fits the needs here? I don't know. You're just

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saying, once we go to an alternative on the state plan amendment then we really are upping the eligibility numbers whether they all would become or not, because the department's philosophy on every fiscal note is you look at every potential person that could do it if you had to cover, right? [LB346]

COURTNEY MILLER: This fiscal note is based on the current AD waiver children coming into the state plan service. We didn't account for those physician referrals under EPSDT, because that number is unknown. How would we determine that? [LB346]

SENATOR CAMPBELL: Okay. Follow-up questions here? [LB346]

SENATOR HOWARD: One more. Since there are no bad ideas in brainstorming...it appears as though that is what we are doing today. Do the managed care companies have the leeway to bundle services? [LB346]

COURTNEY MILLER: They do. This is not a managed care service. Waiver services are not in managed care at this time. That would be managed long-term services and supports. [LB346]

SENATOR HOWARD: Oh, I apologize. When looking at Terri's... [LB346]

COURTNEY MILLER: If it becomes a state plan...I'm sorry, if it becomes a state plan service, then it would be moved into managed care if the waiver service was... [LB346]

SENATOR HOWARD: It looks like on Terri's funding silos she is working with managed care companies. [LB346]

COURTNEY MILLER: For the home health benefit, yes. [LB346]

SENATOR HOWARD: And they...do they have the leeway to bundle for that? [LB346]

COURTNEY MILLER: I believe so, yes. [LB346]

SENATOR HOWARD: Okay. [LB346]

SENATOR CAMPBELL: Senator Crawford. [LB346]

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SENATOR CRAWFORD: Thank you, Senator Campbell. So also for follow-up as we're thinking about this question, I just want to come back to the question about access again. So you had mentioned the importance of assuring access and having six facilities and, you know, does that assure access? So I wanted to understand from you, when CMS is looking at access, how it examines that, because it's my understanding that quite a few families with special needs children end up locating closer to the metro areas because they need the special health services and other...and services. So if access is related to where the patients are, we might very well be pretty close with six. And so I wondered if you would comment on how we would get evaluated on access in terms of what CMS would be looking at for this kind of very specialized service for a specialized population. [LB346]

COURTNEY MILLER: Sure, and I brought some numbers with me. There's a little over 200 kids outside of the Lincoln and Omaha metropolitan area. So roughly...the six facilities...if all six enrolled in Medicaid to be providers or expanded that it would take care of half the children if they chose to go. Now, they...it's an optional service, obviously. [LB346]

SENATOR CRAWFORD: Right. [LB346]

COURTNEY MILLER: And so if they chose to continue to pay the grandmother to take care of the child at home or another practitioner or someone that they wanted to use, they could continue to do it and not utilize the children's day health service. [LB346]

SENATOR CRAWFORD: Okay. So the issue with six is not where they're physically located in terms of access. The issue with six is, six is just not enough for the number of potential children? [LB346]

COURTNEY MILLER: No, it's that there's only six...it's for those folks outside Omaha and Lincoln metropolitan area or those children. [LB346]

SENATOR CRAWFORD: Oh. So the 200...was 200 outside of those metro areas. Okay. Thank you. I'm... [LB346]

COURTNEY MILLER: Right, right, right. It's the 200 that currently...when you say they do move closer at times, I--and it's hard to generalize--but yes, they could come closer, because that facility would meet their need. But in some of the rural areas of the state they do depend on friends or family members and train them to care for the child and use the in-home services and that would be your 200 children that use or find a day care provider...a licensed day care provider

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that can meet the children...accept the child into their facility with some additional assistance. [LB346]

SENATOR CRAWFORD: So those 200 kids now generally are using other kinds of services, trained in-home services or other services. They are not using these CRCCs...this service. They're using a different kind right now. [LB346]

COURTNEY MILLER: Correct. [LB346]

SENATOR CRAWFORD: And you're saying CMS would say that we would need to make sure, if all of them decided to use the service instead. [LB346]

COURTNEY MILLER: Um-hum. Correct. [LB346]

SENATOR CRAWFORD: That's what...that's your interpretation of what CMS requires or that's what you would...what Nebraska would be looking to set as a standard? [LB346]

COURTNEY MILLER: Well, both. I mean, if we take a service away from the AD waiver and they were getting the in-home, we would want to have options available so that they could do that. [LB346]

SENATOR CRAWFORD: Sure. [LB346]

COURTNEY MILLER: But also, yes, when you introduce a new service with CMS, they do want to know about access and also if we amended the waiver to take it out, they would want to know how we're going to care for those children and the services that they're receiving and how that prevents them from being institutionalized. [LB346]

SENATOR CRAWFORD: And so I'm hearing when you're talking this way--and I think this is what I'm understanding about the fiscal note as well--there's an assumption that if you create this service, because that duplication assumption, that if we don't revise the whole thing creates that problem of kicking people off those lower-cost services. And so you're assuming those 200 kids would no longer have those lower-cost options and they'd all have to be wrapped into this. [LB346]

COURTNEY MILLER: They'd have to move to Lincoln or Omaha. [LB346]

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SENATOR CRAWFORD: That's the assumption in what you're telling us about access and cost? [LB346]

COURTNEY MILLER: Correct. [LB346]

SENATOR CRAWFORD: Okay. Thank you. [LB346]

SENATOR HOWARD: Could we still try and see if CMS said that we didn't have the access? [LB346]

COURTNEY MILLER: I think you can always try. I'm not saying no to that. But I would want to...I would be concerned about the families then that were receiving the in-home service and telling them that the waiver service is being removed or eliminated and that they could find a facility for children's day health but they wouldn't be able to use the in-home service. We wouldn't reimburse for the in-home service. [LB346]

SENATOR CAMPBELL: We don't want to do that. [LB346]

SENATOR HOWARD: No. But I think if we were able to look at the waiver and make those necessary modifications, I think it would still be worth a shot. [LB346]

SENATOR CAMPBELL: I think it's worth discussing. Yes, I do. But we're way into the weeds here... (Laughter) [LB346]

SENATOR HOWARD: Yeah. [LB346]

SENATOR CAMPBELL: ...in terms of trying to figure... [LB346]

COURTNEY MILLER: It's very complex, very complex. [LB346]

SENATOR CAMPBELL: ...well, and trying to figure this out without really kind of looking at all the definitions and how it's been. And we've done this time and again. But time and again in the discussions I've been a part of, it's always been, how do we make this in the existing situation... [LB346]

SENATOR HOWARD: Right. [LB346]

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SENATOR CAMPBELL: ...not how could we look at this differently if we applied to CMS for a different waiver? [LB346]

SENATOR CRAWFORD: Yes, yes. [LB346]

SENATOR HOWARD: Right. [LB346]

SENATOR CAMPBELL: And really, Ms. Miller, that's all that I'm saying. And maybe we need to sit down and think creatively here, because part of the thing that you do not want to do is you do not want a deal for the 200 kids outside of the metro area. None of us would want to do that. You just can't do that to them and their families. All right. Any follow-up questions for Ms. Miller? And I appreciate your patience on...while we spent time in the weeds. (Laughter) Anything else you want to add, Ms. Miller? [LB346]

COURTNEY MILLER: No. [LB346]

SENATOR CAMPBELL: Senator Kolterman. [LB346]

SENATOR KOLTERMAN: I would just like to thank you for the institutional lesson (laughter), because you're way over my head. [LB346]

SENATOR CAMPBELL: The experts are not...we're just trying to figure out. The experts are probably out there and certainly Senator Howard. Thank you, Ms. Miller, and we will be back in touch with you. Let's put it that way. [LB346]

COURTNEY MILLER: Thank you. [LB346]

SENATOR CAMPBELL: Anyone else in the hearing room to testify in opposition? Anyone in a neutral position? Senator Krist. [LB346]

SENATOR KRIST: First of all, I want to thank you for your patience. Second, I've been at this for a little over five years. And I want to thank Courtney Miller for actually thinking about thinking outside the box, really, because we were all here--at least you and I were--when Vivianne Chaumont sat right here and said, absolutely not, there is no way to do anything. And I appreciate now Courtney's attitude towards if, then, what if, going forward. Here's the problem...and one other comment on a personal note: I know a family that drives 300 miles in to use the facilities here because they have no other alternative, so access is definitely a question,

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Senator Crawford, that needs to be asked and answered. We obviously have a point in time here where it's...we've tried to ask the question many different ways. We can't afford to put these 180, 200, 300 kids that are in the metropolitan area in any other kind of service. This is a savings for the state, number one. And then overall, I would say there are many people in this...in the Unicameral, in the Legislature, that don't want to use the word Medicaid expansion. I have not heard Governor Ricketts say there isn't a good reason to spend Medicaid money as opposed to General Funds. I've not heard him say that. I've heard him say, Medicaid expansion in the verbiage that we tried several years ago--which I supported and then I didn't support--is not the way the state needs to go. But I have not heard this Governor say, we need to take...we don't need to take care of kids or families the way we need to. So that argument, for me, in terms of Medicaid expansion...I wish those two words were never attached to each other, but they are. So I'm very adamant about looking at case-by-case basis in terms of where we used to spend money through Medicaid funds and where those have been eliminated now in the future. But once again, Courtney needs to be lauded for her efforts to try to get us there, because she has made a lot of efforts that have made the CRCC situation much better. It's not there yet, though. We can't afford to lose those programs. And I thank you for your time. [LB346]

SENATOR HOWARD: Thank you, Senator Krist. Senator Kolterman. [LB346]

SENATOR KOLTERMAN: Yeah, I just want to make a comment, Senator Krist. I appreciate that. I don't have the institutional knowledge because, I mean, three of us are new to this. And when you start talking about waivers versus programs and...well, you're way above our heads. But I, too, want to take care of the kids. And I'm hoping--and I know this is not going to happen instantly--but I'm hoping our new director of Health and Human Services might have some insight into issues like this where we can take advantage of the Medicaid dollars that can come from the federal government and at the same time look at ways to create the efficiencies that we need to free up dollars to help in programs like this. And so I appreciate what you're saying. I just...as we've looked at bills over the last 30 days, I'm looking...you know, we're looking at Aid to Dependent Children, we're looking at this, we're looking at the Medicaid reinvention (sic), whatever that was yesterday. [LB346]

SENATOR HOWARD: Redesign. [LB346]

SENATOR KOLTERMAN: Yeah. And, I mean, we're talking millions and millions of dollars. And we all know that we're stretched for the budget anyway if we're going to try and do any kind of potential tax reform and at the same time continue to provide services. So I'm hoping...it's unfortunate that she isn't going to be here until April 1st. But at the same time, I'm hoping there are some opportunities to talk about some of this, because we've...I know we're going to have to wrestle with some of these issues in the next couple of weeks about, do we bring it to the floor

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and then talk about the dollars that aren't there or we...you know what I'm saying. So I appreciate that. And... [LB346]

SENATOR KRIST: Sure. Can I comment? [LB346]

SENATOR KOLTERMAN: Yes, absolutely. That's a...it's the form of a question, (laughter) because you've got the institutional knowledge. [LB346]

SENATOR KRIST: Here's what I would say from a personal perspective: Those two people that are coming to us that were a part of nationwide searches, the--both Courtney Phillips and our new Medicaid director--they both have experience in a state that is--compared to Nebraska--is destitute. Their base of services deal with people that don't have the kind of cash flow, their unemployment rates, look at all that perspective. And they've been successful at balancing general funds and Medicaid dollars and Medicare and service providing, providing services, medical services for a much different population, much more challenging population. I have no doubt in my mind they'll come with out-of-the-box ideas and some issues and some changes. It's going to take some time. So I have faith in that. Second thing: I don't think we need to solve the problems for the executive branch. We've been doing that too long. My corporate experience tells me that we need to have good people in place. We need to get out of their way. We need to enable them, legislate, appropriate, and apply some oversight. So I give them...I'll give them all the leeway I can. My third thing, and my last thing, and I'll get out of your hair, is we've gone from an attitude where there was a sign on the wall in the Medicaid department in the state of Nebraska that says, find a way to cut Medicaid. True...an attitude of, try to find a way to cut Medicaid dollars any way you can, to now a more realistic approach to, how do we balance those dollars? So I hope and pray that they'll be able to do that. And I think they will. Thank you. [LB346]

SENATOR HOWARD: Any other questions for Senator Krist? Seeing none, with that we will close the hearing on LB346 and open the hearing for LB557, Senator Kolowski's bill to redefine a term under the Nebraska Clean Indoor Air Act. And before we get started, Brennen, are there items for the record? [LB346]

BRENNEN MILLER: (Exhibit 17) A support letter from the Nebraska Medical Association. That's all. [LB557]

SENATOR HOWARD: Great. Thank you. Senator Kolowski, whenever you're ready. [LB557]

SENATOR KOLOWSKI: Thank you. Good afternoon, Chairwoman Howard--thank you very much--and members of the Health and Human Services Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent Legislative District 31 in southwest Omaha. We just ran across the hall from another presentation, so I'm very happy to be here also. Thank you. LB557 requires home day cares and their vehicles to be smoke free during and after hours of business in accordance with the standards for commercial day care centers. Currently, the Nebraska Clean Indoor Air Act protects employees and the general public from secondhand and thirdhand smoke in the workplace and public places, but the act has a loophole for in-home day cares. Even though in-home day cares are defined in this act as businesses and public places, people are still allowed to smoke anywhere in them until the first day-care child enters the home and after the last day-care child exits. Before and after work we can't smoke in our offices, but people can smoke in home day cares. So for adults we have clearly defined protections from secondhand and thirdhand smoke but not for our most vulnerable citizens, our children. Most of you are familiar with the term "secondhand smoke," which occurs when people come in contact with the smoke and other airborne products that come from being close to burning tobacco products such as cigarettes. In an average home, it takes four hours for the fresh tobacco smoke to be exhausted from the home. In a newer or more airtight home, it takes 15 to 30 hours to clear the smoke from these homes. Thirdhand smoke is the residual nicotine and other chemicals left on a variety of indoor surfaces by tobacco smoke. Thirdhand smoke residue builds up on surfaces over time and resists normal cleaning. It cannot be eliminated by airing out rooms, opening windows, using fans or air conditioners, or confining smoke to only certain areas of the home. Secondhand and thirdhand smoke causes increased incidence of ear infections, colds, asthma, and potentially cancer. Children are more vulnerable to these harmful effects because their bodies are growing and they breathe faster than we do as adults. The most fragile children in day cares are infants, and they usually spend their whole day inside. Some studies have shown that up to half of all SIDS deaths are caused by breathing secondhand smoke. The only way to protect nonsmokers from secondhand and thirdhand smoke is to create a smoke-free environment. Children don't have a voice or a choice in this matter, and it is my goal to be their voice today and I urge you to give them the same protections that adults have when it comes to secondhand and thirdhand smoke. So what do parents want? Ninety-eight percent of the nonsmokers and an astounding 76 percent of smokers do not allow anyone to smoke in their home at any time. This figure is from the 2010-2011 Nebraska Adult Tobacco Survey from DHHS. This survey drives home that most parents, even ones that smoke, do not want their children exposed to secondhand or thirdhand tobacco smoke. A sidebar comment: I have talked with many, many people about this bill and they were astonished to learn that there isn't regulations protecting day cares around this whole state. They were shocked that it wasn't in place. Nebraska has approximately 88 percent of all parents in the work force, and we consistently rank among the top five states with the highest number of mothers in the work force who have children less than five years of age. This means the majority of our children under age six are in someone else's care during the day. With over 60 percent of day cares in the state being

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in-home day cares, many of these children will spend their days in the care of these facilities. This bill advocates for those working parents and their children to have a safe place for their kids to learn and grow. This is a public health issue because these children are the future of our state and we want them to grow up with sound health so that they can be happy, productive citizens. To be honest, I'm a little shocked that DHHS has not already changed these regulations to reflect the language of this bill. Currently their inspectors have to go into a home and determine whether a person has been smoking during day care hours which is not easy to do when smoke lingers in a room for hours after a cigarette, pipe, cigar, or any other tobacco has been lit. By changing their regulations to disallow smoking in home day cares at all times of the day, we make this portion of the inspection much more straightforward. I thank the committee for their time and consideration and would be more than happy to answer any questions. Keep in mind we have several experts testifying after me that can talk in depth about specifics of secondhand and thirdhand smoking. Thank you very much for your...the opportunity to be here and for your patience today. [LB557]

SENATOR HOWARD: Thank you, Senator Kolterman. Are there questions? Senator Kolowski. I've got Kolterman on the brain. (Laughter) [LB557]

SENATOR KOLTERMAN: I'm on down...I'm down here. [LB557]

SENATOR HOWARD: Are there questions for Senator Kolowski? Senator Crawford. [LB557]

SENATOR CRAWFORD: Thank you, Senator Howard. So you had mentioned the regulations on day care. And I seem to recall that was one of our discussions we had last time... [LB557]

SENATOR KOLOWSKI: Yes. [LB557]

SENATOR CRAWFORD: ...we talked about this was whether to put it in the Indoor Air Act or whether to try to put it someplace to require a change in the day care regulations so that when they inspect it would be a matter of not just...was it...during those hours. Did you have...I'll just let you comment whether or not you have...you had discussions and decided to keep it in this act because of some of those discussions you had or if you have a rationale you want to tell us about why it's important to put it in this part of statute. [LB557]

SENATOR KOLOWSKI: We're keeping it...we didn't have in-depth discussions after that presentation last year because we were trying to get other bills done then the session ends and all the rest. We had talks in the...in our off season as we had opportunities to work on bills and put things together in this particular way. We are open for discussions on this. Any way we might

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want to go including phase-in...we know there are different parts of the state that maybe it will need a year or two phase-in. But the desired goal is to get to that point where no child is in a home day care facility that would connect with tobacco smoke or residue in any way, shape, or form. So we're not closing the door on any possibility. We want to...we understand there are complications in some towns. Some towns only have one day care. We've done some research on that and found out how many day cares were in different homes around the state and we can share that as we work on refining this bill. But the important thing is, we have put children in some unhealthy situations. And if you have the same amazement in your life as I do in mine that we've lived to this point of being where we are with antismoking laws, it's an entire different world than I grew up in and you grew up in. And it's a better world because of that and because of what we do. Now, we just have to be careful not to link cigar places with day cares and we'll be in good shape, so. (Laughter) [LB557]

SENATOR CRAWFORD: I appreciate your flexibility on that. And I would just suggest also, perhaps, following up with Senator Campbell in terms of this. I have no idea how this links, maybe, with the Step Up to Quality program that we just were...have just passed recently in terms of if it's a possibility that in the phase-in, maybe, the day care centers that are certified smoke free or something have some special stand... [LB557]

SENATOR KOLOWSKI: Sure. [LB557]

SENATOR CRAWFORD: ...or some special star or something; so, just a suggestion. [LB557]

SENATOR KOLOWSKI: The biggest thing that I come back to time and time again was the amazement on the part of parents that this was not already a statute. They were flabbergasted. And I would many times ask, do you know where your child is, is that smoke free? And I think it got some parents making sure... [LB557]

SENATOR CRAWFORD: Right. [LB557]

SENATOR KOLOWSKI: ...that there wasn't someone upstairs that would be smoking while their kids are in the lower level of a home with a walkout basement and all those kinds of things like many of them are. And I...my grandkids have been to those kind of facilities. And they've been smoke free at this point in time and I hope it continues as they continue to grow and have opportunities before they go full time into school. [LB557]

SENATOR HOWARD: Senator Baker. [LB557]

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SENATOR BAKER: Well done, Senator. [LB557]

SENATOR KOLOWSKI: Thank you, sir. [LB557]

SENATOR BAKER: Wouldn't it be incumbent on anybody who is operating a licensed day care and those who regulate those day care centers to comply with the law no matter where it was lodged in the law book? [LB557]

SENATOR KOLOWSKI: Yes, sir. [LB557]

SENATOR BAKER: Okay. [LB557]

SENATOR KOLOWSKI: It would be and...but I...we are very cognizant, though, that we have situations as we talked about in large cities and then we talked about middle-size towns and then we talked about small environments, small-town environments. We're trying to recognize that we are in a very diverse state and one size doesn't fit all. So whatever we can do to phase it in if we need to do that over time, we're trying to be as flexible as possible to give people time to either quit smoking, clean up their house, and then run a day care...we're not saying you can't run a day care. We're saying, we don't want kids around the residue of what that is. And we're not trying to regulate their behavior... [LB557]

SENATOR BAKER: Exactly. [LB557]

SENATOR KOLOWSKI: ...their habits, or anything else. But we're saying, do what you need to do, but you can't have a licensed day care here. I think we have to stand by something any more than...and you and I, Senator Baker, were in schools when people smoked in schools. And we know what that smelled like and how that stunk up hallways when you had a teacher's lounge that was next to where kids were going to be walking by and... [LB557]

SENATOR BAKER: Board meetings. [LB557]

SENATOR KOLOWSKI: Absolutely. All those things were a part of our past. That's why I say, it's amazing to live in a world where none of that is even permitted and you've got to walk 50 feet away from a doorway even... [LB557]

SENATOR BAKER: Yes. [LB557]

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SENATOR KOLOWSKI: ...to not have back blast of smoke into a public building or a private building anymore. It's a change that had to happen. And it has happened and we have a vulnerable set of individuals in our society called little kids that it is very dangerous to. [LB557]

SENATOR BAKER: I remember back in the late '80s when we took a deep breath--no pun intended--and made the announcement at our outdoor football stadium there would no longer be any smoking in the stadium. And we thought that we'd get run out of the announcer's booth but a huge cheer went up, so. [LB557]

SENATOR KOLOWSKI: I was in charge of a district health committee in the middle '80s, when I--and you know this individual, Dr. Ron Witt--when I went to him as an assistant superintendent and I said, part of what we're doing in this whole health bill or rules that we're putting into the place in our district, we can be ahead of the game and Lincoln just went to that at the stadium, UNL. And I said, Dr. Witt, it would be really important that we make a statement. He almost bit his pipe in half as I was sitting in his office. (Laughter) But he knew that was the correct thing to do. And I stuck my foot out and said, this is the right thing. Now, do we have the courage to do this? And he said...he got back to me later and he said, you're right, we've got to do it and we're going to do it this year, we're going to get it done. And that took us on a path. But nothing was worse than sitting downwind from somebody smoking a stogie in an outdoor stadium like that. That was repulsive to everyone around them. And you know that made a difference and I know what a difference that made as well, so we're very, very happy with where we are, but we're not done. [LB557]

SENATOR HOWARD: Senator Riepe. [LB557]

SENATOR RIEPE: Senator, we know we can always count on the Marines to get it done. [LB557]

SENATOR KOLOWSKI: Semper Fi, sir. [LB557]

SENATOR RIEPE: Yes, sir. My question is this: Would this apply only to the licensed--emphasizing licensed--home day cares? [LB557]

SENATOR KOLOWSKI: Excellent question and a good point. Most day cares would need to be or have to be licensed if they're an official...under the auspices of the state of Nebraska. You and I know there's Aunt Lily's three-kid day care center in the basement of some home someplace that she's paid and that's a way of life for some people. But it's probably not advertised as such. It's just kind of a neighborhood thing where she's got grandkids and neighbor kids that might be

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there. That exists. I know that exists. Part of the education with this whole direction would be to make sure we get enough publicity and asking parents to ask the questions that they need to ask because we, as a governmental agency with certain people that go out and look at these environments don't have enough people to check everything under the sun. And it's just a reality. [LB557]

SENATOR RIEPE: Given that, is the law necessary for the licensing agency? That seems to me, like, to be the enforcing organization, that you make it part of the license. You don't get the license if you violate these principles. [LB557]

SENATOR KOLOWSKI: Absolutely, or you'd lose your license. Yes, sir. Absolutely. [LB557]

SENATOR RIEPE: And on the balance of it, it becomes...if they're not licensed then it's really not an enforceable piece. You'd just have to work at it from public awareness. Is that your thought? [LB557]

SENATOR KOLOWSKI: Yes. And again, it has...part of this has to come back on the shoulders of the parents. [LB557]

SENATOR RIEPE: Absolutely, it's their responsibility. [LB557]

SENATOR KOLOWSKI: As I said, so many parents could not believe this didn't exist and they would never put their own children in those homes or they don't smoke around their own kids also in their...anywhere in their homes. I know many families that you go out on the porch. You smoke out there. I don't want that in here. The husband says it, the wife says it, or both. And they don't allow smoking in their homes. My wife and I made the decision...we're not smokers but we had some family members that smoked. When our first son in 1975, we told our entire family, no one smokes in our home anymore. And we were almost like outcasts in 1975. Now, that was a long time ago but we were way ahead of the curve and it made a great difference because of the health of our kids. And we thought that was paramount that we made that decision. And look where the world is now. [LB557]

SENATOR RIEPE: I think most of these are...nothing is perfect. It's always incremental and I think this is a very good step in moving towards that. [LB557]

SENATOR KOLOWSKI: Thank you, sir, appreciate that. [LB557]

SENATOR RIEPE: Thank you. [LB557]

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SENATOR HOWARD: Any other questions for Senator Kolowski? Seeing none... [LB557]

SENATOR KOLOWSKI: Thank you, very much, ma'am. [LB557]

SENATOR HOWARD: ...we'll take our first proponent. Good afternoon. [LB557]

MARK WELSCH: Hello. Madam Chair and committee members, my name is Mark Welsch, M-a-r-k W-e-l-s-c-h, and I'm the president of GASP of Nebraska. It's the Group to Alleviate Smoking Pollution. We've been working on smoke-free air issues for three decades now. This is very important for the children of our state. I personally have gone into a day care in Omaha with a friend of mine. He was doing some drywall work. He needed some help. I went along. Before we got inside, he said, you're not going to believe what you see and you can't say anything because this person is paying me to do this work and you're just here to help me on this. (Laughter) So you can't say...he knew I would say something if he didn't tell me not to. So I didn't say anything but, you know, he opened up the door, the smoke hit me in the face. It was a day care. I walk in and there had to be ten kids running around upstairs, downstairs, you know, they were just running all over the place. I don't know how many people that woman had working for her if any. I didn't get into that. I was there to do the job and smell the smoke. Downstairs where we were working, she had a bedroom where we...when we were done doing the work, we went in there to talk with her and she was smoking in the building while the kids were in that day care. I talked with, you know...but I couldn't say anything. And when an inspector goes in, that person is not going to smoke while they go up to the door to answer it. They're going to leave the cigarette downstairs maybe smoldering in the ashtray. And the person has...that's doing the inspections won't go down to do that, to check, because, well, there's no reason for them to. If they see a bunch of ashtrays with cigarette butts in them, right now that's legal. But if this law gets changed then if they see ashtrays with butts in them indoors, they'll know that an infraction has happened and they can write them up and educate them and say, hey, you got to stop this. Like Senator Kolowski, every person I talk to about this is shocked that the only places you can smoke in a business are cigar bars and in-home day cares. It just doesn't make any sense to anybody. I hope it doesn't make any sense to you. As a woman on a previous bill mentioned--she stole my line--an ounce of prevention is worth a pound of cure. Children are being made sick and we just need to have it stop. Senator Kolowski mentioned and I just reiterate that all other businesses in Nebraska, when the people go home, you still can't smoke there. The owner can't sit in his office when nobody else is there and smoke because the secondhand smoke is going to harm his employees and his customers when they come back. And that's just not right. So, you know, and I'd like you to think about the differences between the cigar bar customers and the day care customers. The cigar bar customers choose to go into those cigar bars. The day care customers, the children--who are really the customers even though they're not paying for it, they're using the service--the children have no choice. They go where their parents take them. And sometimes they can't even talk yet so they can't tell their parents, I'm being made

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sick every time I go into this place. You know, the damage being done to these children will last them their lifetime, possibly their shortened lifetime. So I hope you will consider passing this. I'm sure you all know the United States Surgeon General has said there is no safe level of secondhand smoke exposure. Even outdoors, you can't catch a whiff of smoke outdoors, according to the Surgeon General, without it harming your health. So if we want to have healthier children, you know, less cancer, less asthma, less chronic ear infections, upper and lower respiratory infections, and fewer SIDS deaths, you will advance this unanimously to the Unicameral so they can take quick action on it. And I thank you very much for your time and interest in this very important issue. [LB557]

SENATOR HOWARD: Thank you, Mr. Welsch. Are there questions? Seeing none, you must have done a really good job. [LB557]

MARK WELSCH: Thank you. [LB557]

SENATOR HOWARD: Our next proponent? [LB557]

DAVID HOLMQUIST: You'd think I'd never done this before for a second. (Laughter) Hello again. Once again, my name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I am a registered lobbyist. I represent the American Cancer Society Cancer Action Network and I'm here today to testify in support of LB557. Appreciate Senator Kolowski introducing this legislation. He introduced it a couple of years ago and that time, it wasn't that I opposed the legislation but I had great concerns about the possibility of opening up the Nebraska Clean Indoor Air Act to possible nefarious actions on the part of some other people. But as you know, in the last month, we've had the Nebraska Clean Indoor Air Act opened up and it seems now that this is a very viable time to take action on this issue of smoking in day cares. I find it unconscionable that day care providers are continuing to smoke during the times when children aren't there because I...we've probably all passed somebody in the grocery store or in an airport or walking down the street who carries with him or her an incredibly acrid odor that is caused by cigarette smoking. And, you know, I've had times when I'm almost blown over by it. And I hate to admit that I probably smelled like that 25 years ago before I quit smoking. I smoked for 25 years. And I...even when I quit, I probably wasn't one of those people who was, you know, oh, get rid of those smokers. And I'm still not a person who wants to get rid of smokers. (Laughter) But I've taken a little bit of heat over the cigar...the outcome of the cigar bar bill. But my concern with that bill primarily was the language that talked about public accommodation because public accommodation in this state has statutory language that includes, interestingly, everything but bars. (Laugh) Restaurants, bowling alleys, you name it, it's a public accommodation. And we were able to get that out. And I knew that the will of the Legislature was that we should go back to the status quo as it appeared six months ago. And I'm a pragmatist and a practical person and I agree...and I understood that. So I

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kind of had to bite the bullet on that one and back away once we got the language changed from public accommodation. On this issue, I think that we need not bite a bullet. We need to do the right thing. And we need to make sure that our children and grandchildren are being cared for properly and that people who run a day care understand that if they have the privilege of running a day care and being paid for that service and are licensed by the state of Nebraska that no smoking of any kind should be allowed within the premises or in any of the vehicles that are used by that day care facility at any time of day or night. My next-door neighbors all smoke. They smoke outside. You know, I get the pleasure of the wafting of smoke occasionally. But even though they all smoke, they all smoke outside so that they're not damaging the home. I don't know if it's about damaging their health or not but they're...but I think they don't provide childcare. So that is their privilege. People who provide childcare need to make sure that they are smoking outside as well. And now I'm rambling so I'll finish. [LB557]

SENATOR HOWARD: Are there any questions for Mr. Holmquist? Seeing none, thank you for your testimony today. [LB557]

DAVID HOLMQUIST: Thank you, Senator. [LB557]

SENATOR HOWARD: Is there anyone else wishing to testify as a proponent for LB557? Seeing none, anyone wishing to testify in opposition? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Kolowski, you are welcome to close. [LB557]

SENATOR BAKER: It looked like you were going to waive that, it seemed, for a minute there. [LB557]

SENATOR HOWARD: Yeah, it felt very "waivey." (Laugh) [LB557]

SENATOR KOLOWSKI: I gave it a second. Thank you, Madam Chair. And thank you to the committee for your time and energy in listening this afternoon. It's been a long week for all of us and it's been a good week in many, many ways. And I just had a run of three bills this afternoon (laughter) so this back and forth with...and trying to make this all work. And we had excellent, excellent people testifying including a large group of students next door for early registration for voting. And they blew away the committee next door with freshmen, sophomores, and juniors in high school and how well they presented themselves and we're very proud of that. This issue is extremely important to me. I've been...I've never touched tobacco in my life. I've hated it. I have to admit that and I'll say it out front. I'm bothered by the smell and so I can only look back to my youth. We had a father who did smoke and didn't like that at all and most of my family did. But it's not something I've ever done, touched, or want to be a part of. So I have that personal bias but I also recognize people's rights and all the rest. And within that whole framework of what we

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talked about and how we described this, no one's rights are...I'm not trying to infringe upon anyone's rights. But if you want a day care, there should be no smoking. It's as simple as that. There should be nothing in that home that has residue or leftovers that would be bothersome, firsthand, secondhand, thirdhand, fourthhand smoke, I don't care what it is. I would give you a story on our own Legislature. On the floor in those halls at one time with all the smoking that did take place in its early days, if you haven't talked to the people that cleaned this place, when the curtains and the walls were basically scraped of the residue that existed in that hall when they went to a nonsmoking environment, ask someone here about the history of that cleanup. And you would be amazed. And that doesn't surprise you if you've been in anyone's homes, and we've all been there with family members and how things are just...permeates everything, as you all know. So I leave you with that and I thank you very much for your attention. And I hope we'll be able to make some move on this this year and we're open for any modifications that you would like to present in order to assist us to get to where we want to be to help families and especially those nonvoters called children. Thank you very much. [LB557]

SENATOR HOWARD: Are there any final questions for Senator Kolowski? Seeing none, this will close the hearing for LB557. We are done for the day. [LB557]