WILLIAMS: [RECORDER MALFUNCTION] Committee hearing. My name is Matt Williams. I'm from Gothenburg and represent Legislative District 36 and I serve as Chair of the committee. The committee will take up the bills in the order that they were posted on the door. Our hearing today is your part of the public process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. We have bills to introduce in other committees and are sometimes called away. It is not an indication that we are not interested in the bills being heard in this committee, just part of the process. To better facilitate today's proceeding, we ask that you abide by the following procedures. Please silence or turn off your cell phones. Move to the front row when you are ready to testify. The order of testimony will be the introducer, proponents, opponents, neutral testimony, and followed by a closing. Testifiers, please sign in, hand your pink sheets to the committee clerk when you come up to testify, and when you begin your testimony, please spell your name for the record. We request that you are concise with your testimony and that we limit testimony to five minutes, and we do use a light system. It will be green for the first four minutes, yellow for the next minute, and then when the light turns red, we ask you to conclude your testimony. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard before us today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify, and we will need ten copies. If you do not have ten copies, please give them to the page and they will make copies for you. To my immediate right is committee counsel, Bill Marienau; to my left at the end of the table is committee clerk, Natalie Schunk. And our committee members are with us today and we will do self-introductions. We're going to start with Senator McCollister today.

McCOLLISTER: Thank you, Chair Williams. John McCollister, District 20, Omaha.

KOLTERMAN: Mark Kolterman, District 24, York, Seward, and Polk Counties.

QUICK: Dan Quick, District 35, Grand Island.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

GRAGERT: Tim Gragert, District 40, northeast Nebraska.

WILLIAMS: And our page today is Lorenzo, and Lorenzo is a student at UNL. Having a great year, right?

LORENZO CATALANO: Great year, sir.

WILLIAMS: Good, good. All righty. Well, we will begin our first public hearing and invite Senator Clements to come up, LB1024, change provisions of the Intergovernmental Risk Management Act. Welcome, Senator Clements.

CLEMENTS: Thank you, Chairman Williams and members of the Banking, Insurance and Commerce Committee. I'm Senator Rob Clements, R-o-b C-l-e-m-e-n-t-s. I represent Legislative District 2, and I'm here to introduce LB1024. LB1024 amends the Intergovernmental Risk Management Act. It would allow for additional oversight of risk management pools by the Nebraska Department of Insurance and provide an operative date of January 1, 2021. I've been made aware that over the last several years, issues with certain risk management pools have exposed deficiencies in the current law to adequately provide oversight for the best interests of member public agencies and taxpayers. These issues were brought to my attention by constituents who were concerned that the level of oversight by the Department of Insurance authorized in our current law and the regulations for risk management pools were inadequate. Had this oversight authority been in place, several regrettable issues may have been avoided, for example, Gage County taxpayers finding themselves not covered to pay court ordered damages to the Beatrice Six, also the League Association of Risk Management's, LARM, problems with its executive director and a situation of having two competing boards of directors-- directors. Reading the transcript from the public hearing from last year's LB573, in this committee, I realized there was a diversity amongst the risk management pools that would make reform more complex than I originally thought. But I felt that the testimony of Director Ramge of the Department of Insurance provided a good place to start a continued conversation on potential reforms for risk management pools. Director Ramge had four main reform recommendations that the department would like to see changed. I took his four recommendations and put them into four sections in LB1024, which is before you today: Section 1 would require risk management pools to be subject to the Unfair Insurance Trade Practices Act. This would set certain standards for risk pools to follow with their member public agencies. The director stated that infighting brought about

actions by the pool against individual members that would constitute unfair insurance trade practices of a traditional insurer. Another testifier-- testifier on LB573 stated that LARM tried to force North Platte out of LARM by imposing a 99-100 percent increase in its workmen's compensation deductible. Section 2 would require risk pools to elect members of the board of directors from member public agencies and to add to their plan of management the means by which such members will be elected or removed. Some, but not all, pools have been following these policies. Section 3 would allow the Department of Insurance to dissolve a risk management pool pursuant to the Nebraska Insurance Supervision, Rehabilitation and Liquidation Act, if the director finds just cause not to renew a certificate of authority. This mirrors existing rules for private insurers. Finally, Section 4 would allow the Director of Insurance to issue corrective orders for noncompliance with Intergovernmental Risk Management Act and removal of members of the board of directors or executive management if they do not comply with the corrective orders. This bill is not meant to create any burden for risk pools which are already operating in the best interest of their members. It gives the Director of Insurance authority which he doesn't currently have to correct problems which may occur in the future. I also filed a conflict-of-interest statement on this bill because I am an insurance agent who could sell a policy to a city or a county. However, where they purchase-- whether they purchase from me is completely up to that board, and so I believe it's still proper for me to present this. Thank you for your consideration of LB1024, and I will try to answer any questions at this time.

WILLIAMS: Thank you, Senator Clements. Questions for the senator? Senator Kolterman.

KOLTERMAN: Thank you. Thank you for bringing the bill. Did you bring this on your own or did you-- did they ask you to bring this bill?

CLEMENTS: The department did not ask. I had constituents who are aware of things going on and-- and came to me. And I have worked with the department, but was not requested at the-- from the department.

KOLTERMAN: And do you know how many risk management pools exist in the state of Nebraska today? Do you have any notion of that?

CLEMENTS: I don't.

KOLTERMAN: OK, I'll ask-- I'll wait and ask someone else.

CLEMENTS: All right. Thank you.

WILLIAMS: Additional questions? Seeing none, will you be staying to close?

CLEMENTS: Yes.

WILLIAMS: Thank you. We would invite the first proponent. Welcome, Director Ramge.

BRUCE RAMGE: Thank you. Chairman Williams and members of the Banking, Commerce and Insurance Committee, my name is Bruce Ramge, spelled B-r-u-c-e R-a-m-g-e, and I'm the Director of Insurance for the State of Nebraska. I'm here today to testify in support of LB1024. I have had the opportunity to review the contents of LB1024. I believe the bill sufficiently addresses concerns that I raised regarding the Intergovernmental Risk Management Act during testimony before this committee last year. So thank you for your time today. I'm more than happy to answer any questions that you may have.

WILLIAMS: Thank you, Director. Questions for the director? Senator Kolterman.

KOLTERMAN: Thank you for coming, Mr. Director. Do you know how many approximate risk management pools there are in the state operating today?

BRUCE RAMGE: I'll get back to you, but I-- I believe it's between four to five pools.

KOLTERMAN: So there's-- there's not a huge amount.

BRUCE RAMGE: No, no.

KOLTERMAN: Were your concerns based on the fact that you had all the problems with LARM a year or so ago?

BRUCE RAMGE: Primarily, yes.

KOLTERMAN: OK. Up until then, had we had any problems with the situation the way it was?

BRUCE RAMGE: Not to that magnitude, no. And-- and to be fair, since last year's hearing, LARM has done a great deal to resolve the concerns and frustrations that I had last year.

KOLTERMAN: So this bill would be proactive in a way that-- that fits the needs of the department, and-- and these really shouldn't have an

adverse effect on the current risk pools. Would that be a correct statement?

BRUCE RAMGE: I believe so, yes.

KOLTERMAN: OK. Thank you.

BRUCE RAMGE: Thank you.

WILLIAMS: Senator McCollister.

McCOLLISTER: Thank you, Chairman Williams. If LB1024 had been in statute, it would have-- would not have made any difference with Gage County, correct?

BRUCE RAMGE: You know, I'm not really prepared to-- to speak on that because I don't know the details enough to know whether it would have or-- or not. But if it would have, that would have been great, but I'm sorry, I just-- I'm not prepared to answer that.

McCOLLISTER: Thank you, Director.

BRUCE RAMGE: Yes.

WILLIAMS: Any additional questions? Seeing none, thank you, Director, for your testimony.

BRUCE RAMGE: Thank you.

WILLIAMS: Invite the next proponent. Welcome, Mr. Bell.

ROBERT BELL: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Robert Bell. Last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, and I am here today in support of LB1024. As you know, the Insurance Federation is the primary trade association of insurance companies domiciled or with a significant economic presence in Nebraska. I will tell you that the Federation members are in direct competition against the risk management pools that exist. So companies that write commercial policies and whatnot can try to sell to cities or counties or community colleges or natural resource districts, all the various pools that exist out there. And, you know, the-- the things that exist in the insurance code are there to protect the-- you know, the policyholders in this case would be the members. And so taking some of those protections that exist in the Unfair Insurance Trade Practices

Act as an example and making sure that those do apply to these pools does protect those members when bad situations arise, which doesn't happen all that often, but it does happen from time to time. And I would just encourage the community to look at Nebraska Revised Statute 44-1525, which enumerates the list of prohibited acts under the Insurance-- Unfair Insurance Trade Practices Act and-- you know, apply those in your head to the various actions that could occur against, say, a city, and ask yourself why that shouldn't apply to an intergovernmental risk pool. And from the standpoint of the Insurance Federation, you know, we want a-- a level playing field as much as possible with our various competitors and understand that there's-- there is a need for intergovernmental risk pools, but we'd like to compete as well. So with that, thank you.

WILLIAMS: Thank you, Mr. Bell. Senator Kolterman.

KOLTERMAN: Thanks for coming today, Robert.

ROBERT BELL: Sure.

KOLTERMAN: So in the risk pools, they typically-- they're not fully self-insured, are they?

ROBERT BELL: Oh, they probably-- I mean, it probably depends on the pool. I assume that they have insurance behind them as well.

KOLTERMAN: Don't many of them use insurance companies to underwrite their product?

ROBERT BELL: They probably do. I'm-- I'm not that aware of the--

KOLTERMAN: OK.

ROBERT BELL: --inner workings of the actual risk management pools.

KOLTERMAN: OK.

ROBERT BELL: But I do know that the insurance-- the Unfair Insurance Trade Practices Act--

KOLTERMAN: I-- I--

ROBERT BELL: --does not apply to them.

KOLTERMAN: No, I understand that. I-- I like that aspect of this bill.

ROBERT BELL: OK.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

ROBERT BELL: You're welcome.

WILLIAMS: Invite the next proponent. Seeing none, we'll switch to opponents. Is there anyone here to testify in opposition? Welcome--

LYNN REX: Thank you.

WILLIAMS: --Ms. Rex.

LYNN REX: Thank you. Senator Williams, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And today, at their request, I'm also representing the Nebraska Association of School Boards. Just like to emphasize that we think that there are some positive things about LB1024 and some of the provisions in it. We also think that there are some provisions that need some significant work just because the risk management pools all operate a little bit differently, and I think some of that needs to be addressed. So with that, I'm happy to answer any questions that you have. We just appreciate Senator Clements putting the bill in, but we just think that it needs a lot more work and we're prepared, both NASB and the League of Nebraska Municipalities, to work with this committee and-- and other interested parties, because I think that the issues are significant. And risk management pools are in existence because of what happened back in the '80s when municipalities and other public entities simply could not get insurance, so with that-- at least certainly not at an affordable price-- I'm happy to respond to your questions.

WILLIAMS: Thank you, Ms. Rex. Questions? Seeing none, thank you for your testimony.

LYNN REX: Thank you very much.

WILLIAMS: Additional opponents? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Clements, you're welcome to come and close.

CLEMENTS: Thank you, Chairman Williams. I have not had a chance to discuss this with the league or the NASB, but I would be willing to work with their concerns if there is something in the bill that really restricts their ability to operate. I didn't want to become a burden on them, just would like to get them as much under the same authority as private insurance have, as long as it doesn't conflict with what

they're already operating. Regarding Beatrice, I think a licensed insurer has an obligation to inform clients of provisions like retroactive effective dates. I'm not sure whether the pool is required to make that information or not. That would have-- that was the key problem with that situation that the retro-- retro date was not matching up with the coverage they needed. With that, that's all I would have.

WILLIAMS: Any final questions for the senator? Seeing none, thank you. And that will end the public hearing on LB1024.

CLEMENTS: Thank you.

WILLIAMS: And we will now move to LB1108 with Senator Gragert to change provisions relating to property under the Uniform Disposition of Unclaimed Property Act, the School Employees Retirement Act, and the Uniform Residential Landlord and Tenant Act. Welcome, Senator Gragert, to your committee.

GRAGERT: Good afternoon. Chairman Williams and members of the Banking, Commerce and Insurance Committee, I am Senator Tim Gragert, T-i-m G-r-a-g-e-r-t. I represent District 40 in the northeast corner of the state and I am here to introduce LB1108. LB1108 modernizes Nebraska's Unclaimed Property Act to bring it more in line with other states and the Revised Uniform Unclaimed Property Act adopted by the Uniform Law Commission in 2016. I've passed out AM2513. AM25-- this amendment represents a consensus achieved by the State Treasurer's Office in their work with the Nebraska Bankers and the Insurance Federation. It is my hope that the amendment becomes the bill, therefore, I will only address the amendment. AM2513 will allow the Treasurer's Office some discretion in which items to maintain in the safety deposit box. Items with no commercial value may be destroyed by the Treasurer's Office, rather than maintained for five years, incurring the associated cost of maintenance, advertising, and appraisal. The language related to safe deposit box-- boxes is similar to the statutes of at least nine other state laws. Last year I introduced an unclaimed property bill, but it was referred to the Government Committee. A portion of it related to the elimination of aggregate reporting was removed due to opposition. I am pleased to report that we have come to an agreement with those that were opposed last year, and AM2513 contains elimination of aggregate reporting. In recognizing there is a cost to reporting for both the holder remitting the report and the state receiving the report, AM2513 allows the deferral of reporting for reports of $50 or less. The amendment clarifies that in the first year that the holder has $50 to report, remittance is required. AM2513 also

adds authorization for the Treasurer to donate unclaimed property to a nonprofit organization when a claimant elects that option. Last year, the Legislature passed LB433, which updated the Landlord-Tenant Act to require uncashed security deposits to be remitted after going uncashed for 60-- after going uncashed for 60 days. This dormancy period is much shorter than any other of the Unclaimed Property Act. The change also required remittance of unclaimed security deposits every 60 days rather than the once a year on a fixed reporting deadline like all other unclaimed property types. AM2513 streamlines uncashed security deposits to a one-year dormancy period and remittance in accordance with the Unclaimed Property Act. The Unclaimed Property Act has been in place in Nebraska since the late 1960s. Technology has changed business operations significantly since that time. Statute requires notices be sent to the U.S.-- by the U.S. Mail to contact owners prior to reporting an unclaimed amount to the State Treasurer's Office. AM2513 removes electronic indication of interest relating to banking properties and adds it back in as a separate section to apply for all holders of unclaimed property. This change will allow holders to treat a secure password protected log-in or on-line transactions as an indication of interest and prevent the account from being considered dormant, even if there is otherwise no other activity on the account. Meaghan Aguirre, director of the unclaimed property with the State Treasurer's Office, will testify following me in support of LB1108. Although I can try to answer any questions you may have, she will be a-- better suited to address the technical questions you may have on LB1108 and the proposed amendment. I urge your favorable consideration of LB1108 as amended by AM2513. Thank you.

WILLIAMS: Thank you, Senator Gragert. Questions for the senator? Seeing none, I'm sure you're going to stay to close.

GRAGERT: Yes, sir.

WILLIAMS: Invite the first proponent. Welcome.

MEAGHAN AGUIRRE: Thank you. Well, my name is Meaghan Aguirre. I am the director of unclaimed property-- sorry, Meaghan is spelled M-e-a-g-h-a-n, Aguirre is A-g-u-i-r-r-e. As I said, I'm the director of unclaimed property for Nebraska State Treasurer John Murante, and I'm here to testify in favor of AM2513 as a replacement for LB1108. First, I'd like to thank Senator Gragert for introducing this bill on behalf of the Treasurer's Office. Senator Gragert did a great job of laying out what AM2513 will do. And to kind of clarify, the-- the main difference between a piece that left but stayed in was that section related to the electronic due diligence. It was removed from the

banking sections, but then added in with some clarification. And what-- basically what that section will do is allow electronic-- a secure password-protected log-in to constitute activity on an account which would prevent it from being considered abandoned. But the section did clarify that automatically reoccurring transactions would not constitute activity, as those are not an indication that the owner is still aware of those funds. This would require the reauthorization of those automatic transactions every five years in order to avoid dormancy. I'll also address the items in LB1108 that were not included in AM2513. LB1108 changed the language relating to the authority to audit companies for compliance with unclaimed property statutes. The definition of record was added to clarify which records are subject to an unclaimed property audit. LB1108 also adds the ability to issue administrative subpoenas to under-- uncooperative holders and to encourage compliance with the audit. While we feel these changes are important, we understand the concerns of the Insurance Federation and look forward to engaging in good-faith negotiations on this matter. Without the robust authority to audit holders of unclaimed property, the Unclaimed Property Act is essentially unenforceable. There are cases where audits go on for years and years while legal arguments are made as to which records are subject to an audit. And in some cases these-- efforts are made to indefinitely postpone the audit, or even worse, holders just simply say that they won't turn over any records without any further rationale for the refusal to comply. The ability to issue administrative subpoenas would be a way to escalate an audit without formally referring it to the Attorney General's Office and recommending legal action. While most holders do try to comply with unclaimed property laws, we work diligently with them to assist in maintaining proper compliance. But there have been instances of bad actors, typically out of state, who willfully disregard the law and hold on to Nebraskans' money beyond what the law allows. It is our obligation to enforce audits and we need this additional tool in order to enforce compliance. Additionally, the reduction of dormancy periods from five years to three years was excluded from AM2513. About half of states have moved to dormancy periods of three years for check and account balance property types. The rationale is that the sooner we get the money, the sooner we can start returning it to owners. And if a holder has a bad address for an owner, the longer that we wait to start searching for them, the more difficult it may be to help find the owner. We also feel that this would help prevent unnecessary fees being charged to an owner's account. For instance, if an owner passes away and the heirs are unaware of the account, that account could be hit with account fees month after month, year after year, until eventually the entire account may be depleted, or if maybe after five

years it would be considered dormant and then reported to the-- our-- to the State Treasurer's Office at that time. Our office appreciates the conversations that we've had with the Nebraska Bankers and Insurance Federation on these issues. And we look forward to continuing this conversation in the interim and will bring these issues back to the Legislature in the future. It is our intention to negotiate in good faith and come up with a mutual agreeable solution as our ultimate aim is to preserve these assets for the owners and return them to the rightful owner or heir. If the committee has any questions about the amendment or portions of LB1108 that were excluded, I would be happy to answer them now.

WILLIAMS: Thank you. And I-- I want to clarify the statement you just made that-- and I want to be sure I'm understanding that you're in continuing negotiation or conversations at this point. So is--

MEAGHAN AGUIRRE: Correct.

WILLIAMS: --is your take that the legislation, as presented with AM2513, is not a completed project-- project yet?

MEAGHAN AGUIRRE: Yes. So-- so we had a number of-- the sections that we removed, those were points where we determined there was further conversation needed. However, the way that we reconciled the electronic due diligence to apply to the entire Unclaimed Property Act, some of the clarifications as to the reoccurring payments, it appears we need some further conversation related to that particular piece of it.

WILLIAMS: Thank you.

MEAGHAN AGUIRRE: Um-hum.

WILLIAMS: Additional questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. Thanks for being here today. On a-- you know, you talk about-- in the bill you talk about retirement plans, the state's retirement plans, and on-- on page 10 of the bill, it talks about Qualified Domestic Relations Orders, QDRO. Is that the only-- does that only pertain to those where you've taken out within five years following the date of the deceased member's death?

MEAGHAN AGUIRRE: That-- that particular change was actually made-- I had received a call from an attorney with the Nebraska Retirement System.

KOLTERMAN: OK.

MEAGHAN AGUIRRE: And that particular five-year dormancy period was in that particular period-- or place in statute. And so rather than having when changing dormancy periods to have to change it in both places, they asked that I just strike through that sentence there because basically those funds would just be remitted according to the Unclaimed Property Act, rather than having that specific dormancy period mentioned twice in statute. So that's why that particular change was added.

KOLTERMAN: Is it--

MEAGHAN AGUIRRE: However, it wasn't my intention to make any other specific changes to retirement.

KOLTERMAN: Was-- was that the only-- was that-- was that the only change that dealt with the retirement plans?

MEAGHAN AGUIRRE: Um-hum. Yeah, that-- yeah, it was just related to the dormancy periods.

KOLTERMAN: That's what I sensed, I just--

MEAGHAN AGUIRRE: Um-hum. Yep.

KOLTERMAN: OK. Thank you.

MEAGHAN AGUIRRE: Yeah, so they weren't disagreeable to the three-year dormancy period, but I was informed that either way, if we just struck through that, then it wouldn't be duplicated in multiple parts of statute.

KOLTERMAN: OK.

MEAGHAN AGUIRRE: It would just be remitted according to the Unclaimed Property Act itself.

KOLTERMAN: Thank you.

MEAGHAN AGUIRRE: Um-hum.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. I'm-- I'm on page 5--

MEAGHAN AGUIRRE: OK.

McCOLLISTER: --of the amendment--

MEAGHAN AGUIRRE: OK.

McCOLLISTER: --line 16--

MEAGHAN AGUIRRE: OK.

McCOLLISTER: --I'm sorry, 15. If the State Treasurer or his or her designee determines after investigation that the delivered property has insubstantial commercial value, the State Treasurer or his or her designee may destroy or otherwise dispose of the property at that time.

MEAGHAN AGUIRRE: Yes.

McCOLLISTER: Insubstantial commercial value, did I read in the bill that that means any amount below $50?

MEAGHAN AGUIRRE: No. So what that is referring to is the-- the tangible items that we would receive. So we take in contents of safe deposit boxes. That would be the tangibles that we receive. In some cases, we may have items that just have no value, no sentimental or monetary value whatsoever. In some cases, it may be the items were inside of another box that basically has no-- it's not made of any material that would be of value, there's no, like, inscription or art or anything that would make it have any value, perhaps it's broken, it's taking up space in our vault. We want to be able to condense those items and get rid of maybe that box that would've been held. Sometimes we open safe deposit boxes and the only thing in the box is the safe deposit box contract. And so we want to be able to get rid of items where nobody's really going to come looking for them. You know, it's something where there would be a pretty good amount of clarity that this is not an item of value, this is not something that somebody is going to come looking for. I've always been careful that if anybody-- you know, if there's ever a question, just hold on to it or let an appraiser look at it before making that determination. The language that was used in the bill and the amendment is language similar to several other state laws. And so since that's what had been implemented in other states and I felt that our office could benefit from it as well because there is a cost associated with maintaining--

McCOLLISTER: One person's junk is another person's treasure.

MEAGHAN AGUIRRE: And that's very much true, which is why I--

McCOLLISTER: Yeah, so-- so--

MEAGHAN AGUIRRE: --try to be very careful about what we let go. But certainly there are things, like I said, when the only thing in the box is the safe deposit contract, you know, that's the kind of thing that-- that we would be wanting to-- to be able to destroy rather than holding for five years.

McCOLLISTER: Well, it says, "or otherwise dispose of the property." How would-- how would you do that? "Otherwise dispose of the property," does that mean throw it away or does that mean--

MEAGHAN AGUIRRE: Pretty much. Yeah, so we do--

McCOLLISTER: --or give it away to Goodwill?

MEAGHAN AGUIRRE: No, we don't. No, none of the items we have donated. We just-- they would be destroyed in the sense that we-- if it's like paper items, they get shredded. If it's like electronic media, we look for secure methods to destroy that. If it's just items that have no other-- like there's not a security kind of standpoint to it, then we may just toss it.

McCOLLISTER: So it won't appear on eBay?

MEAGHAN AGUIRRE: We do-- so we-- I hold items for five years. If there is an item that has value, then it will get auctioned. We hold it at least five years. But at that point, we can auction those items off and then the proceeds would be applied back to the property and then the owner or their heir could claim those items. But of course, there's a cost associated with selling on eBay as well, so we recognize there's a certain threshold, and that's been a very low threshold--

McCOLLISTER: OK.

MEAGHAN AGUIRRE: --in the past as well. We do try to make sure people can claim what is theirs or, you know, give the opportunity for proceeds on an item, even if it's a [INAUDIBLE].

McCOLLISTER: Let's go to page 9--

MEAGHAN AGUIRRE: Sure.

McCOLLISTER: --and line-- starting with page-- line 5-- or the return balance of the security deposit remains outstanding for one year, it

shall be considered abandoned property to be reported and paid to the State Treasurer in accordance, etcetera, etcetera. So is that a source of income to the State Treasurer at this point?

MEAGHAN AGUIRRE: I mean, it's treated, I guess, like any other-- I guess I-- so the-- the funds that are reported in unclaimed property, whether it be the sec-- the security deposit or any amount, so those are all reported to the State Treasurer's Office. Our office, the unclaimed property division, our budget is appropriated out of that-- those funds; however, any funds in excess of a million dollars are transferred out to the permanent school fund annually. I don't know if that answers your question or if it [INAUDIBLE]

McCOLLISTER: It does. So how about lesser amounts? Where does that money go?

MEAGHAN AGUIRRE: Meaning like the funds a million and--

McCOLLISTER: Less-- less.

MEAGHAN AGUIRRE: So that is the account where we pay the claims out of.

McCOLLISTER: I see.

MEAGHAN AGUIRRE: So when-- when claims are filed, we obviously have to keep money in that account so that we can pay out the owners of unclaimed property.

McCOLLISTER: So it's an imprest account kind of thing.

MEAGHAN AGUIRRE: Um-hum.

McCOLLISTER: OK. Thank you.

WILLIAMS: Additional questions? Could you be-- I-- I just want to be sure I understand the change in here for automatic transactions--

MEAGHAN AGUIRRE: OK.

WILLIAMS: --and the-- if you would take me through that again, the password-protected electronic--

MEAGHAN AGUIRRE: Sure. So--

WILLIAMS: I'm assuming we're talking about a bank and a bill-pay account or something like that.

MEAGHAN AGUIRRE: Yes, um-hum. Yes, so if you have a bank account and maybe you don't use it for anything necessarily, you just-- you have funds in there, you don't need them, you're not adding to it at this time, there's nothing in, nothing out, and that could potentially be considered a dormant account because there's no activity on it. But because you know it's there and you want to check in on it from time to time and you've got a secure log-in, you log in to just verify those funds in that account, that act-- action of you logging in to view your account would be considered interest in the account and then prevent it from being reported, even though there may otherwise be no activity on the account.

WILLIAMS: It starts-- starts the clock again.

MEAGHAN AGUIRRE: Um-hum. However, you know, there are the cases where somebody may initiate an on-line, like, payment or, you know, maybe you subscribe to something and that goes on-- reoccurs over and over again. But maybe you've moved and forgotten about the account; maybe the owner has passed away. Just because those reoccurring transactions keep happening in the account, that doesn't necessarily mean that the owner is aware of it or still, you know, is-- is maintaining that as an active account.

WILLIAMS: And so if they haven't made that inquiry, the five years would still be there, even though there would be a transaction happening.

MEAGHAN AGUIRRE: Um-hum. Sure. Yes. And of course, you know, the-- the banks or whoever would still have the opportunity to perform their due diligence. They would notice, you know, there's nothing but these reoccurring transactions. All unclaimed property-- property types, they are required to be sending out notices. Holders send out notices to try to prevent it from being abandoned. So then that notice could be sent by mail verifying there's been no other activity on your account just to make sure that that owner, they still have a present address or that owner is still aware of the account.

WILLIAMS: Thank you.

MEAGHAN AGUIRRE: And then at that point, that could [INAUDIBLE]

WILLIAMS: Yeah, that explains what I was trying to--

MEAGHAN AGUIRRE: Sure.

WILLIAMS: --be sure I understood.

MEAGHAN AGUIRRE: Um-hum.

WILLIAMS: Any final questions? Seeing none, thank you for your testimony.

MEAGHAN AGUIRRE: Thank you.

WILLIAMS: Invite the next proponent. Welcome.

GENE ECKEL: Welcome. Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Gene Eckel; that's G-e-n-e E-c-k-e-l. I am here on behalf of the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. We're here in support of LB1108, in particular, Section 6 of the amendment, which would allow landlords one year to send uncashed security deposit checks to the State Treasurer. What happened is this is kind of a situation of unintended consequences. Last year, when the statute regarding uncashed security deposits was changed, we thought it was a good idea to get those funds into the State Treasurer's hands as soon as possible. We learned, though, from tenants and landlords, or in our case it was the property management companies, that, one, it was causing frustration because they would come back after 60 days only to find that the funds were now to the State Treasurer, then they had to contact the State Treasurer. They would have rather gotten the funds from the landlord at that particular time. The landlords then were incurring stop-payment fees. The industry standard for banks is typically six months before the check goes stale, and then the property management company, we reissue a check or, you know, send it on to the State Treasurer. So we're trying to fix that situation and fix those problems so everybody's happy at the end of the day. Really, that's all we wanted to talk about and inform the committee about. But I'd be happy to answer any questions at this time.

WILLIAMS: And the amendment moves that to a one-year period. Is that correct?

GENE ECKEL: That's correct.

WILLIAMS: Questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. I would guess there's due process for tenants if the landlord decides to keep the damage deposit?

GENE ECKEL: That's correct. There is penalties in state statute. So if a landlord refuses to give back that money, then they would incur--

well, first they'd have to give the amount of the security deposit in full back to the land-- back to the tenant. In addition to that, they would incur penalties, which I think is three months' rent, and then incur reasonable attorney's fees.

McCOLLISTER: There's nothing in this bill that relates to that-- those kinds of issues. Correct?

GENE ECKEL: That-- no, that-- this would just be amended to the current statute with regard to how much time there is before the landlord has to submit it to the State Treasurer.

McCOLLISTER: Thank you.

GENE ECKEL: So this is the only change.

McCOLLISTER: Thank you.

GENE ECKEL: Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you for your testimony.

GENE ECKEL: Thank you, Senator.

WILLIAMS: Invite the next proponent. Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Welcome.

JILL BECKER: Good afternoon, Chairman Williams and members of the committee. My name is Jill Becker, J-i-l-l B-e-c-k-e-r, and I appear before you today as a registered lobbyist on behalf of Black Hills Energy. We don't often appear before this committee, so I thought you might be interested to know that we care about the unclaimed property provisions. We have a significant number, couple hundred or so every year, maybe a little bit higher given the year, on either customer credits to their accounts or to deposits that are still remaining on their accounts. In a perfect world, we would love to just find them and give them back their money. That would be a lot easier. Unfortunately, it doesn't happen that way. So just to make a few comments on the proposed amendment, I know that there was some discussion about the removal of the ability to aggregate those small amounts. We would still really kind of like to do that. I don't know about the additional discussions that went on about removing that provision, but honestly, while it is other people's money, there is an administrative burden to keeping track of all of those very small

amounts. As an example, a few years ago, when we did some rate adjustments due to the Tax Credit and Jobs Act, that was about a, depending on the customer level, a $5 to $7 credit to their account. So that's a type-- that's the type of a number that we would be tracking if we can't aggregate that amount anymore. Some of those amounts are a lot higher, not due to that credit, but, you know, sometimes when it's a hundred-- couple hundred dollars amount, then it makes it a little bit easier for us to hopefully find those customers. Hopefully, they want to find us. A few other comments that we had, there was some discussion about decreasing that dormancy period that I understand is left maybe out of the amendment. It's my understanding that we report on an annual basis. But like some of the other testifiers have commented, the faster we can get it to the state, we think the better. Assuming we can't find a former customer soon, getting it to the state is probably the best option that we had. And then we would just comment that I'm not really sure what we think about having the ability to have people donate the money to a nonprofit who's then selected by the Treasurer. I'm just not really quite sure what to think about that. So I just wanted to raise that because our tax people kind of raised their eyebrows, like how would you pick those entities and-- and who's deciding that? And so it's just a little bit different take on what we would really do with the money. So anyway, those are the comments that I have and I would be happy to answer any questions that the committee has.

WILLIAMS: Thank you, Ms. Becker. Questions? Seeing none, thank you for your testimony.

JILL BECKER: Thank you.

WILLIAMS: Invite the next neutral testifier. Welcome back, Mr. Bell.

ROBERT BELL: Thank you, Chairman Williams. And, members of the Banking, Commerce and Insurance Committee, my name is Robert Bell; last name is spelled B-e-l-l. I'm executive director and registered lobbyist for the Nebraska Insurance Federation. The Nebraska Insurance Federation is the primary trade association of insurers domiciled or with a significant economic presence in Nebraska. And I'm here to testify neutrally on LB1108. And I wanted to say, first, thank you to Senator Gragert, to the Treasurer's Office, for reaching out to the Insurance Federation. When this bill was first introduced, it contained some provisions that were very concerning to the insurance companies of Nebraska, including the-- the providing of administrative subpoena power to the State Treasurer, as well as the changing of the standard of investigation. Many of the insurance companies, life

insurance companies in particular, have been under multiyear, multistate audits from unclaimed property administrators. Typically, these are handled by contractors of the State Treasurer's. They-- they look for data and they try to find if the insurance companies have not provided the proceeds of a life insurance policy or some other financial product that they have. And there's-- there-- there can be these-- these things have been going on for a long time. I think I have one member that has had an ongoing audit for ten years. And so they get very sensitive anytime there's any kind of legislation that's introduced that-- dealing with that type of investigatory power, and appreciate the Treasurer's Office listening to us and removing those provisions. The one in-- the amendment is-- it's great in removing those provisions. There is one provision in here that we do have issue with, and that's on page 8, it would be Section 4, but actually it's page 8, lines 5 through 10 where we're talking about reoccurring-- reoccurring payments. As you mentioned, Senator Williams, one of our issues that we have with that is the fact that a lot of times you buy a life insurance policy and you sign an agreement and you pay your monthly premium for a long time. I-- I was thinking about my own life insurance policy I probably bought in 1999. I don't think I've seen my agent or talked to my agent-- no offense, Senator Kolterman, you're not my agent, but I know I should talk to my agents more often-- in 15 years. But I know that policy is in force. I see it come out of my bank account every month. And to start messing around with those business operations of how life insurance companies do business would-- would be something we need-- would need to have a discussion with if this amendment was to move forward. And I-- I-- I understand what they're trying to do. The Treasurer's Office is trying to make it easier so dormancy doesn't kick in when people are electronically hitting their accounts, but do know that there are current business practices, especially in insurance, where reoccurring automatic payments occur all the time. And so not only for the insurance companies, but the policyholders that we ensure, they don't necessarily want their policy to go over to State Treasurer's Office unbeknownst to them. And probably that wouldn't occur. It might be a little bit of a parade of horribles. I'm sure there would be various contacts and things, but basically they fire and they forget about those policies, other than noticing it's coming out of their bank account. With that, we're happy to talk about that provision further. Again, with the most onerous provisions gone, and should we be able to solve that reoccurring payment issue, we would be neutral on the amendment. So thank you.

WILLIAMS: Thank you, Mr. Bell. Questions? Seeing none, thank you for your testimony.

ROBERT BELL: You're welcome.

WILLIAMS: Invite the next neutral testifier. Welcome, Mr. Stilmock.

JERRY STILMOCK: Mr. Chair, members, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of the Nebraska Bankers Association in a neutral capacity on LB1108. We were pleased to see the amendment in a couple respects, particularly going back to the-- what is now the five- year period of time. It also, as you heard from Mr. Bell, I'm not going to repeat everything he said, but in Section 8-- excuse me, Section-- Section 4 on pages 7 and 8, it's that automatic renewal--automatic debit issue that, you know, that jumps out at us because of the, you know, the issues that we face with electronic transactions. So we appreciate the opportunity to continue to work with the Treasurer, particularly work continuing with Senator Gragert, and we take those opportunities and hopefully reach an end that would be acceptable to the parties involved, sir, and members.

WILLIAMS: Thank you, Mr. Stilmock.

JERRY STILMOCK: Thank you.

WILLIAMS: Questions? Seeing none, thank you for your testimony.

JERRY STILMOCK: Thank you.

WILLIAMS: Next neutral testifier. Welcome, Mr. Radcliffe.

WALT RADCLIFFE: Thank you, Mr. Chairman. I so hate neutral testimony. My name is Walt Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of Woodman Life neutrally on LB1108. And I'm-- I'm appearing neutrally because, quite frankly, Senator Gragert and the Treasurer's Office has-- have been nothing but cooperative in trying to sit down and work out some amendments. The amendment that you have, we-- the only objection, frankly, is the issue of automatic payments that's been previously discussed. This bill, though, it reminds-- Senator Loran Schmit, who's from Bellevue [SIC], who I dearly loved, used to say, you know, we go to that sale barn in Bellwood every week and the same blind, crippled bull comes through, and someday somebody is going to buy it. Well, this is that same old blind, crippled bill. It's been in this committee, and it's like whack-a-mole. You take care of-- you take care of three issues

and another one pops up. And I-- I just hope now, with the continuity we've got in the Treasurer's Office and the good faith that's been evidenced, that we can sit down over the interim, come back next year with a clean bill and say, hey, the stakeholders, the Treasurer's Office, and everyone is in agreement with this. To be-- to be very blunt, the issue arises not from the, from the good efforts of the Treasurer's Office. It arises from-- and these are my words, and my words only-- from contract bounty hunters who go out and try to find unclaimed property. And insurance companies are not real receptive to turning over their computer records to them, among other things. Now we've resolved most all that, except all of a sudden that other whack-a-mole of automatic payments raised its head, so that's why we're going back to the drawing board. I really do think we can come up with something, and I thank the committee and its Chairman, who I know has been with this issue for some time. And, Senator Gragert, welcome aboard. Good luck and let's godspeed for next year. I'd attempt to answer any questions.

WILLIAMS: Thank you, Mr. Radcliffe. Yeah, for those of us that have been here six years, this isn't our first rodeo.

WALT RADCLIFFE: It is-- it is not, nor is this our first goat.

WILLIAMS: Questions? Seeing none, thank you, Mr. Radcliffe.

WALT RADCLIFFE: Thank you.

WILLIAMS: Any additional neutral testifiers? Seeing none, and we do not have any letters, we invite Senator Gragert back up to close.

GRAGERT: Thank you, Chairman Williams. Well, I guess being a crippled bull and I'll be the veterinarian. In closing, I commend the Treasurer's Office for being proactive in making their office more efficient and effective through updating the procedures of returning unclaimed property. I would just ask that we take this and along we'll probably come back again next year and I'd enjoy your-- or ask your support for moving this one forward. Thank you.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, quick question, I'm not truly answer-- asking you a question. I just wanted to get something on the record. In Section 3, subsection (2), it seems to me that that phrase is confusing and maybe it needs a conjunction. So let's put that on the record and that may be something for us to deal with next year.

GRAGERT: Thank you.

WILLIAMS: Any final questions for the senator? Seeing none, that will close the public hearing on LB1108. We'll now be opening our public hearing on the bill this committee has waited for all year, the last bill--

MORFELD: Is this the last one? It's a great sign.

WILLIAMS: --LB1196 with Senator Morfeld, adopt the Pharmacy Benefit Manager-- let's wait just a second. And thank you all again. We're starting on LB1196 to adopt the Pharmacy Benefit Manager Regulation Act and require an audit under the Medical Assistance Act. Welcome back, Senator Morfeld.

MORFELD: Thank you, Chairman Williams, members of the Banking Committee. For the record, my name is Adam Morfeld, A-d-a-m M-o-r-f, as in "frank," -e-l-d, representing the "fighting" 46th Legislative District, here today to introduce LB1196. I didn't know that I was the last one. I figured this would just be a noncontroversial bill that I could attach to LB997, so we'll see how that goes. I'm not hearing very much laughing behind me. [LAUGHTER] Guess not. OK. LB1196 was introduced at the request of Nebraska Pharmacists Association to continue to shed light on the business practices of pharmacy benefit managers, or otherwise known as PBMs. Pharmacy benefit managers are middlemen that were originally designed to reduce administrative costs for insurers, validate patient eligibility, administer plan benefits, as well as negotiate costs between pharmacies and health plans. Over the time, PBMs have, in my opinion, taken advantage of their strategic position between the insurer and provider to assert control over most aspects of the prescription drug transactions and have become extremely profitable. The three largest PBMs manage drug benefits for approximately 95 percent of Americans with prescription drug coverage, and each of these companies has annual revenues exceeding $15 billion. In spite of these facts, PBMs are virtually unregulated at the state or federal level, even though they manage numerous prescription plans funded by taxpayer dollars. In my time in the Nebraska Legislature, I've worked tirelessly on healthcare issues, always putting patients and their interests first. When I learned about how patients are often penalized with higher copayments for getting their prescription medications from their local pharmacy or required to use PBM-owned mail orders or specialty pharmacies, I knew that we needed to look into this issue. Like Senator Kolterman's bill last year, that put into law prohibitions on gag clauses and clawbacks, LB1196 continues the efforts to level the playing field for community pharmacists and

patients across Nebraska. Nebraska pharmacies are struggling because of the policies of the insurers in their PBMs. LB1196 will remove specialty networks and mail-order requirements so that patients have a choice of where to get their medications. It is a daily occurrence in pharmacies across this state that patients come into pharmacies asking for help, as their lifesaving medicine-- medicines did not arrive in the mail yet and they need medications that day. That is unacceptable. The bill will add provisions to pharmacy contracts that require PBMs to pay pharmacies a fair price on their medications that they dispense to patients. Pharmacies are often required to dispense brand name because of the rebates that they get from manufacturers. Those rebates aren't passed-- passed on to the patients or pharmacists-- pharmacies. We are told that those rebates help lower premium for policyholders. I haven't heard of many premium decreases on health insurance for patients. In the last 18 months or so, several states have audited their Medicaid drug benefits, specifically their managed care program and the PBMs that manage the drug benefits on behalf of the managed care program. LB1196 include languages that provides funding for our State Auditor to audit the Medicaid prescription drug program. As legislators, I believe it is our job to ensure tax dollars are being spent appropriately. Recent findings by state auditors and attorney generals [SIC] in Ohio, Kentucky, Florida, and West Virginia caused me concern and why including this audit provision, I think, is important. While Nebraska's MCO contracts were amended in November 2019 to say that spread pricing is not allowed, it was, in fact, a part of the original contract and should therefore be examined. I'm aware that the Nebraska [SIC] Association of Insurance Commissioners is working on model PBM language that we hope is ready for the 2021 Nebraska legislative session. I hope to work with this committee and other members of the Nebraska Legislature on meaningful PBM legislation to protect patients and community pharmacies. I urge your favorable consider of LB1196 and I'm happy to answer any questions. There's a few friends behind me, particularly a pharmacist or two, that will actually be able to talk to you about this. I didn't bring as many friends as I did on Friday, though, so I think we should be out fairly early.

WILLIAMS: Thank you, Senator Morfeld. Questions? Seeing none, will you be staying to close?

MORFELD: I will be, thank you.

WILLIAMS: Thank you. We invite the first proponent. Welcome to the Banking Committee.

ROBERT MOSER: Thank you. Chairman Williams, committee members, my name is Robert, R-o-b-e-r-t, Moser, M-o-s, as in "Sam," -e-r. I hold a doctor of pharmacy degree from the University of Nebraska Medical Center and two bachelor's degrees from Rockhurst University in Kansas City, Missouri. For the past 15 years, I have been in retail pharmacy at a management level, and for the past 12 years, I have been the owner of an independent pharmacy in Nebraska City. I would like to thank you for this opportunity to tell my story and speak in favor of LB1196. Last year, I filled over 80,000 prescriptions. That means 80,000 times I interpreted doctor's orders, reviewed them for medical necessity and appropriateness, provided a prospective drug utilization review, ensuring each prescription was safe to take with the patient's existing medications, counseled patients to answer every question they had, and ensured they took their prescription correctly. Last year, I did over $7 million in sales and struggled to break even. During that same year, an unregulated, unnecessary industry of middlemen profited over $2 million off of my store alone while providing none of the tasks I listed. I've spent countless hours talking to patients about the cost of their medications, all too often telling them, because of this unregulated, unnecessary industry, cheaper alternatives aren't covered by their insurance. Of course, this industry is the Prescription Benefit Managers, or PBMs. Due to nondisclosure clauses in my third-party contracts, all of the examples I will cite are not specific to my store. Rather, they have been extracted from studies published by Pharmacists United for Truth and Transparency, or PUTT, or available on Bloomberg.com. Senator Morfeld has all of my sources if you wish to see them. I particularly urge you to search YouTube for the PUTT video, The PBM's Dirty Little Secret. This video will go into much great-- greater detail with the concepts I'll discuss this afternoon. PBMs got their start adjudicating claims for a small per-transaction fee, but by the 1990s, PBMs started negotiating directly with drug manufacturers to create preferred drug lists or formularies. These formularies were originally written by a therapeutics committee, which would do extensive research, determining the best and most cost-effective ways for treating a disease, state, or condition. In recent years, it has become apparent that formulary committees have been less interested in therapeutics and more interested in obtaining the largest rebates from manufacturers, leading to the most expensive brand-name drugs being included on formularies in lieu of less expensive alternatives which can't afford to offer the same rebates. It's not uncommon for 35 percent of the cost of a brand-name drug to be rebated to PBMs, some as high as 50 percent. But rebates aren't the only way PBMs profit off of retail pharmacies. PBMs also practice spread pricing on generic

prescriptions. Spread pricing refers to the difference between what a PBM collects from the payers and what it pays the pharmacy. Being unregulated, PBMs have abused this power. Since PBM contracts are kept secret, it's hard to show exactly what's going on. But an analysis by Bloomberg found that Medicaid programs in 31 states pay drastically different prices for 90 different generic drugs studied, often a 300 percent difference-- 300 percent difference. The most glaring example they cited is the leukemia drug Gleevec, which is now available generic. While brand-name drug remains priced at about $10,000 per patient, per month, the generic costs the pharmacy about $3,000 per month. Most states had this price increase by as much as 190 percent, charging the state Medicaid program nearly $9,000 per patient, per month, at a profit of almost $6,000 per patient, per month, for the PBM. The evolution of spread pricing gave raise-- rise to the clawback. The clawback is how PBMs profit off of less-expensive generics. Let's assume a patient expects to pay a $15 copay on generic prescriptions. One example given in the PUTT video, a prescription had a usual and customary retail price of $20. The pharmacy collected the $15 copay at the point of sale, and most patients assume the PBM pays the additional $5 to reach the usual and customary retail price. However, the PBM determined that the contract price for the prescription was only $5. So they not only failed to pay the pharmacy the additional $5 but billed the pharmacy for the extra $10 that they collected from the patient. The PBM doesn't refund the patient. They pocket the difference. For high-deductible plans or plans without defined copays, these examples become much more egregious. There are many examples available in the sources showing clawbacks of $200 per prescription. I hope I brought to your attention a few ways in which PBMs have taken advantage of unregulated-- unregulated status to increase healthcare costs for all of us, absorb the profit that used to be in retail pharmacy. Every year, 20 percent of independent pharmacies disappear. Everyone who's been in business knows you can't re-- if you can't recuperate your investment in five to seven years, it's not a good investment. Right now, independent pharmacies are a bad investment. Who's going to service rural Nebraska when our independent pharmacies disappear? In an ideal scenario, PBMs should be eliminated and replaced by companies that adjudicate and pass claims on to insurance companies for a small per-transaction fee. In lieu of this, any meaningful regulation should include elimination, or at a minimum make transparent, all rebates; eliminate all spread pricing; eliminate all clawbacks and maintain one single MAC list for all pharmacies with a clear appeals process; and all clean claims should not be subject to refund upon audit. Again, Senator Morfeld has all my

sources and you can contact me by the means at the top of my handout. I welcome any questions.

WILLIAMS: Thank you, Mr. Moser. Would-- would you mind taking a minute and-- and talking about clean claims? I noticed that's a part that you weren't able to get to in your testimony.

ROBERT MOSER: Thank you, Senator. Yes. Clean claims are defined in this bill; however, to keep it simple, a clean claim is a legal-- legally-- legally processed prescription. The clean claim comes through in the audit. A clean claim is one that should be paid for promptly. And upon audit, the PBM-- even though a claim is clean and you can prove that you've dispensed the product, the pharmacy often gets re-- has to repay for prescriptions that have been filled legally and proof of receipt provided, but can contain an inconsequential clerical error. Let's assume a pharmacy fills a $500 prescription for insulin and the technician entering that prescription mistakenly entered the script was brought in, instead of phoned in. That small clerical error is grounds for charging back not only the original $500 prescription, but all refills as well. That one error could cost the pharmacy $6,000 on audit. It's not unusual for PBM audit to cost a retail pharmacy $10,000-25,000 without any proof of fraud or any significant errors found.

WILLIAMS: How-- in your experience, how often do they do those kind of audits?

ROBERT MOSER: It depends on how successful the audit is. If you end up with a clean audit, you might go a year without seeing one. Otherwise, you'll probably see three or four a year.

WILLIAMS: Thank you. Additional questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. So we've been doing this now for about five years since I've been around, and it seems like every year we try to make changes that are positive for the pharmacies and we've worked hard to get the PBMs to come around. We took care of the gag order last year; we took back some of the clawback provisions last year. Do you feel like we're making any progress at all?

ROBERT MOSER: My bottom line doesn't show it.

KOLTERMAN: And that's-- where do you-- you think it's just the PBMs or do you think pharma plays into this or do you think the cost of the actual drugs plays into it, the drug-- the drug makers? I mean, what--

does it-- or is it just that we have a third party running it that has no controls?

ROBERT MOSER: I think for the most part, we have a third party running it that has no controls. Every-- every step of the way we-- our healthcare system, there are so many steps of bureaucracy between the manufacturer and the consumer. The consumer plays no place-- place in the actual cost of the medication. Everyone is so regulated except for the PBMs. They are the ones that drive the price on this. You know, they're still collecting 35 to 40 percent of the drug cost in rebates. So that seems like the biggest place to start cutting costs. But DAW 9 programs where a PBM requires the brand-name substitution, as opposed to a generic substitution, those should be written off. Those are just 100 percent rebate driven. There's no clinical reason for it and it--

KOLTERMAN: So-- so when the rebates come back-- or sometimes the rebates will come back to the policyholders, the people that own the plan, so do those come back to the pharmacy at all?

ROBERT MOSER: Not through the PBM chains. We get small rebates from our drug manu-- or from our wholesalers for hitting certain generic purchase percentages, along those lines, but they don't--

KOLTERMAN: But in our Medicaid contract, don't we get a sizable amount of rebate directly from the PBMs? Are you aware of that?

ROBERT MOSER: Well, I do know that Medicaid gets sizable rebates from PBMs.

KOLTERMAN: OK. Thank you.

ROBERT MOSER: Certainly.

WILLIAMS: Any additional questions? Seeing none, thank you for your testimony.

ROBERT MOSER: Thank you, Senator.

WILLIAMS: Invite the next proponent. Good afternoon.

ANTHONY DONOVAN: Good afternoon. Thank you, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Anthony Donovan. I'm a fourth-year pharmacy student at UNMC. And I guess to start, I started my pharmacy career about eight years ago when I applied to the Health-- Kearney Health Opportunities Program at UNK. So I'm still fairly early in my career, but this issue is

important to me and I wanted to speak to you about it today. Over the past eight years, I've had wonderful experiences working with patients and learning the profession of pharmacy. I rise in support of LB1196 due to the burden PBMs have placed on our community pharmacies in our state. My first pharmacy job was at the U-Save Pharmacy in my hometown in Kearney. It was a great job for me to learn the ropes and I had a great boss. Unfortunately, he sold his pharmacy to a larger chain due to concerns with reimbursements, which we just previously heard about. This was a really difficult decision for both him and his family, this was a family business, it had been in operation for many years, and ultimately it was a result of PBMs running over his business and being-- for it being very difficult to remain profitable and continue to operate. Over the past years-- eight years that I've been in pharmacy, this has only gotten worse due to PBMs not being held accountable to their practices, which hurt both business, business owners, as well as the patients they serve. While sitting in the audience, I did think of one story of a patient I had seen recently in the past few months. It was an elder-- elderly patient who called to get a refill and she couldn't get it at our pharmacy anymore because she was required to use a mail order. She was very confused because we mail it to her half the time already and it turned into days of problems of trying to get ahold of the insurance to get this filled, and eventually she was able to get it switched. But the bottom line is she didn't want to be forced to use mail order. She wanted to have the option to be able to get it at the same time that she was at her doctor's appointments, and it was a very frustrating ordeal for her overall. Pharmacists are an asset to Nebraska and we're the most successful healthcare professional. PBMs make our abilities to do what is best for our patients more difficult, and without regulation this will only continue to get worse. As a student, when I was reading up on the audits that we just heard about with the-- at Ohio State and other states with Medicaid programs, I found it really alarming that there's these misuses of taxpayer funds, and that's something I hope this bill will protect our state from, the same abuses. I guess lastly, I love pharmacy and I'm expecting to practice in rural Nebraska after graduating. I've been able to help patients with their medications in many ways I never would have anticipated prior to going to pharmacy school. Not only for patients, but I'm also a resource to providers. Countless times, even as a student, I've been able to help doctors, advanced practitioners with medication questions that were difficult, and I ultimately made a huge impact on the patient's care. Healthcare needs pharmacists to do our jobs, both to protect patients and to make sure medications are used effectively. This bill supports my efforts and the efforts of the pharmacists around the state to

improve the health and well-being of our communities. With that, I want to thank you for your attention and your time, and I'd be happy to answer any questions.

WILLIAMS: Questions?

BILL MARIENAU: He didn't spell his name.

WILLIAMS: I'm sorry.

ANTHONY DONOVAN: Oh, excuse me.

WILLIAMS: I did not have you spell your name, if you would do that, please.

ANTHONY DONOVAN: Anthony Donovan, A-n-t-h-o-n-y D-o-n-o-v-a-n. Sorry.

WILLIAMS: Thank you. Any additional questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. First of all, thanks for being here.

ANTHONY DONOVAN: Absolutely.

KOLTERMAN: You're still a student?

ANTHONY DONOVAN: Yes.

KOLTERMAN: This is your last year?

ANTHONY DONOVAN: Correct. I graduate in May.

KOLTERMAN: And you're going to try and go back to Kearney?

ANTHONY DONOVAN: Grand Island, after I finish some extra training, is where I'm hoping to end up with the VA for a mental health role, but, yes, around Kearney.

KOLTERMAN: So is-- is the degree eight years now--

ANTHONY DONOVAN: It's--

KOLTERMAN: --four years of undergraduate and four years of advanced training?

ANTHONY DONOVAN: The probably average student will do three to four years of undergrad. It can be done as soon as three. Some students are

able to do it in two in the nontraditional path, but the pharmacy curriculum is four years. So I will graduate in May with a doctor in-- doctor of pharmacy from eight years of training.

KOLTERMAN: I'd just like to thank you for making the commitment to stay in our state.

ANTHONY DONOVAN: Absolutely.

KOLTERMAN: We'll do what we can to help you.

ANTHONY DONOVAN: Thank you so much.

WILLIAMS: And thank you for being a-- a committed advocate for your industry also.

ANTHONY DONOVAN: Absolutely.

WILLIAMS: Seeing no more questions, thank you for your testimony.

ANTHONY DONOVAN: Thank you.

WILLIAMS: Invite the next proponent. Good afternoon.

MICHAEL VRBICKY: Good afternoon, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Michael Vrbicky, M-i-c-h-a-e-l V-r-b-i-c-k-y. I appear before you today in my capacity as associate general counsel for Nebraska Medicine in support of LB1196, the Pharmacy Benefit Manager Regulation Act. Nebraska Medicine is a nonprofit, integrated health provider with 800 licensed beds, 1,000 doctors, and 40 specialty in-care clinics. A vital part of our health delivery to patients is our pharmacy department. Nebraska Medicine is in support of this legislation because it will enhance and support community pharmacies throughout our state to better provide services to patients, as well as coordinate care between the pharmacy and treating providers. Pharmacies are an-- are an integral part of the health delivery system. Improving care coordination between patients and providers is one of the leading focuses on lowering the healthcare delivery within our local communities, state, and across our nation. Ensuring that pharmacies have the resources to continue to provide services, as well as ensuring patients have access to pharmacies of their choice, is an important step to take in the current healthcare landscape. The pharmacy department at Nebraska Medicine is comprised of four community pharmacies, as well as a specialty pharmacy program. We serve approximately 40,000 patients annually through our community pharmacies and 3,500 patients with our

specialty program. The specialty pharmacy fills orders and medications for patients that might require a higher level of management and oversight, typically including higher cost drugs, which require close monitoring due to increased potential for side effects and often more complex administration. Nebraska Medicine's specialty program is directly integrated with our medical providers, providing patients with the care and monitoring they require. PBMs often limit the locations where specialty drugs can be dispensed. When patients are forced to use out-of-state mail-order pharmacies to obtain these specialty drugs, providers often lose visibility to the patient's care at the pharmacy. Section 4 of the proposed legislation would prohibit a PBM from excluding pharmacies from their specialty network. This is important because it would allow patients to utilize the pharmacy of their choice. Allowing local pharmacies to provide these services to patients will provide better patient monitoring by the patient's treating providers as well as our-- allow our providers and our specialty pharmacists to directly integrate with the patient's treatment through sharing of medical records. Similarly, as a requirement to most network agreements with PBMs, they will prohibit pharmacies from mailing medications directly to patient-- directly to patients, despite the request of that patient had-- to have the pharmacy mailed them their refills. They do this to promote their own out-of-state mail-order programs and drive utilization to their own pharmacies. For some patients, transportation to and from a pharmacy to refill medications is a barrier for accessing the medications they need. Barriers often lead to patient health deterioration, causing further treatment, readmission to hospitals, and diminishing quality of life. These all lead to higher costs for all parties who fund the delivery of healthcare services, be it individuals, state, or federal programs. Section 5 and 7 of the proposed legislation will help to ensure that pharmacies are reimbursed fairly for the services they provide. Nontransparent, retroactive fees charged by PBMs to pharmacies as a condition of participating in PBM networks continue to increase year over year, increasing financial strain and uncertainty for pharmacies. Removing these fees paid to PBMs will help to alleviate financial stresses facing pharmacies and provide clarity and actual reimbursement amounts the pharmacy can count on receiving and keeping. Nebraska Medicine participates in the federal 340B drug purchasing program. The 340B program allows Nebraska Medicine to fulfill our mission as a safety net provider. Nebraska Medicine uses the savings generated by the 340B program directly to provide free and reduced-cost medication to those in need in hospital-owned pharmacies. Many necessary medical services for our communities are dependent on 340B savings. These savings are also used to subsidize clinical

services for uninsured and Medicaid recipients. Over the last two years, our pharmacy has faced the threat and reality of PBMs implementing two-tier pricing models, providing lower reimbursement rates for 340B pharmacies as compared to pharmacies that are not owned by a 340B entity. Reductions in reimbursement defeat the intent of the program and pass the savings along to PBMs, rather than to the safety net provider. These reimbursement models are harmful to our communities as they greatly impact the financial performance of our pharmacies, thus diminishing the amount of resources we can provide within the community to improve healthcare and extend service offerings. Nebraska Medicine believes that the policies laid out in this legislation will help to allow local pharmacies to provide better care for members of our communities, as well as alleviate some of the financial uncertainties that pharmacies currently face. Thank you, Chair Williams and members. I'll take any questions.

WALT RADCLIFFE: Thank you. Questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. Thank you for your testimony today. Explain to me what a 340B program is or how you are eligible for a 340 program.

MICHAEL VRBICKY: Sure. So 340B was a program put in place by the United States Congress back around 1992. And what it is, it's a-- it's a discount drug purchasing program, meaning that because we provide services to a disproportionate share of indigent, low-income individuals, we can participate in 340B, which allows us the ability to buy certain outpatient drugs at a discount.

McCOLLISTER: And Medicaid is primarily a 340B kind of program?

MICHAEL VRBICKY: Yeah, it's primarily-- we pass those savings along to Medicaid.

McCOLLISTER: Medicare as well?

MICHAEL VRBICKY: Yes.

McCOLLISTER: Thank you.

WILLIAMS: And if I could follow up on that, so under this proposed legislation, you would be protected with that 340B discount and not have a two-tier pricing system. Is that what you're telling us with that?

MICHAEL VRBICKY: Yeah, that's correct. We would-- we would still be able to-- we would still acquire our qualified patients and drugs at-- through the 340B program. But what we're seeing across the industry is PBMs are coming and slashing the reimbursement for 340B entities, which defeats the purpose that Congress intended for the 340B program. And it's passed-- they're taking the savings rather than 340B entities realizing that savings.

WILLIAMS: Thank you. Any additional questions? Thank you--

MICHAEL VRBICKY: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Welcome.

MARK PATEFIELD: Thank you. So my name is Mark Patefield, M-a-r-k P-a-t-e-f-i-e-l-d, and I'm a pharmacist in support of LB9-- LB1196 on behalf of NPA. So I am from Laurel, grew up in Laurel, and I own a pharmacy in Laurel and also one in Wayne. My wife is a pharmacist, as well, and as pharmacy owners we get a firsthand account of PBM unfairness, we'll say. Generally, me personally, I'm against regulating industries, but I believe that this particular industry is at the point of just absurd unfairness to pharmacies and patients and taxpayers as well. While they say they're focused on reducing cost, the lack of transparency, secret price lists, makes that pretty demonstrably false. If you do any search of PBM litigation, there's multiple cases of millions of dollars that come up very quickly. As the-- Senator Morfeld said, a lot of states are looking at this. As you-- you've said, you have seen that the last couple of years; more people are becoming aware of it. And just to give you some examples of what some other states have found in those audits that he mentioned, according to the Columbus Dispatch, a newspaper in Ohio, the-- 2017, PBMs billed the state of Ohio Medicaid program $225 million more than they reimbursed pharmacies. So they're taking a quarter of a billion dollar taxpayer cut on that. And it just so happens that those PBMs are the same ones that manage Nebraska Medicaid. So also another state, West Virginia, they completely eliminated PBMs from their Medicaid program and use a publicly available price list, federal price list instead. And they were both able to pay pharmacies at a more fair level and save $54 million in 2018. In reimbursing pharmacies, PBMs do use different price lists. They say that we need to purchase better. But as an example, I had to work this morning, there was one claim I lost $75 dollars on. So I went to five different suppliers to see if I could buy it any better. The cheapest I was able to do was for me to lose $75 on that claim, all the way up to about $140. So I am looking at better purchasing all the time, but you can't

meet levels that are unachievable. So I could give you hundreds of examples of that, that's just one. If you guys want to hear more, I-- you can walk into any retail independent pharmacy in your district and the pharmacy owner would be more than happy to talk your ear off about PBMs and how they're being treated unfairly. Another issue that's addressed in this bill is mandatory mail order. An example for me, owning a pharmacy in Wayne, there's a large employer in Wakefield, which is 15 miles away and has no pharmacy. They are forced to use mail order or PB-own-- PBM-owned pharmacies, so they either have to drive to city-- to Sioux City, which is a half hour away, or through Wayne, past my front door, onto Norfolk to get their medication. So obviously, that's a large inconvenience for the patient. Most of them are not happy about that. They've brought that up multiple times. But as employees, they don't have a lot of pull in that either. That results in dollars flowing out of the community, and in mail orders' case, out of the state directly. Another hat I wear happens to be as mayor of the city of Laurel, and so when we sit down yearly to decide on what insurance we're going to have for our employees, one of those choices has the employees defaulted to mail order. So employees of the city are-- we-- we have to choose a plan, one of which basically prompts them to not only do business out of town-- you know, they're citizens of the town, employees of the town, but they are not able to fill their prescription in the town like they want to. They don't have the choice, so that's where mail order comes in. And another part addresses specialty pharmacy, which is often mail order. That is addressed in the fiscal note on the bill as well. I think the specific line says it identifies these pharmacies as focusing on the management of high-cost, high-complexity, and/or high-touch models which require additional medical management services. So for their-- those reasons, they say they have to be filled at a specialty pharmacy. But occasionally we, as retail pharmacists, can fill those. And I've always found it interesting that although those services are designated as so special that we shouldn't even be able to do them most of the time, when we are allowed to do them, the value that the PBM places on those special services is zero dollars because I'm doing it. So it's so special that I can't do it most the time, but when I do, do it, there is no value in that. So that's just an example of the duplicity that we deal with, with PBMs all the time. And again, if you haven't heard from pharmacists, if they're not calling you, I-- I'm sure if you stopped into any of them, they'd be more than happy to talk to you about it.

WILLIAMS: Thank you. Questions? Senator McCollister.

McCOLLISTER: Thank you. Thank you, Chairman Williams. Did you say there's a state that has outlawed the use of PBMs?

MARK PATEFIELD: Not outlawed completely, but they no longer use it for their Medicaid program.

McCOLLISTER: I see.

MARK PATEFIELD: So they completely stopped using PBMs to manage that and they manage it themselves.

McCOLLISTER: And what was the practical effect of that?

MARK PATEFIELD: So they not only pay pharmacies better, a more fair price so that they don't have those underwater claims, but the state saved $54 million in 2018.

McCOLLISTER: So could Nebraska do something similar and save money?

MARK PATEFIELD: They could look at it, yes, definitely.

McCOLLISTER: Thank you. Thank you.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

MARK PATEFIELD: Thank you.

WILLIAMS: Invite the next proponent. Welcome.

AMY PICK: Thank you. Good afternoon, Senator Williams, members of the Banking, Commerce and Insurance Company [SIC]. My name is Amy Pick, A-m-y P-i-c-k. Although I'm a pharmacist, today I'm speaking as a mom of a child who receives a medication through a mail-order specialty pharmacy. I'm here today in support of LB1196. I want to thank Senator Morfeld for sponsoring this legislation. I want to share with you my story. My son Caleb [PHONETIC] was diagnosed in 2014 at the age of seven with juvenile idiopathic arthritis, better known as JIA. JIA is an autoimmune condition that causes swelling in the joints and impacts functionality. At the time, Caleb was unable to walk, requiring me to take him to school in a stroller. There is no cure for JIA; however, with early and aggressive treatment, some patients will obtain a lasting remission. JIA is treated with methotrexate and injectable biologics. These biologics are often considered specialty drugs, but they're no different than any other medication, with the exception of cost. Caleb was initially treated with oral and then injectable

methotrexate. We've been always able to fill our methotrexate and necessary syringes at our local pharmacy. Methotrexate is an old drug; however, it's an antineoplastic and hazardous medication. Each week, I put on gloves and draw up 0.8 mils of methotrexate from the vial and inject it into the subcutaneous layers of his stomach. In addition to methotrexate, Caleb's on two additional oral drugs to lessen the side effects. Because he's immunosuppressed, he's at risk for infections and is routinely prescribed antibiotics. We fill all of these prescriptions through our local pharmacy. In 2019, in July, Caleb's disease worsened, requiring more aggressive treatment. We added on the medication Adalimumab, better known as Humira. Humira is commercially available as a prefilled syringe, and it's not considered a hazardous medication. Although the Humira prescription was sent to our local pharmacy, we learned that our insurance company mandated that Humira be ordered through a specialty mail-order pharmacy. We had no other option but to work with the mail-order pharmacy to receive this medication. Each month I go on-line, I refill the prescription. The medication is delivered in a large refrigerated cooler and hopefully hidden behind a pillar outside our front door. I pray that the $5,000 worth of medication isn't stolen while it sits outside while I'm at work. I pray it's delivered on time and that the temperature is maintained. We administer Humira to Caleb twice a month, and we've been very blessed that this medication has placed Caleb in a medication-induced remission. Caleb will probably be on this medication for several years, if not the rest of his life. And honestly, I'm already worried how he's going to get this medication when he goes to college. I can't imagine it being shipped to a dorm room or sitting in a mail room on campus. I'm very fortunate to be health literate. It took two weeks to get the first dose of Humira sent, requiring patience and persistence. I can see how easy it is for someone to get frustrated. They give up and become nonadherent. I understand the importance of making sure the temperature is maintained, which is critical to the drug's efficacy. I know how to navigate the financial resources and the billing. Just last month, I spent close to 20 hours working on getting the medications paid for. Eventually, I was able to get the cost of Humira reduced from $2,508 to $5 using the Humira copay card, despite the fact that $2,500 was inadvertently charged to my credit card and denied as fraud. I despise having to do this all over the phone, but I'm an advocate for my son's health. I find it alarming that we can encourage polypharmacy when PBMs restrict selected medications to mail-order-only pharmacies. The idea that multiple pharmacies are filling my son's medications increases the likelihood that critical drug-drug interactions could be missed. In our case, Humira is just like any other medication for JIA.

Honestly, it's easier to administer then injectable methotrexate, and yet it's treated like a specialty medication, probably due to cost. Senators, I come here today asking for your help. I urge you to support LB1196 to give Caleb and my family the ability to purchase the medication at the pharmacy of our choice, eliminating the requirement for mail order, alleviating the stress associated with the delivery process, and allowing us to receive the medication from our local pharmacy. I'm more than welcome to share videos and pictures with you if you're interested in what it looks like to receive a medication through a mail-order specialty pharmacy. I thank you for your time today and I'm more than welcome to answer any questions.

WILLIAMS: Thank you, Ms. Pick. Questions? Where do you live, ma'am?

AMY PICK: I live in Omaha.

WILLIAMS: Omaha, OK. Additional questions? Thank you for your testimony.

AMY PICK: Thank you.

WILLIAMS: Invite the next proponent. Good afternoon.

KATELIN LUCARIELLO: Good afternoon, Mr. Chairman and members of the committee. My name is Katelin Lucariello, K-a-t-e-l-i-n L-u-c-a-r-i-e-l-l-o. Thank you very much for having me here today. I am the state policy director for the Pharmaceutical Research and Manufacturers of America, or PhRMA, and PhRMA is committed to finding ways to improve the affordability of medicines for individuals, which is why I'm here today in support of LB1196. Simply having health insurance is not enough for many patients, it is what the insurance actually covers that's most important. Insurers and PBMs are increasingly shifting more costs onto patients through deductibles and coinsurance. A deductible requires a patient to assume the full price of a drug until their coverage kicks in, and a coinsurance requires that they pay a percentage of that medicine's list price to-- to get coverage for their drug. Since 2006, deductibles for patients have increased 300 percent and what patients pay in coinsurance has risen 89, almost 90, percent. What patients pay out of pocket, as we've heard here today, impacts their ability to take their medications as directed and can have devastating consequences for patients with chronic illness that rely on their medications to keep their symptoms at bay. Compounding this increased burden of cost sharing that patients are facing, patients are expected to assume-- or that patients are expected to assume, PBMs are also restricting the use of

patients' out-of-pocket assistance programs. Historically, third-party entities, including manufacturers, have been able to offer copay card programs to patients facing high out-of-pocket costs. Now insurers and-- or health plans and PBMs are increasingly adopting policies, called accumulator adjustment programs, that block manufacturer coupons from counting towards a patient's deductible. Essentially, by not allowing a copay card or coupon to count toward a patient's deductible, the health plan extends the time that it takes a patient to meet their out-of-pocket costs, and the plan can collect both the copayment assistance and the full deductible from the patient. Plans benefit, and it's at the patient's expense. Copay coupons also deliver value not just by saving patients money but improving medication adherence. A 2014 Health Affairs study on copay cards found that they're effective at lowering costs below $50 per prescription. And when costs can be kept below $250, the study found that patients are far less likely to abandon their therapy at the pharmacy. The burden of patients' out-of-pocket costs can also be relieved by a provision in LB1196 that requires certain medicines be covered by insurers from day one without subjecting patients to high deductibles. As I mentioned earlier, the use of deductibles can require patients to pay the full price of their medicine before their insurance coverage kicks in, and this requirement has risen dramatically over the past several years. Between 2012 and 2017, the percentage of health plan-- insurance plans that employ deductibles has almost doubled from 23 percent to 52 percent, and deductibles usually reset at the beginning of the year for a plan. So this means, for a patient with a high deductible health plan, when they walk into a pharmacy in January, they could be subject to an individual deductible of $1,400 or a family deductible of $2,700, as set in 2020. The amount that patients pay under a deductible, as I mentioned earlier, is usually based on a drug's list price. So a drug with a $100 list price, which a insurer PBM receives a $40 rebate, this is an example for, has a net cost to the insurer or PBM of $60. The patient pays the whole $100 and that all goes back to the PBM. In closing, the system really needs to work better for patients. Policies that count third-party discount programs towards patients' out-of-pocket limits and provide first-dollar coverage for drugs can provide immediate relief for out-- from out-of-pocket costs for patients and make their drugs more affordable. For these reasons, I urge you to vote yes on LB1196 and I'm happy to take questions. Thank you.

WILLIAMS: Questions? Senator McCollister.

McCOLLISTER: Thank you, Chairman Williams.

KATELIN LUCARIELLO: Thank you.

McCOLLISTER: You work for the pharmacy companies. Is that correct?

KATELIN LUCARIELLO: I worked for the biopharmaceutical trade organization, yes.

McCOLLISTER: OK. These discount cards that you spoke of, I'm aware of those. In fact, I've even used one myself. But doesn't a person using those discount cards have to have a certain amount of education or sophistication not-- not every buyer has?

KATELIN LUCARIELLO: Well, it depends on the program. For insulin, for example, most of the manufacturers offer-- actually all of the manufacturers offer patient assistance. PhRMA has created a medication assistance tool to do just this. Their-- the medication assistance tool helps patients be connected to the over 900 patient assistance programs that are available for a variety of drugs, and it's a centralized resource for them to access all of those different programs. So there is a certain amount of education required, but there are also resources out there and we're trying to provide resources to make that easier.

McCOLLISTER: Can pharmacists tell their customers about these discount programs without prohibition?

KATELIN LUCARIELLO: I-- I think you would have to ask a pharmacist that, but I do-- have not heard that they're prohibited from doing that.

McCOLLISTER: OK. Thank you.

KATELIN LUCARIELLO: Thank you.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

KATELIN LUCARIELLO: Thank you very much for having me.

WILLIAMS: Invite the next proponent. Welcome, Ms. Cover.

JONI COVER: Thank you. Senator Williams and members of the Banking, Commerce and Insurance Committee, for the record, my name is Joni Cover; it's J-o-n-i C-o-v-e-r. I'm the CEO of the Nebraska Pharmacists Association. I'm here today to testify on behalf of our members in support of LB1196, and I've also been authorized to testify in support

of the Nebraska Grocery Industry Association in support of LB1196. I really want to thank Senator Morfeld for his introduction of this legislation and for helping us out with this bill this session. My testimony today is going to focus on Section 13 of the bill, which is the audit section. The bill requires the State Auditor's Office to audit the Medicaid pharmacy benefit from January 2017 through December of 2019. And January 2017 is when the pharmacy benefit was carved into managed care. And while we have worked over the years with the pharmacists from the three MCOs, we continue to have challenges with the PBMs that they contract with, so often for UnitedHealthcare, Caremark for WellCare, and now RxAdvance for Nebraska Total Care, particularly in the underpayment for the drugs dispensed to Medicaid patients and for the PBMs to review and remedy those underpayments. Is-- has been mentioned earlier, Caremark and Optum have-- Optum have been audited by several states, and each audit has produced some rather interesting information. When Ohio's auditor reviewed the claims from their managed Medicaid pharmacy benefit in 2017, they discovered $224.8 million in spread pricing in generic drug claims, and that's the difference between what pharmacies were paid to dispense medication to Medicaid patients and what the PBMs reported to the plans. I know that Ohio continues to struggle to rein in these types of activities, most recently in the workers' compensation program. Kentucky discovered over $123 million in underpayments; New York and Pennsylvania have had similar results. States like Kentucky, California, Michigan, and West Virginia, after concerting audit results, have decided to take the pharmacy benefit out of Medicaid-managed care and instead utilize a more of a fee-for-service-type model where the state has more control. That's what Nebraska had before we were carved into the Medicaid-managed care program. I believe that Nebraska's Medicaid contracts were amended in November of 2019 to eliminate spread pricing, which is good, but that doesn't mean that the state is saving money by staying in a managed care program for the pharmacy benefit. So for example, the state of Florida recently reviewed their Medicaid PBM activities and the tide seems to be shifting away from spread pricing under managed care. And now what we're seeing is that the PBMs are paying themselves higher payments for specialty drugs because they own their own specialty pharmacies and they-- which helps them maintain their high profits. There were some interesting things I noted in the fiscal note, which I've never had a seven-page fiscal note before, so that was kind of exciting. But I noticed the comment that we weren't able to determine what the-- if we took specialty out of the Medicaid program, what that would look like, and I think that's interesting because in the first year of managed care, all pharmacies in Nebraska were allowed to

dispense specialty meds. And then the second year it got changed, so it was only the PBM specialty network that were allowed to dispense those. So I-- I would think that we could do a pretty easy comparison on that. I'm just-- I think, as a taxpayer, it'd be interesting to know if this kind of thing, like what's happening in Ohio and other states, is happening in Nebraska, and just to know how the money is being spent. As policymakers, I'm wondering if you're also interested in-- in-- in the taxpayer money at the expense of patients and pharmacies and Nebraska businesses. I think transparency in the spending of public funds is important. I'm happy to provide any of the reports to you that have been mentioned today, if you'd like them. Some of them are kind of long, so I don't know if you need any interim reading, but I'm happy to provide those to you. And I just want to say thank you to the committee. I know this is your last hearing, so you saved the best for last. And thank you for all your work this session. This committee hears lots of interesting and challenging issues, and-- and this is one of them. So thank you for that.

WILLIAMS: Thank you, Ms. Cover. Questions? Senator Kolterman.

KOLTERMAN: Thank you. Joni, how does the-- how does the Medicare fit in to all this, because that's a Part D, and do they go through PBMs with Medicare?

JONI COVER: They do, they do. Medicare's having some of the same challenging issues as Medicaid and commercial plans, so this bill won't touch Medicare because it's a federal plan.

KOLTERMAN: Right.

JONI COVER: But, yes, we have the same, if not worse, issues in Medicare. One of the things that Medicare deals with is direct and indirect remuneration fees, so that's sort of extra clawback, if you will; the clawback issue that we had last year, it's sort of amplified. That's the easiest way to explain it. It's kind of a complicated issue, but there was actually a very good study that was just released, and I'm happy to provide that to the committee, about what we're seeing in the Medicare space as far as DIR fees and PBMs, so I can get that for you.

KOLTERMAN: OK. Thank you.

JONI COVER: You're welcome.

WILLIAMS: I think your testimony pointed out that all of the pharmacies used to be able to dispense specialty drugs and then that changed. Why did that change?

JONI COVER: That was what was in the Medicaid managed care RFP for the state of Nebraska. So for one year there wasn't a carve out, and then the second year they were allowed to say, no, these are specialty networks.

WILLIAMS: Additional questions?

McCOLLISTER: I have one.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, and following up on Senator Williams' questions, Joni, did that have the effect of raising drug prices in Nebraska when that occurred?

JONI COVER: Well, that's a great question, and I think that's what the audit can tell us. Maybe it didn't; maybe it actually saved the state money by having that specialty network. But we don't know that until we-- until we look into those-- to those contracts.

McCOLLISTER: Thank you.

JONI COVER: You're welcome.

WILLIAMS: Senator Kol-- OK. Any additional questions? Seeing none, thank you for your testimony.

JONI COVER: Thank you, Senator Williams.

WILLIAMS: Any additional proponents? Going once, twice. All righty, we'll move on to opponents. Anyone here to testify in opposition? Good afternoon.

DAVID ROOT: Good afternoon. My name is David Root. I'm the representative here from Prime Therapeutics. We are PBM. We are the PBM for Nebraska Blue Cross/Blue Shield. We service over 35-- over 30 million Americans, including those members who have Nebraska Blue Cross/Blue Shield. We are also an employer in the state of about 420 people operating in a center we have in Omaha. I think the one thing we can agree to today is that this bill will eliminate, if passed, many of the efforts PBMs use to control costs. I think that is evident by the stated amounts of at least $2.8 million worth of additional

cost to two of the state plans, the university system and the state employee system. So the-- I think we need to sort of go through a few things. The assertion that PBMs are adding cost doesn't make sense when you look at the fiscal impact, as this bill argues. This bill would remove the role of the PBM in the-- in the utilization of those plans and, thereby, add cost to the benefit that those-- those two plans offer. We do the same thing for employer groups, unions, and others who buy insurance on the exchange. The role the PBM, and I heard-- we heard earlier, is to decrease costs. We do this in three main ways. We leverage drug manufacturers to compete with each other on price; we leverage pharmacies to compete with each other on service and price; and we bring scale to the drug-delivery system. The size of our mail order facilities and our specialty pharmacies make it possible to generate savings we are able to pass on to consumers, employers, labor unions, and health plans. That same scale allows PBM specialty pharmacies to provide a level of clinical-- clinical focus-- excuse me, typically not found at a retail shop. We also drive-- the third item is to drive specific-- excuse me, programs for medical adherence. We've been all over the place today, so I'm going to cover a couple of different things that I think are important for this group to understand as it relates to this-- this bill. Spread pricing, we just got finished having a conversation about that. As I talked about in front of this committee last year, at around the same time around the same bill, spread pricing is an option that a payer can utilize. At one point, your state Medicaid program had a spread pricing option. That spread pricing contract that they wrote and they bid provided them with a specific level of financial certainty. In other words, their cost structure for the benefit was based around-- in a simple administration fee. The other activities were-- the costs for those other activities were reduced because the PBM was allowed to assume some risk by negotiating lower reimbursement rates with pharmacies and keeping the difference between what they contractually agreed to charge the state and what they're going to pay the pharmacy. So the spread arrangement became a pay-for item for the various services that the state paid the PBM to perform for their Medicaid populations. The state chose not to do that some time around-- in late 2018, the state chose to rescind that contract and go to what we call a full pass-through. That's fine. That is your right as the payer to do that. The PBM did not initiate that requirement. That was done at the behest of the health plan. The other thing we talked about is couponing programs. Couponing programs are programs instituted by branded manufacturers to offset and to generate market share for drugs that-- for branded products that are often more expensive. Now one of the things we heard earlier, these products are not offered to indigent

people. These products are not offered to the uninsured. These products are only offered to people who have insurance. It is a way for the manufacturers to drive market share to their product that they cannot otherwise get in the marketplace. The other comment about them that we heard that is-- needs to be explained is the-- the notion that the PBM or the health plan keeps the rebate and keeps the coupon cost. When a coupon is used, the consumer only has to pay the $5, in the example. The coupon-- then the manufacturer covers the cost of the other $2,500, let's say-- it's a $3,000 drug-- but the health plan has to pay the full cost of that product, $3,000. So the health plan is in the best interest to try to steer the consumer to the lowest possible cost. But they can't do that when they use-- when a coupon is used and it is used outside of the knowledge of the PBM or the health plan. And that's one of the reasons why we try to encourage people to use our specialty pharmacies, so that we can be made aware of when a coupon is used. And I'll remind you that coupons are considered illegal kickbacks in the Medicare Part D program, as well, by the federal government. And as far as CMS is concerned, Centers for Medicare and Medicaid Services, with respect to DIR, direct and indirect remuneration, and other bills that we've seen in states mentioned in Florida, the Florida legislature has only convened for the last two weeks. Yes, there's a bill put in for that, but let's see where it goes. And then CMS has reviewed every year, reviewed the requirements around DIR, and every year continues to enforce those requirements. And lastly--

WILLIAMS: Thank-- thank you, Mr. Root.

DAVID ROOT: Thank you.

WILLIAMS: We'll see if there's questions?

DAVID ROOT: Sure.

WILLIAMS: Senator Kolterman.

KOLTERMAN: Thank you, Mr. Chairman. So Prime Therapeutics, do you mandate mail order?

DAVID ROOT: No.

KOLTERMAN: So-- so they-- the consumer still has the opportunity to use the local pharmacies?

DAVID ROOT: That is correct. You are actually already, sir, prohibited from mandating mail order in your state code, Section 44-513.02.

KOLTERMAN: Do you get-- do you get a substantial savings if you do go to mail order?

DAVID ROOT: We're prohibited from generating-- we do get a savings, but we're prohibited from incentivizing that savings back to the consumer by this statute.

KOLTERMAN: OK. And then you alluded to the fact that under the Part D, the coupons, the re-- the coupons are illegal.

DAVID ROOT: Yes.

KOLTERMAN: Is there any reason that wasn't put into statute as it pertains to Medicaid, do you know?

DAVID ROOT: Yes, because those med-- those-- those-- the-- the-- I think the thought was most states had sort of a-- I don't know how to pronounce, how to say it-- a sort of perverse understanding about the benefit of those coupons. And you have to remember that coupons didn't exist in the beginning when we were talking about the most expensive drug being $250. Now we're talking about the most expensive drug being, you know, a couple of million dollars, and a large population of drugs in the $1,500 to $5,000 range. And so those coupons then have become-- and if you look at the coupon situation, you can see how the coupon situation has morphed. Originally, those coupons were actually what you think of when you think of a coupon, right, a little piece of paper that you take in, provide to the pharmacy. Now the manufacturers, because we are using these coupon accumulator programs, which don't allow people to take credit for something they didn't pay for to subvert the benefit, the formulary, they are now taking to mailing consumers Visa cards, Visa debit cards with $150 on them, or in some cases we've even seen cash dispensed to consumers for the utilization of these programs, and again, in order to generate market share for a product that the manufacturer is otherwise not able to generate. Remember, orphan drugs, orphan drugs don't have coupons. The drugs that have coupons-- we heard one mentioned, diabetes. Most diabetes drugs are coupon, because most diabetes drugs are insulin, which is a common product. So these companies compete by offering different kinds of coupons for their products and that-- in-- in an effort to drive consumers to their products.

KOLTERMAN: And the-- and the last-- the last question I'd have of you is, are you working with NAIC to get model legislation--

DAVID ROOT: Yes.

KOLTERMAN: --passed as it pertains to PBMs?

DAVID ROOT: Yes, sir, we are working with NAIC. We have continued to work with them. They have a fairly long and deliberative process, but we are working with them and, frankly, have had some good success in-- in the discussions that we've had.

KOLTERMAN: OK. Thank you.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yes, thank you. Have any states passed the model legislation you just spoke of?

DAVID ROOT: Not to my knowledge, no.

McCOLLISTER: Are you a publicly held company?

DAVID ROOT: No, we are not.

McCOLLISTER: You're a nonprofit?

DAVID ROOT: We are owned by 22 nonprofit Blue Cross/Blue Shield plans.

McCOLLISTER: I see.

DAVID ROOT: So everything we make-- the best way to think about us is sort of like an electric co-op. Everything we make goes back to our plan owners.

McCOLLISTER: I see. We didn't fully explain in your comments the rebate programs. These are monies returned to whom?

DAVID ROOT: The rebate dollars that we receive are returned directly to the payer. So if it's in a--

McCOLLISTER: Who's the payer?

DAVID ROOT: In-- in an ERISA plan case, it would be the employer. In a-- in a health plan instance, it would be in this case Nebraska Blue Cross/Blue Shield.

McCOLLISTER: So they receive the rebates, not the customer.

DAVID ROOT: That is correct. And the rebates we receive, if we were to have the state Medicaid program, by law, would 100 percent go back to the state Medicaid program.

McCOLLISTER: So Nebraska currently receives rebates?

DAVID ROOT: Yes, Nebraska has a-- the Nebraska Medicaid program is a PDL list, a preferred-- a preferred drug list that they create. The state creates that list. And so one of the things that we heard about with respect to rebates is that PBMs are taking the most rebated drug, instead of the least costing drug. And that is a-- that is just a-- a misinterpretation of a-- a blatant misinterpretation of the facts. PBMs as-- in the state Medicaid program, are required to drive to the lowest net cost. So there may be a product that is $100, there may be a branded product that is $150, but with the rebate, that product only ends up costing the health plan $75. The health plan is then able to plow that savings back into keeping premiums and out-of-pocket costs lower than they would be with a continued escalation.

McCOLLISTER: How much money did the state of Nebraska receive in rebates in 2019?

DAVID ROOT: The state? I-- I don't--

McCOLLISTER: Yes.

DAVID ROOT: --you'd have to ask someone who manages the state Medicaid program. I'm afraid my company doesn't do that, so I don't know. But your State Medicaid Director would be able to tell you that.

McCOLLISTER: So conceivably we could use that rebate to offset some of the-- the fiscal note in this bill.

DAVID ROOT: No, because the money from the rebates are baked into the original bid.

McCOLLISTER: OK. Thank you.

DAVID ROOT: It's OK. Thank you.

WILLIAMS: Additional questions? Senator Quick.

QUICK: Thank you, Chairman. I know you were-- you were asked earlier about-- on the mail orders, now are employers also prohibited from that or, you know, requiring their employees, or do you know that?

DAVID ROOT: So if-- if a plan-- if an employer group is an ERISA plan, a-- a self-funded program, they are under what is called the federal ERISA preemption program, their-- their rules and regulations are governed by Congress.

QUICK: OK.

DAVID ROOT: And they are not subject to the state program. So in the example that we heard today, if you're referencing that and we can go back to that, that employer, it sounds like, chose to have a maintenance medication at mail-order program in place for their maintenance medications. That was their choice. Under the ERISA preemption doctrine, they're allowed to have that choice, if they want to, and exercise some-- you know, exercising the savings that the PBMs can offer through a mail-order program of scale.

QUICK: OK. All right. Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you for your testimony.

DAVID ROOT: Thank you.

WILLIAMS: Invite the next opponent. Welcome back, Mr. Bell.

ROBERT BELL: Thank you, Chairman Williams. And, members of the Banking, Commerce and Insurance Committee, my name is Robert Bell, last name is spelled B-e-l-l, and I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. I am here to testify today in opposition to LB1196. And as Senator Morfeld pointed out in his opening, there is work being done at the NAIC level. It looks like they got their work started in July. I know there were a number of calls. I actually listed-- listened in to a couple of them where they were gathering information. They-- they have a charge in 2020 to look at whether or not to adopt a model law or to tweak the model laws that do exist already and that-- that touch on this area. So work is progressing, and it's slow because it's deliberative and collaborative. And hopefully by the end of their work, it-- there will be a product that both pharmacists and insurance companies can agree on. You know, the point of PBMs is to keep premiums down. And we heard from PhRMA saying that the cost sharing are going up, and they are, as are premiums. Everything is going up. The cost of healthcare is going up, and really what we need to look at is lowering that cost. We think that would be more important. Anyway, with that, thank you for the opportunity to testify.

WILLIAMS: Thank you, Mr. Bell. Questions? Seeing none, thank you for your testimony.

ROBERT BELL: You're welcome.

WILLIAMS: Invite the next opponent. Welcome, Ms. Gilbertson.

KORBY GILBERTSON: Thank you, Chairman Williams. Members of the committee, for the record, my name is Korby Gilbertson, spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Medica. And in light of your comment at the beginning of the hearing, to be brief, because this is the last hearing, I will let you read the letter, but it gives a little bit more information about what the opponents already have talked about and some specific comments about specialty pharmacies and the coupon issue.

WILLIAMS: Any questions? Seeing none, thank you for your testimony.

KORBY GILBERTSON: Thank you.

WILLIAMS: Invite the next opponent. Welcome, Ms. Nielsen.

COLEEN NIELSEN: Good afternoon, Chair-- Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, that's spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the America's Health Insurance Plans, also known as AHIP, testifying in opposition to LB1196. I don't have a lot to add to this, but other than to say that I've always appreciated this committee's work on this issue. This bill does contain a lot of issues in it, and we are happy to continue to work with the pharmacists in the future. But we are hoping that the NAIC will develop a model that we can bring to this committee at some point and discuss it. With that, I'd be happy to answer any questions.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. Some of the issues we heard today, do you think the model legislation will sufficiently address those issues?

COLEEN NIELSEN: You know, I am not aware of what exactly they are working on. And I have not seen any language from the NAIC as of yet, so I can't answer that.

McCOLLISTER: Thanks, Coleen.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

COLEEN NIELSEN: Thank you.

WILLIAMS: Invite the next opponent. Welcome, Mr. Dunning.

ERIC DUNNING: Thank you, sir. Mr. Chairman, members of the committee, my name is Eric, E-r-i-c D-u-n-n-i-n-g. I'm a registered lobbyist for Blue Cross and Blue Shield. I'm here today to-- in opposition of the bill. And as Mr. Root and others have covered the ground pretty thoroughly, I'd open myself up to any questions, and thank you.

WILLIAMS: Questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. Mr. Dunning, can you tell me what percentage of Blue Cross and Blue Shield's market share is ERISA compliant, approximately?

ERIC DUNNING: Believe it or not, I actually don't check our own numbers on that. But I do know that in a-- that in a general setting, it's about half and half of insured people. Right? So-- so to the extent that we've heard complaints about folks getting required to use mail-order pharmacy, my conjecture is-- is that those folks are covered by ERISA-governed plans. And so they'd be subject to the United States Department of Labor rather than Nebraska state statute.

KOLTERMAN: OK. Thank you.

WILLIAMS: Senator--

KOLTERMAN: So-- so your estimate might be about 50/50?

ERIC DUNNING: About 50/50 for insured people.

KOLTERMAN: OK. Thank you.

WILLIAMS: Senator McCollister.

McCOLLISTER: Thank you, Chairman Williams. Do you have anything else to add, Mr. Dunning, about the role of rebates in pricing for health plans in Nebraska?

ERIC DUNNING: Well, you know, I-- not really. I think what I-- however, in order not to completely deny you an answer, I would point out that, again, Prime Therapeutics is completely owned by a series of not-for-profit Blue plans who rely on Prime to negotiate with pharmaceutical companies. Blue Cross and Blue Shield of Nebraska, although we serve a lot of Nebraskans, does not necessarily have a great deal of negotiating leverage with very large pharmaceutical companies unless we band together with our fellow not-for-profit Blue

plans, and Prime Therapeutics is the vehicle that allows us to do that.

McCOLLISTER: As a part of that, that relationship, you receive rebates?

ERIC DUNNING: We don't receive the rebates directly. It would be in the form of-- of monies that are returned from Prime that we would get as an owner.

McCOLLISTER: Thank you.

WILLIAMS: Does Prime Therapeutics also own its own pharmacy?

ERIC DUNNING: Honestly, Mr. Chairman, I don't know the answer to that question, and I'd have to get back to you.

WILLIAMS: OK. Thank you. Any additional questions? Seeing none, thank you, Mr. Dunning.

ERIC DUNNING: Thank you, sir.

WILLIAMS: Additional opponents? Welcome, Mr. Brunssen.

JEREMY BRUNSSEN: Hi.

WILLIAMS: You're in the wrong committee today.

JEREMY BRUNSSEN: [LAUGH] Glad to be here.

WILLIAMS: But Senator Howard had to leave for just a minute, so. [LAUGHTER]

JEREMY BRUNSSEN: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Jeremy Brunssen, J-e-r-e-m-y B-r-u-n-s-s-e-n, and I am the interim director for the Division of Medicaid and Long-Term Care within the Department of Health and Human Services. I am here to testify in opposition to LB1196, which will change provisions surrounding specialty pharmacies in Medicaid pharmacy benefit manager networks and require an audit of the Medicaid pharmacy benefit program. So I'll summarize a bit, as others have, and get across our-- our main concern, and really my testimony that's been provided hits to that. Really, the purpose of our testimony is just to speak to concerns about the effectiveness of the audit as it's constructed and drafted in the bill. And so, as talked about already today, it's important to note that the bill

instructs us to do a comparison of cost from 2017 to 2019, during which that period 99.6 percent of our claims ran through managed care and only 0.04 percent of our claims ran through fee-for-service. I don't know that we will get a valid study or actionable information out of the study as it's constructed in the bill. So we'd have concerns just because there will be skewed results due to variance in volume and mix of claims as it's prescribed. I would note that, as the bill does disallow the use of the spread pricing reimbursement models by PBMs, and others have-- have stated before me, the Division of Medicaid and Long-Term Care did change our contracts last year to no longer allow for spread pricing and our MCOs currently are all operating under a pass-through contract arrangement within the Medicaid program. So for the reason around the concerns with the study, we respectfully request that the committee oppose the legislation. And I'd be happy to answer any questions you have.

WILLIAMS: Thank you, Mr. Brunssen. Senator Kolterman.

KOLTERMAN: As I'm-- as I'm aware of what goes on in HHS, you do get-- on our managed care, you do get all 100 percent the rebates, don't you?

JEREMY BRUNSSEN: That's correct, Senator. So I-- I have a couple of notes that can cover about that because I know there were several questions prior to me being-- joining you all here. So the way that we operate in the Medicaid program is we actually have a couple different streams of rebates. We pay 100 percent of the gross cost up front through capitated payments to the managed care companies who then administer their plans or their benefit package through PBMs. But because we pay 100 percent of the cost for that drug on the front end, the state directly receives federal drug rebates and supplemental drug rebates through the PDL list, as mentioned earlier. So we get 100 percent of those rebates to off-- to offset the expenditures that the department is making each year. And I know there was a question earlier about the amount. It can vary a little bit year to year, depending on the actual experience, what-- what specific therapies are billed to the program, but I would say roughly it's-- it can range anywhere from around $100 to $125 million a year in terms of rebates. We actually publish, each year in our annual report, the Medicaid annual report on our website. One of the items that we do publish, in addition to all of our expenditures, is the net amount of rebates-- or I'm sorry, the total amount of rebates we receive each year, each state fiscal year.

KOLTERMAN: And the last question that I have, if it's all right, on-- when-- when you're working with the consumer, the people that are on Medicaid, you don't mandate-- you can't mandate that they use a mail-order pharmacy. Is-- is it included, though, if-- as an option under your plans with the PBMs?

JEREMY BRUNSSEN: I'm going to-- I don't-- I don't believe we do any mandating in that space. I would-- I can follow up with our pharmacy director to provide exactly what language our contract does allow or does not allow. I apologize. I can't answer that--

KOLTERMAN: No, that's OK.

JEREMY BRUNSSEN: --that level of detail. What I would say is the state, I-- I think it was mentioned earlier, didn't explicitly say that our health plans had to do a pass-through or had to do a spread pricing, or in every aspect of how an operation is run through a health plan, we didn't mandate every aspect of how they run the business. They propose it, we review it, we learn over time, and then we make changes, as we did in 2019, based on looking at what's going on across the st-- the nation and what's best practice and looking at our own data.

KOLTERMAN: OK. Thank you.

JEREMY BRUNSSEN: Yep.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. And thank you for your testimony. The bill, as it's currently drafted, includes that the State Auditor would do audits on-- on this particular issue. Is that correct?

JEREMY BRUNSSEN: Yes, so through the Auditor, Auditor of Public Accounts, correct.

McCOLLISTER: And that, the amount was approximately $85,000 a year for two people. Is that right?

JEREMY BRUNSSEN: So I think I can speak to-- the Medicaid fiscal note had basically two people-- because we aren't sure exactly what's going to be audited, it can be very complex. This Auditor of Public Accounts had a separate fiscal note specifically for their department. I think it was around $50,000, going off memory. The challenge that we run into is when we talk about cost, what does that mean? Does that mean

the amount we're paying in capitation rates? Because we might pay $600 on a per member per month, but that's for all services for that member: behavioral health services, pharmacy services, physical health. So we have to understand, is it-- are we trying to break down every capitation payment, whether they're a disabled individual, whether they're a family cohort member, a TANF-type population? Is it what's actually-- what the actual experiences through encounters that are being paid to pharmacies? And so there's a lot to unwind, there's a lot of work to do to-- to help understand what are we trying to actually measure and what are we trying to achieve.

McCOLLISTER: So you really don't see a benefit of doing that work. Is that correct?

JEREMY BRUNSSEN: Well, I-- I think it's-- I-- I wouldn't say that-- we're-- we're constantly auditing our own data. We have many entities that audit us all the time as well. We're not opposed to doing appropriate audits. We're just not sure that comparing fee-for-service to managed care in this-- in this instance, in the way that it's prescribed, would provide value because all of our experience is in one bucket. What are we comparing?

McCOLLISTER: How-- does the federal government do similar audits for this kind of work?

JEREMY BRUNSSEN: I would say that we regularly get audited by the federal government. And prescription drugs, we've had audits in the past around through OIG and other entities. We do surveys through the GAO and other entities as well. I can't say that this specific one has been surveyed by the state of Nebraska before.

McCOLLISTER: With those audits the federal government has done, have you found any instances of-- of problems in the past?

JEREMY BRUNSSEN: I'm not aware of any instances related specifically to PBMs in Nebraska.

McCOLLISTER: Thank you.

WILLIAMS: Any additional questions? Senator Howard, yes.

HOWARD: Thank you.

McCOLLISTER: You're back.

HOWARD: Thank you, Senator Williams. Thank you for visiting with us today. You forgot I was on this committee too.

JEREMY BRUNSSEN: Senator Williams reminded me. [LAUGHTER]

HOWARD: Don't worry, I came back just for you. I actually just-- so we've dealt with this issue on PBMs in HHS as well. Has the department considered any-- any sort of-- so the department doesn't regulate PDMs in-- PBMs in any way?

JEREMY BRUNSSEN: So you probably missed a little bit of our conversation. We have a lot of contract divisions. As-- as you know, we have a massive contract, but certainly we don't regulate every aspect of how the managed care entities or their subsidiaries or their subcontractors operate. Certainly, over time, we evaluate what's going on in the market; we look at what's going on nationally. In this space, we actually did make a change to our contracts last year to prohibit spread pricing. We-- not all of our plans were doing it, but two of them were. And one was actually, at the time that we were drafting the change, was already moving out because we were raising concerns, looking at the federal-- the-- the national marketplace and just asking questions, and so I think it's cleaner. They also hear from providers and want to, you know, work with providers on issues. So I would say that we have the authority through our contracts to manage what we feel is necessary to be managed.

HOWARD: OK. And then so you've addressed the issue of spread pricing. Were there other issues that you heard in committee today that haven't been addressed in those contracts?

JEREMY BRUNSSEN: I think I would want to go back and look and understand what the concerns were. I think there's a lot of-- these are complex issues, and even for the department who deals with it, and I'm not an expert in all of them. But I think, you know, to give an example, I think-- I have-- we have notes and we're going to go back and read, you know, work through what the-- what the concerns were. But there was some talk about 340B pricing, I think it's important to note that the 340B pricing actually in the-- in the Medicaid program, we cannot collect rebates on because it's discounted up front. So it's important to understand the context of how the programs operate. So it actually lowers the price on the front end and the state cannot collect rebate on those 340B drugs. So there's a lot of nuancing to it and it's-- depending on where you sit, you have a certain perspective, but it's important to look at the whole picture.

HOWARD: OK. OK. Well, thank you for visiting with us today. We appreciate it.

JEREMY BRUNSSEN: Thanks.

WILLIAMS: Any additional questions? Seeing none, thank you, Mr. Brunssen--

JEREMY BRUNSSEN: Thank you.

WILLIAMS: --for your testimony. Any additional opponent testimony? Seeing none, is there anyone here to testify in a neutral capacity? Good afternoon.

RUSS KARPISEK: Good afternoon, Senator Williams and members of the committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor of Public Accounts, Charlie Janssen. We are-- I am just here because of Section 13 and the audit of-- for the Auditor. The Auditor and I do not make the decisions that you do. We tried that and we didn't do so hot, so now we're on the other side of that. [LAUGHTER] It's not that funny. Anyway, yes, so we do want to thank Senator Morfeld for including us in this and also realizing that there would be some fiscal cost to that. That doesn't always happen for us, but the Auditor is still always happy to look into things for senators if-- if there's something that needs to be looked into. As you saw, we do have, I think, a $50,000 fiscal note; that would be the actual cost, so it could be less. As the last testifier said, we're not positive on how far it would go, how far it would delve, because we don't normally do something quite like this. So we tried to be conservative and give a higher number so it wouldn't go above that. But again, we would be happy to-- to try to look into this for the Legislature. Again, not exactly what we always do because we usually just-- we'll look into financial audits. This would be a little different, I suppose. And anyway, I'd be glad to answer any questions. I just wanted to make sure that you had-- that we were here to say we know about it and we're not against it, but we're also not for it, I guess. We'll just-- we'd be glad to do what the Legislature deems. So I'd be glad to take any questions. Thank you.

WILLIAMS: Senator Karpisek, I-- I think you're here because you think you might be the last witness of the year in Banking, Commerce and Insurance with this--

RUSS KARPISEK: And my one and only time here this year, lucky-- lucky for you.

WILLIAMS: But Senator McCollister has a question.

RUSS KARPISEK: I'm sure he does.

McCOLLISTER: And this may be the last question.

RUSS KARPISEK: I doubt it.

WILLIAMS: I doubt it. [LAUGHTER]

RUSS KARPISEK: I've been here all afternoon. I don't think so.

McCOLLISTER: State senators, even when you were here, can request audits from the State Auditor.

RUSS KARPISEK: Correct.

McCOLLISTER: Would we still have that ability on any of the things we've discussed today?

RUSS KARPISEK: Yes, and of course, it is at the Auditor's discretion, whether, I suppose, there would be an audit or not, because, again, we are a separate entity. But in Senator-- Auditor Janssen's six years now, I don't think we've ever turned any down. Now that leads to a question that I really didn't want to get into too much, but I think you were kind of going there. My question was, do we need this bill? And I think that maybe we do, because I think it would get into some performance audit. We-- we, the Auditor's Office, can do some performance audit, but that is on cities and counties, not usually-- not state agencies unless directed by the Legislature. So again, I don't know how you would do the audit on this without getting into some performance audit, because you can just-- you look at the-- the numbers and, yes, the money went from Medicaid to the PBM-- to the person, but I guess to-- to do any comparisons and to do different things like that, I think, would probably be a little bit different, again, than what we normally do. So my answer is, yes, we don't always-- we don't have to do it. When I say "we," I'm speaking for the Auditor. But he really tries to.

McCOLLISTER: Thank you.

WILLIAMS: Any further questions? Seeing none, thank you for your testimony.

RUSS KARPISEK: Thank you.

WILLIAMS: Any additional neutral testimony? Seeing none, Senator Morfeld, while you're coming up, we have letters. We have letters in support from Michelle Grossman on behalf of the Combined Health Agencies Drive; Bio Nebraska Life Sciences Association; Brain Injury Alliance Nebraska; Epilepsy Foundation of Nebraska; The Kim Foundation; NAMI Nebraska; Nebraska AIDS Project; Nebraska Chapter, National Hemophilia Association; from Matthew Magner, from the National Community Pharmacists Association; Marsha Yungdahl, from herself; Todd Hlavaty, from the Nebraska Medical Association; Nick Faustman, from the American Cancer Society; Lisa Graff, from the Nebraska Academy of Nutrition and Diabetics; Steven Anderson from the National Association of Chain Drug Stores; Allison Goodenkauf, from herself; and Jim Kennedy [PHONETIC], from Think Whole Person Healthcare. And one letter in opposition from James Watson, from the Nebraska Association of Medicaid Health Plans. Senator Morfeld, welcome back.

MORFELD: Thank you, Chairman Williams, members of the committee. My organization that I'm the CEO of has an audit every year and I know that some advice that I got from my accountant and my attorney at one point was beware of the guy who's afraid of the audit. And so I-- I think that at the very least, what we should be doing is requesting an audit. If it has to-- we have to-- got the rest of the legislation and-- and require a performance type of audit by the Auditor, I think that that would be wise, it would be a good investment, $50,000, to look at where millions of dollars is going. And so I'm happy to work with you guys on this, whether it be this session or next. But this is a serious issue that must be looked into.

WILLIAMS: Thank you, Senator Morfeld. Any final questions for the senator? All righty. Well, that will close the public hearing on LB1196, and the last hearing of the Banking, Commerce and Insurance Committee for this session of the Legislature. Thank you all for being here.