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Transcriber's Office

Executive Board Committee
January 25, 2018

[LB777 LB837]

The Executive Board of the Legislative Council met at 12:00 p.m. on Thursday, January 25, 2018, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB777 and LB837. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Sue Crawford; Dan Hughes; John McCollister; and John Stinner. Senators absent: Ernie Chambers; Tyson Larson; and Jim Scheer.

SENATOR WATERMEIER: We're going to go ahead and get started here today. Welcome to the Executive Board committee. My name is Dan Watermeier from Syracuse and I represent the 1st Legislative District in southeast Nebraska, and I serve as Chair of the Executive Board. Our hearing today is your public part of the legislative process and your opportunity to express your position on proposed legislation before us today. The committee members may come and go during the hearing. We get called away for various reasons. It is not our indication that we're not interested. It's just part of the process. To better facilitate today's proceedings, I'll ask you to abide by some following rules. Please silence or turn off your cell phones. The order of testimony will be the introducer, the proponents, the opponents, neutral, and then closing by the introducer. If you are testifying, please make sure you fill out a green testifier sheet. When you come up to testify, please hand the green paper and any handouts you have to the page. Please state and spell your name for the record at the start of your testimony. Each testifier will have five minutes to speak. After four minutes, there will be a yellow light on and then a red and I'll ask you to close it up. If you will not be testifying but want to go on part of the record and have a position on a bill today, there is a white sheet in the entrance in the other room back there. Please fill that out with your name on it. Written materials may be distributed to committee members while testimony is being offered. Please hand these to the pages and we will need 12 copies. If you have written testimony but don't have 12 copies, a page will help you with that. To my immediate right is my legal counsel, Janice Satra. To my left is committee clerk, Laura Olson. And with that, we'll open up the meeting. I'll have my members introduce each other so Senator McCollister.

SENATOR MCCOLLISTER: John McCollister, District 20: central Omaha.

SENATOR BOLZ: Senator Kate Bolz, District 29: south-central Lincoln.

SENATOR HUGHES: Dan Hughes, District 44: ten counties in southwest Nebraska.

SENATOR KUEHN: John Kuehn, District 38: only seven counties in south-central Nebraska.

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SENATOR WATERMEIER: Our page with us today is Heather. I forgot where you're from, Heather.

HEATHER BENTLEY: Miller.

SENATOR WATERMEIER: Miller, Nebraska. All right. Also joining us today, Senator Crawford. Do you want to introduce yourself?

SENATOR CRAWFORD: Thank you. Good afternoon. Senator Sue Crawford from District 45: eastern Sarpy County, Bellevue, and Offutt.

SENATOR STINNER: John Stinner, District 48: all of Scotts Bluff County.

SENATOR WATERMEIER: Very good. We will begin today's proceedings on LB777. Welcome, Senator Howard.

SENATOR HOWARD: (Exhibit 1) Thank you. Good afternoon, Senator Watermeier and members of the Executive Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in lovely midtown Omaha. Today I bring before you LB777, a bill that puts guidelines in place when a new senator is to be appointed after a vacancy. Currently, our state law gives an enormous amount of discretion and privacy to the Governor of our state to appoint someone outside of the Legislature. LB777 is a great opportunity to bring transparency to this important process. So when we started, I had this great idea over the summer and when we started this, I was very curious about how many people have resigned and what the process has been in the past. And so we asked Research to look into that over the past few years. And so what you have in your hands as a handout is actually Kate Gaul, our research analyst's, findings. And so I'll just summarize them in my opening, but you have more in-depth information there. So from 1987 to 2017, 39 senators have vacated their office before completing the term for which they were elected. Of those 39, detailed applicant information was found for 28 of those vacancies, and only 2 of those 28 were not selected from the reported applicants for the job. In 2001, Senator Vickie McDonald who, if you don't know her, you'll know her when you're all alums. She's kind of in charge of the alum...senator alum group. She was appointed because she was the widow of a former senator and no other applicants were considered. And then another person was elected and then was appointed to fulfill her predecessor's term before they were sworn in at the beginning of the next year. In two cases that were considered, there wasn't enough information that was reported to tell whether the appointee was on the original applicant list and no information was found for the last nine. So through this history which I've passed out to all of you, it seems that there lacks the opportunity for public vetting of candidates in our current legislative appointment process. When Legislative Research compiled this information,

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the only source for those who applied for the office were press articles. And it may be some help in a historical sense if we were to document applicants in a more official capacity the same way we have such documentation for when a person files for office. A lack of vetting recently created problems in 2013 with the resignation of then-Senator Scott Price. An individual who was to be appointed had to quickly withdraw due to a string of legal and financial troubles, including an issue that required a significant payback of Medicaid dollars from a city to the federal government due to poor management by his company. To me, the first step in helping right this process and prevent what occurred in 2013 is through this bill. In this bill, individuals would be required to apply to fill a vacant legislative seat within 30 days of the vacancy occurring and the Governor would be required to choose from that pool of applicants. This would allow time for their names to be published and for members of the public, particularly their future constituents, to voice any concerns that they may have. Beyond this legislation, I would heartily encourage the Governor's Office to make public at the end of those 30 days all of the applicants who applied and to conduct a thorough vetting process on each applicant. Our state prides itself on having a fair, transparent, and efficient state government. I would ask that we extend that pride through the creation of a transparent process for legislative appointments for vacancies. I would be happy to try to answer any questions you may have. [LB777]

SENATOR WATERMEIER: Thank you, Senator Howard. Are there questions? All right. Thank you. [LB777]

SENATOR HOWARD: All right. I'm here all week. Thank you. [LB777]

SENATOR WATERMEIER: We'll open the hearing for proponents of LB777. Welcome. Come on up. [LB777]

RICKY FULTON: Hello, Senator Watermeier and Executive Board. [LB777]

SENATOR WATERMEIER: Let's wait until you get in front of the mike for the transcribers. [LB777]

RICKY FULTON: Hello. Thank you for having me and thank you to Senator Howard for introducing this bill which is much needed. I have a good feeling about this bill. It's got a lucky number, LB777, so. [LB777]

SENATOR WATERMEIER: We'd like to make sure you introduce yourself and spell your name for the record. [LB777]

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RICKY FULTON: My name is Ricky Fulton, R-i-c-k-y, Fulton, F-u-l-t-o-n. And once again, thank you, Senator Howard and the board. It's nice to be here. I was one of those...I live in District 6 and I was one of those that applied when I saw the notice from the Governor for the vacant legislative seat in LD6 which was vacated suddenly by Joni Craighead. So I applied and I read in the paper that I was, I think, one of 11, 12, or 13 well-qualified, I assume, applicants from my neighborhood area. And so time...the Governor gave a deadline of I believe it was the end of September for...to choose among these 12 applicants. Lo and behold, the deadline passes, I'm wondering what's going on. And then on October 13, he announced that his pick of whoever that is. By the way, October 13 is my birthday. That's another lucky thing about this bill. So when I complained about this, I e-mailed and contacted Senator Watermeier. I wanted an explanation about how the Governor could go around the people that he asked to apply, how he could skip the deadline, skip all of those that have applied, and pick somebody else. And I was informed by your office that there really are no guidelines for picking a senator in the absence of one who's left. And so I saw in the Nebraska Constitution that there really is no method or no...nothing spelled out to appoint someone. It's just basically at the discretion of the Governor. So I subsequently applied for the seat, by the way, as a registered nonpartisan FYI. So then I wonder why would Governor Ricketts go to this trial of asking for all these people to apply, going, reading what they apply, reading all about them when he had no intention of picking anyone from that pool of applicants. So I leave it to you senators and others to wonder why our Governor would pick someone or would ask for all this information and then not have any intention of picking any of those people. So then we also started wondering and worrying about the independence of your Legislature when, as you probably know, I'm sure you're well aware, that the Governor will pick applicants, fund applicants, even in the basis of a fellow Republican, he will pick someone that he thinks is aligned more with his philosophy and support that senator monetarily, etcetera. And I think people have to be aware of that there's three branches of government: the judicial, executive and legislature. I think the Governor here is blurring the boundaries of the Legislature and the executive when he tries to influence you people as he does. So once again, I thank Senator Howard for LB777. And in the future, I like her argument about transparency and just put together some rules and regulations so everyone knows what's what. Okay? Thank you. [LB777]

SENATOR WATERMEIER: All right. Thank you for your testimony. Are there questions from the committee? All right. Thank you for your testimony. Further proponents on LB777? All right, seeing none, are there opponents to LB777? Anyone here today wishing to speak in the neutral position? All right. Senator Howard, you're welcome to close. Senator Howard waives closing on LB777. We'll consider this hearing closed and move in to LB837. [LB777]

SENATOR HOWARD: All right. Okay. Good afternoon, Senator Watermeier and members of the Executive Board. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm presenting to you LB837, a bill that would require legislative

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approval when the Department of Health and Human Services Division of Medicaid and Long-Term Care applies for a waiver to the federal Centers for Medicaid and Medicare Services. This bill would require any waiver to come before the Health and Human Services Committee of the Legislature and have a public hearing for input from the public and providers. The reason that I have these waivers come only before the committee and not the full Legislature is to ensure that, if the division wants to apply for a waiver when the Legislature is not in session, this process would not hold them up. So just for those of you who are not Medicaid nerds, which I'm...so there are two different ways that a state can change their Medicaid program. So every state has a state plan sometimes and that talks about what is covered in your plan and then who is covered in your plan. And the two ways that you can change that plan is through a state plan amendment, sometimes called a SPA, which it's not as relaxing as you would think; and the other one is through a waiver. And waivers have actually become more popular in the past couple of years because they're a little more flexible than a state plan amendment. And so the two waivers that I was really particularly looking at are what's called an 1115 and a 1332. This is like getting very nerdy and I apologize to all of you for this in advance. So an 1115 is one of the only broad waiver authorities under our Medicaid plan and our Children's Health Insurance Program. It's what we've used in the past for things like prenatal care for undocumented women. And the newest one is a 1332, which is also very broad, and that came about under the Affordable Care Act. But the really important piece of this is that both waivers have important budget impacts because you'll either be expanding a type of service or a type of population. Right? So you'll either be having more kids or you'll be having podiatry. Right? So those two can both be very expensive. And so when we were thinking about this bill, we were really thinking about if there's a budgetary impact we want to make sure that a legislative committee is really considering and working with the department when they're creating a waiver. So more fun facts. In 2006, we actually used to do this; and it was specific to state plan amendments. And so I thought that we were still reviewing state plan amendments. The state of Nebraska had required that the Department of Health and Human Services not promulgate any rules or regs or make changes to our state Medicaid plan without first alerting the Legislature and the Governor. But we had also required that any changes to the state plan or waivers would be submitted to the Legislature and the Governor before they were put in. In 2006, then Chair of the HHS Committee, Senator Jim Jensen, put in this huge omnibus bill which, if anybody heard...if any of the women had heard me, I was talking to my mom because I was like, Mom, why did you go present not voting; and I was calling her from the bathroom just because it's a little bit quieter in there. And she was like, I honestly don't remember, like 2006 was a long time ago. But when I went through the bill, she's like, oh, I remember. It was so big none of us really had time to get our arms around what we were doing in this enormous omnibus bill. And so what I'm looking at in terms of waivers is bringing that oversight and transparency and that conversation between the department and the Legislature about some of these higher-budget Medicaid changes. So this bill would allow the legislative committee responsible for oversight for DHHS and the Medicaid program to review the waiver, hold a public hearing, and decide if the waiver is in the best interest of the state and

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our budget. And when we consider fiscal shortfalls and where the Legislature is already being forced to make difficult decisions on where funding should be cut and where it should be saved, it only makes sense that there should be some legislative oversight when it comes to these opportunities. So I thank you for your time today, and I'm happy to try to answer any questions you may have. [LB837]

SENATOR WATERMEIER: All right. Senator McCollister. [LB837]

SENATOR McCOLLISTER: Yeah. Thank you, Senator Howard, for your bill. I'm just curious. You're saying that prior to 2006 the entire Legislature would take action on the waivers? [LB837]

SENATOR HOWARD: So prior to 2006 actually we just had to be...we received notice and then the Health and Human Services Committee would hold a hearing about it. So it wasn't the entire body. It would...essentially this bill is a reinstatement of what we were doing in '06. [LB837]

SENATOR McCOLLISTER: Oh. Would they take action on the hearing? Would they make any recommendations... [LB837]

SENATOR HOWARD: Make any changes. So they could make...they received notice and they could make recommendations based on public comment. But I don't believe they had an approval. [LB837]

SENATOR McCOLLISTER: So they had no authority. So the only obligation was to hold a hearing. [LB837]

SENATOR HOWARD: Right. And one of the things when we put the bill in, we were still trying to consider is it that we just...we should make sure that there's notice to the Legislature or that there's approval from the Legislature? And I can see that there is most likely a separation of powers issue when you're considering whether or not we should approve what an agency does. Although historically, a couple of years ago I had a bill that told them to do a state plan amendment and they did, in fact, do that. So we can tell them to do specific state plan amendments. [LB837]

SENATOR McCOLLISTER: Any clue to why Senator Jensen would make that change? [LB837]

SENATOR HOWARD: Honestly, I have no idea. It was Senator Jensen and Senator Erdman and it was a department bill. So they...and there's a lot, a lot more in there than just this piece. This is, I mean, maybe one small section in the bill. It was a beast. [LB837]

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SENATOR McCOLLISTER: Thank you, Senator Howard. [LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR WATERMEIER: Further questions? Senator Crawford. [LB837]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Senator Howard. So currently we have legislation-- statutes-- that require the department to let us know if they're making a change in a regulation in time for us to try to assess that before we have a session, and put some gap in that. [LB837]

SENATOR HOWARD: Right. [LB837]

SENATOR CRAWFORD: And in this case, you're feeling it's critical to have this in, instead of or in addition to that provision. Could you talk about why this is critical? [LB837]

SENATOR HOWARD: Well, so, you know, I actually thought that we were still reviewing state plan amendments and this would piggyback on that so that it would be in addition to SPAs we would also be looking at waivers. And so we just put it in for waivers thinking that SPAs were handled. And then when we did more digging, we realized that state plan amendments had been repealed. And so, you know, a best-case scenario would be that notice and a public hearing for both waivers and state plan amendments would occur. But I think when you think about a state plan amendment, they can have enormous fiscal impacts. One of our bigger ones was when we decided to take CHIP up to 200 percent of the federal poverty level. And that, well, kids are very inexpensive to cover and our FMAP is much higher on our CHIP program, it was a significant financial cost. But at the time, the Legislature made that choice. There are other waivers that they can apply for that have to do...most recently maybe with medication assisted therapy. When we did multisystemic therapy, the Legislature only passed multisystemic therapy. They added family functional therapy which was wonderful and great for the families in our state, but it also had a fiscal impact that the Legislature couldn't acknowledge because they had included it in the state plan amendment above and beyond what the Legislature asked them to do. Does that make sense? [LB837]

SENATOR CRAWFORD: Um-hum, thank you. [LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR WATERMEIER: All right. Senator McCollister. [LB837]

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SENATOR McCOLLISTER: Thank you, Chairman Watermeier. Is there a list of some of the waivers that are available to the states and whether or not Nebraska has accepted any of those waivers? [LB837]

SENATOR HOWARD: I'm certain there is. I know CMS has a listing of the waivers and you can actually get a copy of our state plan amendment and read through it in your free time. It is fascinating. But there is a listing of waivers that we could get you from CMS. I can't say for certain whether or not we've taken them up on different ones because I honestly don't know. [LB837]

SENATOR McCOLLISTER: Well, is it fair to say that some would cost the state money and some... [LB837]

SENATOR HOWARD: And some wouldn't. [LB837]

SENATOR McCOLLISTER: ...would be a net gain for the state? [LB837]

SENATOR HOWARD: Absolutely. Absolutely. [LB837]

SENATOR McCOLLISTER: Thank you. [LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR WATERMEIER: Further questions? All right. Oh, yes, Senator Crawford. [LB837]

SENATOR CRAWFORD: Thank you, Senator Watermeier; and thank you, Senator Howard. Do you have any consideration for what happens if this happens outside of the session? [LB837]

SENATOR HOWARD: So part of the reason why we wanted it to just be under the Health and Human Services Committee, which is the committee who has the oversight role for the department is because then they could meet outside of session and you wouldn't be bound by the legislative calendar per se. [LB837]

SENATOR WATERMEIER: All right. Further questions? All right. Thank you, Senator Howard. [LB837]

SENATOR HOWARD: Thank you. [LB837]

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SENATOR WATERMEIER: We'll open it up for proponents of LB837. Welcome. [LB837]

KATHY NORDBY: (Exhibit 1) Senator Watermeier and members of the Executive Board, thank you for having me today. My name is Kathy Nordby, K-a-t-h-y, Nordby is N-o-r-d-b-y, and I am the chief executive officer for Midtown Health Center in Norfolk, Nebraska. And thank you, Senator Howard, for introducing this bill. I am here today representing the Health Center Association of Nebraska and our seven federally qualified health centers or FQHCs as we're known. These include OneWorld Community Health Center and Charles Drew Health Center in Omaha, Bluestem Health in Lincoln, Good Neighbor Community Health Center in Columbus, Midtown Health Center in Norfolk, Heartland Community Health Center in Grand Island, and the Community Action Partnership of Western Nebraska whose home is in Gering. Our health centers are nonprofit, community-based organizations that provide high quality medical, dental, behavioral, pharmacy, and support services to persons of all ages. We are the health homes for Nebraska's low-income families. I am here today to support LB837. Nebraska health centers serve nearly 85,000 patients annually. Seventy percent of our patients are racial and ethnic minorities, 93 percent are at or below 200 percent of poverty--200 percent of poverty is \$50,200 in gross annual wages for a family of four so it's pretty small if you think about it. We are essentially the state's safety net for low-income Nebraskans. Fifty percent of our patients that walk through our door are uninsured. Nationally, that average to states is at 28 percent for FQHCs. The seven health centers in Nebraska serve 26 percent of the children in Nebraska that are uninsured. Nebraska health centers are second only to Utah with the highest uninsured population currently. We are not free clinics but all the patients pay their share of cost based on a sliding fee scale for those that have no access to healthcare. From a financial perspective, Medicaid plays an important role to the financial stability of our health center. LB837 provides the legislative approval of Medicaid waivers before they are submitted to the Centers for Medicare and Medicaid Services, also known as CMS. These waivers provide the opportunity for states to implement a new or different way to deliver and pay for Medicaid and CHIP programs. While Medicaid waivers offer the opportunity to innovate how Medicaid programs are delivered, there is also an opportunity for significant changes in Medicaid policy with no legislative input. We feel that the Legislature should be involved in these policy changes. Recent waivers approved by CMS have included significant policy changes to Medicaid programs across the nation. For example, in Kentucky CMS approved a waiver that will allow the state to impose work requirements, charge premiums to beneficiaries, end retroactive eligibility for most beneficiaries, and impose a six-month lockout period for those who do not renew timely or do not report income changes in a timely manner. By Kentucky's own estimate, there will be a significant reduction in the number of months an individual has Medicaid coverage. There are also major policy changes with a profound impact on the beneficiaries, the providers like FQHCs, and the state budget. Kentucky, like Nebraska, does not have any laws requiring legislative approval for the submission of waivers. State Medicaid waivers are a powerful tool that can enhance or add severe constraints to state Medicaid programs. We believe that the

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Legislature should play a role in that process. Thank you for your time and I would welcome any questions that you would have. [LB837]

SENATOR WATERMEIER: Thank you for your testimony. Are there questions? Thank you. [LB837]

KATHY NORDBY: All right. Thank you. [LB837]

SENATOR WATERMEIER: All right. Further proponents. Welcome. [LB837]

MOLLY McCLEERY: (Exhibit 2) Hello. Senator Watermeier and members of the Executive Board, my name is Molly McCleery, M-o-l-l-y M-c-C-l-e-e-r-y. I am the deputy director of the healthcare access program at Nebraska Appleseed. We are a nonpartisan, nonprofit, legal advocacy organization that fights for justice and opportunity for all Nebraskans. I testify today in support of LB837. I'll keep my remarks short but just to echo some of the comments made by Senator Howard in her opening. Medicaid is a state and federal partnership. In order for the state to receive federal Medicaid funds, the state has to comply with certain federal laws. However, waivers do present an opportunity for states to try experimental pilot demonstration projects. They have to be approved by the Secretary of Health and Human Services or by the federal government and must be likely to assist in promoting the objectives of the Medicaid program. That is ultimately a matter of discretion. And so to Senator McCollister's point, these could be widely different depending on the state that proposes it. They could be an attempt to increase eligibility, an attempt to change eligibility to change the type of benefits that are offered, to impose more requirements or more restrictions on eligibility. They could be very different depending on the ultimate goal of the demonstration. Because of the potential impact on eligibility on the type of benefits offered, the way that enrollees enroll in the system and maintain coverage and additionally the cost of operating the program by the state. Because of all of these considerations, it makes sense for the Legislature to have oversight over that process. We talked a little bit about increases in enrollment or adding more people to coverage as a potential impact on the cost of the program. That is just one way that waivers could impact the cost of the Medicaid program. Implementing something like Kentucky or other waivers that are sort of on the table would require significant administrative costs for the program as adding more requirements for enrollees and more things that have to be approved requires someone to approve all that paperwork. Because the Legislature is the one that determines whether the program is funded, at what level it's funded, it makes sense that there should be legislative oversight over this process. And with that, we'd ask that you support LB837. And I'd be happy to answer any questions. [LB837]

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SENATOR WATERMEIER: All right. Questions from the committee? Thank you for your testimony. [LB837]

MOLLY McCLEERY: Thanks. [LB837]

SENATOR WATERMEIER: Other proponents. All right, seeing none, are there opponents to LB837? Anyone in opposition? Welcome. [LB837]

THOMAS ROCKY THOMPSON: (Exhibit 3) Thank you very much. Good afternoon, Chairman Watermeier and members of the Executive Board. My name is Thomas "Rocky" Thompson, T-h-o-m-a-s R-o-c-k-y T-h-o-m-p-s-o-n, and I am the interim director of the Division of Medicaid and Long-Term Care in the Department of Health and Human Services. I am here to testify in opposition to LB837. LB837 would require the department to submit Medicaid waiver applications to the Health and Human Services Committee before submitting them to the Centers for Medicare and Medicaid Services, or CMS. This bill also allows the committee to hold a public hearing and give the committee approval or disapproval authority over the submission of waiver applications, in effect, a legislative veto. Before I begin explaining our opposition to this proposal, we passed out a sheet explaining many different types of waivers. I know that it was mentioned earlier an 1115 innovation waiver which, just so you're aware, to be approved by CMS it has to be determined to be cost neutral and has a different requirement. We can get into details if you want. And the 1332 waiver, the 1332 waiver is actually not a Medicaid waiver. That is for the private insurance market, the individuals that would be covered by a state basics change or a federal facility exchange. But then it goes through some more detail. Now under this bill as currently written, the state may see delays in submitting waivers, which could cause a loss of federal funding. CMS does not retroactively approve different types of waivers, only prospectively. CMS requires that waivers be submitted 90 days before the implementation date. Existing waivers must be renewed and submitted 90 days before the renewal date. Delaying a renewal could cause a break in covered services and/or required services to be paid for by state General Funds. Now what was not mentioned is a 1915(c) waiver and these are ones that cover some of the state's most vulnerable populations: the aged and disabled populations. Any delay or loss in services could be detrimental to these individuals and providers who receive payments under these waivers. Biennial budget requests and fiscal notes on bills routinely plan on federal funding anticipated by waiver submissions. To put this into context, the current time line of a waiver submission with an effective date of October 1 would be on April 1, the state would submit a draft of the waiver to all Nebraska tribes, as federally required. The tribes are given 30 days' notice to review and provide comments or feedback. Public notice would be posted in May, allowing stakeholders to review and provide feedback. This would include on-line posting and stakeholder meetings being held. And submission to CMS must happen no later than July 1 for an implementation date of October 1. Prior to April, our state staff would be working for months to develop and draft a waiver. As written, it is unclear if this bill applies only to new waiver

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applications or if this bill applies to amendments, renewals, and extensions as well. Waivers are not automatically renewed; waivers which have not been formally renewed by the end of the waiver period will automatically expire. Waiver renewals also must be submitted at least 90 days prior to the end of the waiver period. However, CMS prefers renewals to be submitted 180 days prior. Any delay in submitting waiver renewals could lead to ending of the waiver which would effectively end services for vulnerable individuals. CMS at times will consider requests for 90-day temporary waiver extensions. A temporary extension permits the state to continue to operate an approved waiver beyond its original expiration date. Extensions are not granted solely for administrative convenience, such as giving the state extra time to prepare a waiver renewal request. Extensions are only granted for reasons such as aligning a period of the waiver to the state fiscal year or combining several waivers into one waiver. A request for an extension must be submitted formally in writing to CMS in advance of an approved waiver's expiration date and extensions are considered on a case-by-case basis. A request for an extension may also arise out of the need to address waiver design issues as identified by CMS. In those instances, CMS will not approve a temporary extension request unless and until the state submits a satisfactory action plan with specific milestones. CMS will also require the state to report its progress in implementing the action plan during the extension period. Temporary extensions are only granted for a period of up to 90 days. If the intent for LB837 is to apply to extensions, the timing and delay could cause the state to be unable to utilize this important process in ensuring services continue. The director for the Division of Developmental Disabilities, Courtney Miller, is also here and will discuss her recent experience with the extension process. Additionally, this bill effectively gives a legislative committee veto authority over the executive branch's execution of the Medicaid program. By having a veto over the submission of our waivers, the Legislature could hinder Medicaid's ability to effectively manage the program. Medicaid is the single state agency responsible for administering the Medicaid program to the federal government. This includes the ability to submit waivers and ensure Nebraskans who are most in need continue to receive medical services. This bill risks our ability to make sure services are delivered to our Medicaid clients. I believe in holding ourselves to a high standard and I appreciate the oversight and transparency the Legislature's Health and Human Services Committee provides. We want all stakeholders, including the Legislature, to have input into our waivers and waiver designs. Any senator or his or her staff are welcome to attend our stakeholder meetings that are regularly held regarding our waivers. If additional transparency to the Legislature is a desire regarding any particular waiver, I am glad to present to the HHS committee any waiver application if asked. Again, I oppose LB837 because it duplicates existing oversight, raises concerns about the separation of powers, could delay the waiver approval process, could cause vulnerable Nebraskans to lose needed services. It could also create unintended fiscal implications if federal receipts were planned for in a biennial budget or a fiscal note on a bill, which then gets delayed by additional legislative review. I'm happy to answer any questions you might have. [LB837]

SENATOR WATERMEIER: If you need to finish up further, go ahead. [LB837]

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THOMAS ROCKY THOMPSON: Oh, no, I'm done. [LB837]

SENATOR WATERMEIER: Okay. All right, very good. Are there questions? Senator McCollister. [LB837]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. Thank you for your testimony, Mr. Thompson. Under current state law, when you contemplate a waiver, are any public hearings held or an opportunity for the public to respond to the waiver request or any opportunity for stakeholders to respond? [LB837]

THOMAS ROCKY THOMPSON: Thank you, Senator. Under state law I'm not aware, but under federal law that is required for any waiver application. And Courtney Miller can discuss her experience with conducting stakeholder input sessions for the waivers that she just got approved. [LB837]

SENATOR McCOLLISTER: So it's not an obligation under state law, but you have an obligation under federal law. [LB837]

THOMAS ROCKY THOMPSON: That is correct. [LB837]

SENATOR McCOLLISTER: So you have been holding opportunities for the public to respond. [LB837]

THOMAS ROCKY THOMPSON: That's correct. [LB837]

SENATOR McCOLLISTER: Okay. Thank you. [LB837]

SENATOR WATERMEIER: All right. Further questions? Senator Bolz. [LB837]

SENATOR BOLZ: Can you help me understand when a waiver is revenue neutral and when a waiver might not be expected to be revenue neutral? Just because of my recent experience working with the DD waiver, it was...the way we talked about it was that it had to be under existing appropriations or it had to be revenue neutral. But if it were a new waiver, it may or may not be revenue neutral. Can you just walk me through that? [LB837]

THOMAS ROCKY THOMPSON: Certainly, Senator. Now the revenue neutral component, that means that the federal funds that are expected to be expended by the waiver will not be greater

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than what is already expected to be expended on that population. So that's just the base of a cost neutral requirement. Now it goes into a lot of nitty-gritty about how you actually calculate that. [LB837]

SENATOR BOLZ: So it would have to be neutral in terms of the federal funds but not necessarily neutral in terms of the state funds? [LB837]

THOMAS ROCKY THOMPSON: The current requirement under federal law is for it to be cost neutral for the federal government... [LB837]

SENATOR BOLZ: Okay. [LB837]

THOMAS ROCKY THOMPSON: ...to actually approve the...and that's just for 1115 waivers. [LB837]

SENATOR BOLZ: For 1115 waivers. Could other types of waivers have a different type of... [LB837]

THOMAS ROCKY THOMPSON: I would have to look into exactly how they calculate the cost neutral component for those. [LB837]

SENATOR BOLZ: Okay. I guess I'm...to try to state my question more plainly, I would like to better understand when waivers are expected to be cost neutral and when waivers may not be expected to be cost neutral. [LB837]

THOMAS ROCKY THOMPSON: For the federal government or for the state government or under federal law or state law? [LB837]

SENATOR BOLZ: Well, so I guess yes, all of the above because if they're required to be federal...if they're required to be cost neutral under federal law, there's the state matching requirement. And of course, if they're revenue neutral under federal law, we can assume they would be close to revenue neutral under state law due to the matching requirements even though there might be some administrative differences I suppose. [LB837]

THOMAS ROCKY THOMPSON: I would agree with you on that. [LB837]

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SENATOR BOLZ: Uh-huh. But are there circumstances in which under federal law a waiver would not be expected to be revenue neutral? [LB837]

THOMAS ROCKY THOMPSON: Not for 1115 waivers. I would have to check with the other types of waivers. [LB837]

SENATOR BOLZ: So if it's a new waiver, it might not be federally or... [LB837]

THOMAS ROCKY THOMPSON: Well, new waivers have to be cost neutral to the federal government, at least 1115 waivers. [LB837]

SENATOR BOLZ: Okay. Okay. Thank you. [LB837]

SENATOR WATERMEIER: Senator Crawford, did you have...no. [LB837]

SENATOR CRAWFORD: Go ahead. [LB837]

SENATOR WATERMEIER: Senator McCollister. [LB837]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. And this may be outside your field of expertise, but how many states only use the executive branch to determine whether a waiver is applied for? [LB837]

THOMAS ROCKY THOMPSON: Thank you, Senator. I'm not aware of...so you're asking if...for legislative branch approval before the submission of a waiver? [LB837]

SENATOR McCOLLISTER: Well, to what extent do other states utilize legislative approval or not use it? [LB837]

THOMAS ROCKY THOMPSON: Different states have different requirements. I know when I was in North Carolina there was requirement to give legislative notification before the submission of a waiver. [LB837]

SENATOR McCOLLISTER: But just notification. [LB837]

THOMAS ROCKY THOMPSON: Just notification. [LB837]

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SENATOR McCOLLISTER: Not approval. [LB837]

THOMAS ROCKY THOMPSON: That's correct, sir. [LB837]

SENATOR McCOLLISTER: Okay. Maybe I can find out from Senator Howard later on whether a great many states are doing it as Nebraska currently does it since 2006. Thank you. [LB837]

SENATOR WATERMEIER: Further questions? Senator Crawford. [LB837]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Director. What are your current processes for informing the committee, Health and Human Services Committee, or the Legislature when you are applying for a waiver? [LB837]

THOMAS ROCKY THOMPSON: Thank you, Senator. We notify all our stakeholders the same way with a public comment period. As for the last application for a new waiver, that was done as part of the process with the new DD waivers and there was extensive stakeholder outreach. And I know that Director Miller and Medicaid staff are also available for any legislative input. [LB837]

SENATOR CRAWFORD: And how was the committee informed? [LB837]

THOMAS ROCKY THOMPSON: We do have a biennial report that goes over the list of the waivers that we have. [LB837]

SENATOR CRAWFORD: So it's in the information that you submitted a waiver would be in that September 1 report. [LB837]

THOMAS ROCKY THOMPSON: That would be correct and also we have our Medicaid annual report, all the postings on our Web site including draft waivers that are for public input. We have other notice requirements also as provided in federal law. [LB837]

SENATOR CRAWFORD: But no necessarily hearing on waivers. [LB837]

THOMAS ROCKY THOMPSON: And, Senator, I'm glad to attend any hearing if asked. [LB837]

SENATOR WATERMEIER: All right. Further questions? Thank you for your testimony. [LB837]

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THOMAS ROCKY THOMPSON: Thank you, sir. [LB837]

SENATOR WATERMEIER: All right. Further opponents on LB837. [LB837]

COURTNEY MILLER: (Exhibit 4) Good afternoon, Senator Watermeier and members of the Executive Board. My name is Courtney Miller, C-o-u-r-t-n-e-y M-i-l-l-e-r, and I am the director of the Division of Developmental Disabilities in the Department of Health and Human Services. I am here to testify in opposition of LB837. LB837 would require the department to submit any Medicaid waiver applications to the Health and Human Services Committee before submitting to the Centers for Medicare and Medicaid Services-- or CMS-- our federal partners. The bill also allows the committee to hold a public hearing and gives the committee approval and disapproval authority over the submission of waiver applications. Home and community-based or HCBS services, developmental disability waivers are Medicaid waivers and my division has the responsibility for administering them. Under this bill, the state may see delays in submitting waivers which could cause a loss of federal funding that ensure Nebraskans with a developmental disability who are most in need to continue receiving services and risks our ability to make sure services are delivered. I recently requested extensions from CMS for two of the state's Medicaid HCBS DD waivers. Six temporary extensions were granted from January 2016 to June 2017. Two additional extensions for one of the waivers were granted through September 2017. Nebraska's approved Medicaid HCBS DD waivers were set to expire at the end of 2015. In order to address issues surrounding services and reimbursement in the previous waivers, the state worked closely with our federal partners to develop new waivers. The state also worked closely with stakeholders and advocates during this development, posting information on-line, holding town hall meetings, establishing multiple work groups, and regular public meetings. During the development phase, extensions were important to ensure services continued for those covered by the waivers. Any delay in submitting those extension requests could have led to the ending of the waiver and the loss of services for those vulnerable Nebraskans. Again, I oppose LB837 because it duplicates existing oversight, raises concerns about the separation of powers, and could delay the waiver approval process and cause vulnerable Nebraskans to lose needed services due to negative fiscal implications. Thank you for the opportunity to testify and I'm happy to answer any questions that you may have. [LB837]

SENATOR WATERMEIER: (Exhibits 5-11) All right. Thank you. Are there questions? Thank you for your testimony, Ms. Miller. Further testimony in opposition? Seeing none, anyone in the neutral capacity for LB837? So we have letters for the record on LB837: in support, Annette Dubas from the Nebraska Association of Behavioral Health Organizations; in support from Richard Azizkhan and Liz Lyons from Children's Hospital; Geri Johnson from the Nebraska Home Care Association; Joni Cover from Nebraska Pharmacists Association; Dr. Adi Pour from Friends of Public Health; David Slattery from the Nebraska Hospital Association; and Kristin

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Mayleben-Flott from the Nebraska Planning Council on Developmental Disabilities in opposition, excuse me. So we have one letter in opposition. Senator Howard to close. [LB837]

SENATOR HOWARD: I don't really have much to add, but I did want to come back up and just emphasize that this bill is really about transparency. It's really about improving the communication between the department when they are making changes to our Medicaid programs and plans and making sure that we are a part of that process because we are the budget-making body for the state. You know, I actually didn't know that they had public hearings which is concerning because I'm actually pretty aware of what's going on with our Medicaid program and I follow them very closely. And so not even knowing that they were required to have public hearings or that they were doing them. I knew on the developmentally disabled side because I was following all of the notice that they were doing there. But on any other waivers I've never seen a public notice. And so for me as somebody who is a part of that process, that's very concerning. With that, I'm happy to try to answer any questions you may have and I appreciate your time and attention today. [LB837]

SENATOR WATERMEIER: Senator Stinner. [LB837]

SENATOR STINNER: I'm a little bit confused. Are all the waivers because the federal government has changed rulings? I mean, where do the waivers actually originate from? From the federal government or... [LB837]

SENATOR HOWARD: From the federal government. [LB837]

SENATOR STINNER: Okay. So these were being mandated by the federal government. [LB837]

SENATOR HOWARD: No, they're options. A waiver is sort of an option, right? And then there are demonstration projects where you can do something new and innovative in your own state and that would come from us. But a waiver is sort of an a la carte option on the menu for Medicaid. [LB837]

SENATOR STINNER: Okay. So if we want to expand the program, they would have a public hearing. Well, first of all, they would select what menu of services... [LB837]

SENATOR HOWARD: Right. [LB837]

SENATOR STINNER: ...they want to expand, have a public hearing, submit it to CMS, get their approval on that, then they go. [LB837]

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SENATOR HOWARD: Yeah. [LB837]

SENATOR STINNER: And does that have any impact on the state budget, General Fund budget?
[LB837]

SENATOR HOWARD: It can. Some waivers are required to be cost neutral or budget neutral but not all of them. [LB837]

SENATOR STINNER: So we may not have an appropriation at that time to accommodate that or an expansion in a program? [LB837]

SENATOR HOWARD: Maybe. And we as legislators might not know. [LB837]

SENATOR STINNER: Okay. Thank you. [LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR WATERMEIER: All right. Further questions? All right. Thank you, Senator Howard.
[LB837]

SENATOR HOWARD: Thank you. [LB837]

SENATOR WATERMEIER: We will close the hearing for LB837 and ask the members to stick around. We'll have an Exec Session real quick here so. [LB837]