

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Health and Human Services Committee February 5, 2021  
Rough Draft

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**ARCH:** Good afternoon. Welcome to the Health and Human Services Committee. My name is John Arch. I represent the 14th Legislative District in Sarpy County and I serve as Chair of the HHS Committee. I'd like to invite the members of the committee to introduce themselves starting on my right with Senator Murman.

**MURMAN:** Hello, I'm Senator Dave Murman from District 38. I represent seven counties to the west, south and east of Kearney and Hastings.

**WALZ:** Hi, my name is Lynne Walz. I represent Legislative District 15, which is all Dodge County.

**WILLIAMS:** Matt Williams from Gothenburg, Legislative District 36: Dawson, Custer, and the north portion of Buffalo Counties.

**ARCH:** Also assisting the committee is one of our legal counsels, TJ O'Neill, and our committee clerk, Geri Williams, and committee pages, Kate and Rebecca. A few notes about our policies and procedures. Please turn off or silence your cell phones. This afternoon we will be hearing three bills and we'll be taking them in the order listed on the agenda outside the room. The hearing on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill and then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. For those of you who are planning to testify, you will find green testifier sheets on the table near the entrance of the hearing room. Please fill one out, hand it to one of the pages when you come up to testify. This will help us keep an accurate record of the hearing. We use a light system for testifying. Each testifier will have five minutes to testify. When you begin, the light will be green. When the light turns yellow, that means you have one minute left. When the light turns red, it is time to end your testimony and we will ask you to wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone and then please spell both your first and last name. If you are not testifying at the microphone but want to go on record as having a position on a bill being heard today, please see the new public hearing protocols on the HHS Committee's web page at [NebraskaLegislature.gov](http://NebraskaLegislature.gov). Additionally, there is a white sign-in

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sheet at the entrance where you may leave your name and position on the bills before us today. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The agenda posted outside the door will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and Transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. This committee has a strict no props policy. With that, we will begin today's hearing with LB592. Welcome, Senator Stinner.

**STINNER:** Good afternoon, Chairman Arch and members of the Health and Human Services Committee. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent the 48th District, all of Scotts Bluff County. LB592 allows assisted living facilities, which are collocated with long-term care facilities to utilize automated medication dispensing machines, providing procedures are followed regarding the Automated Medication Systems Act. This bill was brought to me by the Nebraska Department of Veterans' Affairs to increase the efficiency of its operations. Currently, there exist automated pharmacy infrastructure in its long-term care facilities. However, due to existing language in the statutes, its assisted living facilities within the same physical structure cannot-- cannot be used, cannot use those machines, thereby having to dispense medication manually, which can be inefficient and time consuming. This bill is a fairly straightforward fix, which adds permissive language so that a dispensing machine located in the long-term care facility can also be used across the hall in the assisted living facility. This bill requires compliance with the Automated Medication Systems Act, with grants-- which grants some flexibility for pharmacies that may not be able to utilize the efficiency of an on-site dispensing machine. Director Hilgert, director of Veterans' Affairs, here to give you more detail on LB955 [SIC] and answer more technical questions. With that, I thank you and I would ask for questions. But before I ask for questions, I will say that we've had discussions with the Pharmacists Association. There are some amendments that I think we can easily

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agree to, to ferret out whatever language differences we have. So there will be an amendment to this. But what it does for me, I've got a veterans' facility in Scottsbluff, has assisted living with long-term care. Obviously, this adds to efficiencies and will help the-- the Veterans' Administration dispense drugs not only more efficiently, but more accurately. So with that, I'll take questions.

**ARCH:** Thank you. Any questions for Senator Stinner? Will we have a pharmacist here today to talk to us?

**STINNER:** I think you have somebody from the association--

**ARCH:** I see somebody waving.

**STINNER:** --that's going to--

**ARCH:** So, OK.

**STINNER:** --eventually, yes.

**ARCH:** I agree. Thank you.

**STINNER:** I will not be closing by the way.

**ARCH:** All right, thank you, waive closing.

**STINNER:** I've got hearings across the hall so.

**ARCH:** OK.

**STINNER:** Thank you.

**ARCH:** Thank you. First proponent for LB592.

**JOHN HILGERT:** I think I'm on a basketball court and someone took a spill.

**ARCH:** Oh.

**JOHN HILGERT:** Thank you very much. Good afternoon, Chairman Arch and members of the Health and Human Services Committee. My name is John Hilgert, J-o-h-n H-i-l-g-e-r-t. I am the director of the Nebraska Department of Veterans' Affairs. I want to thank Senator Stinner for

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introducing this bill at the request of the agency. As Senator-- Senator stated, this is a fairly straightforward bill, and I want to take this opportunity to discuss the process as it relates to our automated medication dispensing machines and how this bill will assist our process and our teammates. Our Western Nebraska Veterans' Home is located in Scottsbluff. We have an automated medication machine that our pharmacist loads with member data and prescriptions. The machine then processes the pharmacy orders and dispenses them in clear packets. I brought some. I won't hold them up, the clear prop thing, I will certainly-- I'm glad you said that or else I would have-- into our medication carts. This process for all of our long-term care beds licensed as skilled nursing beds. Since we have started using this automated medication machine across our system, the agency has realized the time savings of hundreds of hours as a reduction in medication sorting and packaging, and a reduction, a huge reduction in medication waste of approximately 5,000 doses per month agencywide. Separately, in the Western Nebraska Veterans' Home, we have licensed assisted living beds as part of the same building. Everywhere else in all the other three homes, they're all licensed as skilled. And in Western Nebraska, again, they're part of the same building and offer medication assistance to our members who do not self-administer their medications. For these members, our pharmacist enters their data and medications into a separate system, which then generates printed blister packs, which are then loaded and then sent out on a medication cart. This process of manually loading information and blister packs consumes approximately eight hours a week and results in a larger chance of human error and certainly more medication waste. The language in LB952 [SIC] is structured to allow our teammates to utilize the same automated dispensing machine that is already on site for our assisted living members, creating this large efficiency of time and process while reducing medication waste and reliance on blister packs and manual data entry. I am aware, too, as far as today, that there has been expressed some concerns. We reached out to the Assisted Living Association and so forth, and we believe we-- we tried to get there. If there's any technical amendments that would ultimately result in allowing not only the Western Nebraska Veterans' Home, but other long-term care facilities that have a skilled nursing unit at the same place as an assisted living to realize the efficiencies that today's technology can offer, we'd certainly support that. Thank you, Mr. Chairman.

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**ARCH:** Any questions? Seeing none, thank you very much for your testimony.

**JOHN HILGERT:** Thank you very much for having me, appreciate it.

**ARCH:** Next proponent for LB592. Seeing none, are there any opponents for LB592? Welcome.

**MARCIA MUETING:** Good afternoon. Senator Arch and members of the Health and Human Services Committee, my name is Marcia, M-a-r-c-i-a, Mueting, M-u-e-t-i-n-g. I'm a pharmacist and I am the chief executive officer of the Nebraska Pharmacists Association, and I am grateful to be here to express my concerns about LB592. I understand that the changes requested in the Automated Medication Systems Act were specific to a unique facility in Nebraska. We have not had the opportunity to work with the stakeholders and understand the circumstances which brought forth this bill. I want to assure you that automation in any facility offers better recordkeeping, security, and reduces waste. The Automated Medication Systems Act is one of many, one of many acts that govern the practice of pharmacy in Nebraska. I'm certain that the party requesting the law changes is unaware of the impact of inserting the words "or assisted living facility" on page 2, line 8. Assisted living facilities and skilled nursing facilities are licensed as separate entities with separate requirements, especially for pharmacy. The provision of medications for patients at these facilities is different as well. Adding the proposed language will not be helpful to most assisted living facilities in Nebraska, as they are often staffed by medication aides to provide medications to residents. It's important to note that medication aides are not allowed by law to remove medications from an automated system. Assisted living facilities are not allowed to have an emergency box of medications either. So why does this matter? Why am I here? Well, the federal law requires that an automated medication system in a facility like that must be owned by a licensed pharmacy, placing the responsibility for those medications on the pharmacist at that pharmacy. I would be happy to meet with the stakeholders to further discuss technical concerns. But we would need to discuss not just the Automated Medication Systems Act, the Emergency Drug Box Act, and any other laws that are impacted by a potential change. But this can't be done by just inserting a few words on one page in one act. And I'd be happy to take any questions.

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**ARCH:** Questions? Are there any questions? Senator Walz.

**WALZ:** I just need you to, ple-- thank you for being here first of all.

**MARCIA MUETING:** Sure.

**WALZ:** Thank you, Senator Arch. Could you please explain that reasoning again? I-- I was trying to follow you, but I-- I kind of got lost so the reasoning behind your opposition is, again.

**MARCIA MUETING:** Is that the rules for pharmacy are very different for skilled nursing facility patients versus patients that are in assisted living. For example, a skilled nursing facility patient, they may receive medication pursuant to a chart order, whereas people in assisted living have to have a prescription.

**WALZ:** Um-hum.

**MARCIA MUETING:** And if you look at the language as it's inserted, there's a couple of "ors" in there that might be interpreted incorrectly, either by a facility, someone administering the drug, or the pharmacist. And I just don't want the pharmacists to get into trouble. We want to make sure that this is made clear. I mean, automation is the way to go. This makes sense.

**WALZ:** Um-hum.

**MARCIA MUETING:** But-- but currently, what I think the addition of that language is, is a technical problem and creates conflict in the rest of the act.

**WALZ:** OK. All right, got it. Thank you.

**MARCIA MUETING:** Sure.

**ARCH:** Other questions? I have one.

**MARCIA MUETING:** Sure.

**ARCH:** So an automated dispensing system in an assisted living is almost like a retail pharmacy.

**MARCIA MUETING:** Well--

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**ARCH:** If it requires a prescription,--

**MARCIA MUETING:** Right.

**ARCH:** --then-- then who's dispensing?

**MARCIA MUETING:** The pharmacist is-- is actually loading the machine with the medication in the-- in the right bucket, in the right box, in the right--

**ARCH:** Right.

**MARCIA MUETING:** --container cassette, such that when the-- whoever is administering those medications would type in the patient's name and say, I want, you know, Marcia Mueting's 8:00 a.m. medications. It would put a, you know, the pink pill in there, the thyroid medication and the antipsychotic and the, you know, whatever into one little pouch. And it would all be labeled appropriately per federal and state law for administration to that patient. Does that make sense?

**ARCH:** Yes. Does the patient own the medication then in their particular box?

**MARCIA MUETING:** Well, the boxes are boxes full of-- of enalapril 10 milligrams. So, no, the patient doesn't own those medications. In a nursing home, remember that, too, that--

**ARCH:** I'm talking about assisted living.

**MARCIA MUETING:** Right. In assisted living, the medications are provided to them most often by a med aide, who is not a credentialed individual in Nebraska. OK. In the majority of assisted living facilities in Nebraska, medications are provided to the residents of that facility by someone who is not credentialed, which is different than skilled.

**ARCH:** Right.

**MARCIA MUETING:** Which is why the difference between allowing someone to remove a medication from an automated system to provide it to a patient versus not. I mean--

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**ARCH:** Yeah. I-- yeah, the script, the prescription versus the-- the order, right?

**MARCIA MUETING:** Um-hum.

**ARCH:** So in a nursing home, a physician may order a particular medication be provided, like a hospital.

**MARCIA MUETING:** Right.

**ARCH:** But in that assisted living, it's-- it's a very different-- a very different relationship of the medication to the patient.

**MARCIA MUETING:** It is. And, you know, a lot of times assisted living, those people they're, you know, they are able to eat and feed themselves, dress themselves. They go to their own visits, to their-- to their doctor's office and get a prescription e-prescribed, sent to a pharmacy to be filled for them. Whereas with skilled nursing, the delivery of the prescriptions is really just very different.

**ARCH:** Yeah, I don't want to go too deep into it. But as I was thinking about it, the assisted living, the patient may also have their own supply of medication.

**MARCIA MUETING:** Absolutely, yeah.

**ARCH:** So this-- so this coming out of the Pyxis Omnicell is-- is not their medication. This is something-- this is a special script that is written for a particular issue--

**MARCIA MUETING:** Right. And--

**ARCH:** --by their physician, by their physician.

**MARCIA MUETING:** Right. Not to confuse the issue, but in skilled nursing and assisted living, either one of those, the medications are sent for a specific patient. When you're thinking about a hospital and a Pyxis or an Omnicell, those-- those drugs are not labeled for anyone.

**ARCH:** Right.

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**MARCIA MUETING:** So and hence there's differences for hospital administration, skilled nursing, and for assisted living. I just think that we need to get together to work out the technical difficulties because I don't want a pharmacist getting in trouble.

**ARCH:** OK, thank you.

**WALZ:** I have one other question.

**ARCH:** Senator Walz.

**MARCIA MUETING:** Sure.

**WALZ:** So if a person living in the facil-- living facility had a prescription from their doctor or several in this case that I'm trying to make, they can still go to their own-- they can go to HyVee. I'm just going to throw one out there. And are those automated as well? I mean, can-- can they be given those pills in?

**MARCIA MUETING:** It's really important whether you're talking-- when you're talking-- whenever you're talking about providing patients medications that they use one system. Mistakes are made. If-- if we have bottles from HyVee that-- that we're just opening up and we're giving them, you know, one of each out of the pills, mistakes are made. So oftentimes it's a condition of living in a facility that the drugs will be packaged by a specific pharmacy or in a specific way. Have you ever seen a med cart?

**WALZ:** Yeah. And I guess the reason I'm bringing that up is because, you know, I was just trying to think of how it could be easier for a family member as myself when I was trying to dispense meds to my mom who didn't get them from the med aide, you know, 30 pill bottles or 30 pills. So I was just wondering if-- if that was a possibility or is that--

**MARCIA MUETING:** There are pharmacies that actually will package, we call it compliance packaging.

**WALZ:** Um-hum.

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**MARCIA MUETING:** So there are pharmacies in communities all over Nebraska that will package medications for patients that live in their own homes or assisted living or whatever that are self-administering.

**WALZ:** OK.

**MARCIA MUETING:** And they can provide the medications in that compliance packaging where it's kind of like a strip pack where here's your 8:00 a.m. meds, here's your noon meds.

**WALZ:** OK.

**MARCIA MUETING:** It has your name on it. It has the names of everything on it. Yeah, there's pharmacies all over Nebraska that do that.

**WALZ:** OK, that was my question.

**MARCIA MUETING:** All right.

**WALZ:** All right. Sorry it took a very roundabout way.

**MARCIA MUETING:** It's OK. We got there.

**WALZ:** Thank you.

**MARCIA MUETING:** Wwe got there.

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

**MARCIA MUETING:** Thanks for the opportunity.

**WILLIAMS:** Any additional opposition testimony? Is there anyone here to testify in a neutral capacity? Seeing none, Geri, did we have any letters on this? OK, we-- and we have no letters and Senator Stinner waived closing. So that will close the public hearing on LB592. You're going to do it, Lynn?

**WALZ:** Yep. OK, and that opens our hearing on LB59-- oh, LB252 with Senator Williams.

**WILLIAMS:** Thank you, Senator Walz, and good afternoon, members of the Health and Human Services Committee. I am Matt Williams, M-a-t-t

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W-i-l-l-i-a-m-s. I represent Legislative District 36 and I'm here to introduce LB252 for your consideration at the request of the national or excuse me, the Nebraska Cattlemen's Association. LB252 is an uncomplicated bill and simply proposes to authorize veterinary drug distribution companies to continue to refill prescribed drugs to livestock on farms, ranches, and in feedlots for up to 30 days after the death of a prescribing veterinarian. Current Nebraska law requires a client-veterinarian relationship in order for a drug distribution company to supply and refill prescribed drugs. But the law is silent on how to refill drugs when that relationship is severed due to the death of a veterinarian. And you're going to hear a story in a little bit that happened this fall in Nebraska that put a lot of livestock and many feedlots at jeopardy because of the untimely death of a veterinarian. The bill allows a 30-day window for drugs to be refilled while ranchers, farmers, and feedlot operators establish a relationship with a new veterinarian. With that, I would try to answer any questions that you might have. But there are professionals following me that can answer those also. Thank you for your consideration.

**WALZ:** Thank you, Senator Williams. Do we have questions? I see none. First proponent.

**JARED WALAHOSKI:** Good afternoon. Senator Arch and members of the Health and Human Services Committee, my name is Jared, J-a-r-e-d, Walahoski, W-a-l-a-h-o-s-k-i, and I serve as the vice chairman of the animal health and nutrition committee for the Nebraska Cattlemen. I'm also a licensed large animal practitioner at Overton Vet Services in Lexington, Nebraska. I'm here to testify in support of LB252 on behalf of the members of the Nebraska Cattlemen, Nebraska Farm Bureau, Nebraska Pork Producers Association, and the Nebraska State Dairy Association. I want to express a significant amount of gratitude to Senator Williams for working with the Cattlemen to address an unforeseen issue we discovered last fall after the untimely passing of a dear friend, fellow board member, and veterinarian, Dr. Jeff Fox. To provide some context, Dr. Fox is a-- was a consulting veterinarian who lived in Beemer, Nebraska, who primarily worked with feedyards across the state of Nebraska. He was the only veterinarian in his practice, and following his untimely death, it was discovered that all of the prescriptions that he had with his consulting feedyards were null and void based on his passing. After extensive research to find guidance

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as to why this was the immediate case, we discovered it was due to an interpretation of Nebraska's definition of the veterinarian-client-patient relationship, or VCPR, and that statute is listed there. At the heart of our concern with this interpretation are the animal health, safety, and welfare of those animals that were under his care. If a farmer or rancher has a valid prescription that was issued under a bona fide VCPR, we feel it reasonable for that farmer/rancher to have 30 days to refill those prescriptions as needed to administer for preventative measures or administer as treatments while working to develop a new client-patient relationship. In a specific instance I referred to earlier, feedlot members did not have immediate alternatives to reissue their prescriptions for needed veterinary products. To operate within the valid client patient relationship, a veterinarian must have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, meaning that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the farm or ranch where the animal is kept. This type of information cannot be relayed over the phone. And a shortage of large animal veterinarians makes scheduling immediate farm calls a struggle and essentially unnecessary if the prescription issued was done so under a valid VCPR. Additionally, choosing a new veterinarian is a very personal choice. These professionals become members of the farm and ranch teams, and establishing a new relationship does take some time. We took great care when working with Senator Williams, his staff, and other stakeholders to ensure that this amendment to the Veterinary Drug Distribution Act did not allow for the abuse of any controlled substances, as well as ensuring that veterinary drug distributors had the flexibility needed to operate their business in ways they deem appropriate. Thank you again to Senator Williams and thank you to the members of this committee for your time today. I'm happy to answer any questions.

**WALZ:** Thank you. Any questions from the committee? Senator Murman.

**MURMAN:** Thank you, Senator Walz, and thank you for coming in to testify. As a former dairy farmer, I realize how difficult it is to, especially in Nebraska, to find a veterinarian that's knowledgeable about dairy. Could you tell us a little bit about how difficult it is

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to find a veterinarian that would have the knowledge necessary to take care of animals?

**JARED WALAHOSKI:** Depending upon the part of the state you're in, it could be very difficult. Jeff, Dr. Fox covered feedlots in six different states so not just Nebraska, but most of the surrounding states. He traveled a lot. And, you know, in that venue or in the dairy sector, specifically in Nebraska, the people who you would consider to be experts in that field would be few and far between. So one, logistically getting them on site would be difficult; and two, finding one that your relationship becomes the one you would want long term is going to take some time and this would allow for those discussions to be had.

**MURMAN:** Thank you very much.

**WALZ:** Thank you. Other questions from the committee? I see none. Thanks for coming in today.

**JARED WALAHOSKI:** Thank you very much for having me.

**WALZ:** Next proponent. Any opponent? Anybody who would like to speak in a neutral position?

**RICK COCKERILL:** Good afternoon, Chairman Arch and members of Health and Human Services Committee. My name is Dr. Rick Cockerill, R-i-c-k C-o-c-k-e-r-i-l-l. I'm testifying today on behalf of the Nebraska Veterinary Medical Association. The NVMA is testifying neutrally on Senator Williams' LB252. We were approached about the idea of this bill earlier this fall, and we greatly appreciate the proponents' willingness to work with us to get LB252 in a shape that is workable for Nebraska cattlemen while still respecting the essential role of the veterinarian. It is an important tenet of this legislation and of our work as veterinarians in general that a veterinary drug order is only valid if it is based on a veterinary client-patient relationship. Nebraska statutes state that a veterinary client-patient relationship requires the veterinarian to sufficiently know the animal. After an untimely death of the veterinarian, that veterinary client-patient relationship is no longer in existence. All the-- although the instances are limited, this bill allows the veterinary drug order to be fulfilled when there's not yet another veterinarian who

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sufficiently knows the animal and is able to write a new veterinary drug order. Our work on the language as follows in finding the right balance between respecting the producers' need to continue to fill a veterinary drug order with the crucial need for veterinary who sufficiently knows the animals for which the drug was ordered to be part of that mix. We agree that a 30-day maximum refill allowed under the bill is an acceptable length of time. We appreciate the committee's attention to these important animal health issues, even when they seem a bit outside of the health issues you usually see. I'm happy to take any questions.

**WALZ:** Thank you. Questions? Senator Murman.

**MURMAN:** Thank you, Senator Walz, and thank you for testifying. That-- the prescriptions that would need to be filled through a vet-client relationship would often include medicated feed. Is that correct?

**RICK COCKERILL:** Correct.

**MURMAN:** And those prescriptions could need to be filled maybe weekly as feed is delivered.

**RICK COCKERILL:** Correct.

**MURMAN:** So-- so--

**RICK COCKERILL:** But it's--

**MURMAN:** --30 days would-- would not be excessive for, you know, that relationship to be established.

**RICK COCKERILL:** In my opinion, I would say no. But like Dr. Walahoski said, that you need to get a new client-patient relationship with a veterinarian. And so the 30 days hopefully would be sufficient time to establish that because it's probably critical to the type of, you know, feedlots or dairies or whatever to get somebody on board with them as soon as they-- if-- if they run into a situation like this. And fortunately, this type of situation rarely happens. So we were just unfortunate this fall with the passing of Dr. Fox.

**MURMAN:** Thanks.

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**WALZ:** Thank you, Senator Murman. Any other questions from the committee? I see none. Thank you for coming today.

**RICK COCKERILL:** All right. Thank you.

**WALZ:** Anybody else that would like to speak in the neutral? Senator Williams, you're welcome to close. And we had no letters in lieu of testimony and no position letters to report.

**WILLIAMS:** Thank you, Senator Walz, and thank you again to the committee. As you heard the story, none of this is new. The veterinary client-patient relationship. This is a process that's been in place for years. It was an unusual circumstance that happened this fall with the untimely death of Dr. Fox that pointed out this kind of flaw in the system. And so I appreciate the Cattlemen fixing this. You know, we think of our-- of the livestock, especially in a state like Nebraska, where it's not just cattle. We're talking hogs, we're talking dairy, we're talking chickens, lots of things that this can apply to. It was important to me and they took this into consideration. This committee has worked hard on prescription drug monitoring over the years that many of us have been here. So the control issues of controlled substances are removed and are not included under this. So that is not an issue to be looked at. We're talking normal drugs, antibiotics and anti-inflammatories primarily. So I would encourage us to-- to fix this for the Nebraska Cattlemen and the other industries that are represented. And I would encourage your advancement of LB252. Thank you.

**WALZ:** Thank you, Senator Williams. Any other questions from the committee? I see none. This closes our hearing on LB252.

**WILLIAMS:** Our last bill on the agenda this afternoon is LB583 to require electronic prescriptions of controlled substances. Senator Murman.

**MURMAN:** Good afternoon. Senator Williams and members of the Health and Services-- Health and Human Services Committee. For the record, my name is Dave Murman and that's spelled D-a-v-i-d M-u-r-m-a-n, and I represent the counties of Clay, Webster, Nuckolls, Franklin, Kearney, Phelps and southwest Buffalo County. I come before you today to introduce LB583, which essentially requires that prescribers utilize

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electronic prescription technology to prescribe controlled substances beginning January 1, 2022. I would note that this bill is similar to LB922 introduced by Senator Kolterman last year. As all of you are aware, the opioid crisis in Nebraska, as well as all across this country, has been a real problem adversely affecting many individuals and families. As a result, more than half of the states are requiring or will soon require the utilization of electronic prescriptions for controlled substances. This bill is an essential step in curtailing abuse of overprescribing opioids and keeping individuals from shopping for doctors who would readily write a script. Because of this problem, last year, thanks to Senator Howard and the members of this committee, we enacted the opioid-- Opioid Treatment Act. Additionally, please note that this bill would bring Nebraska law in line with federal law, which will mandate the use of e-prescribing for Medicare Part D by next January, January of 2022. Further rationale for this bill would include safety and limiting errors. Electronic prescribing of controlled substances adds new dimensions of safety and security. As you would expect, electronic prescriptions cannot be altered, cannot be copied, and are electronically tracked. The Federal Drug Enforcement Administration rules for electronic controlled substance prescriptions established strict security measures such as two-factor authentication and reduce the likelihood of fraudulent prescribing. Notably, the state of New York saw a 70 percent reduction in the rate of lost or stolen prescription forms after implementing its own mandatory e-prescribing law. Second, studies show that electronic prescriptions are less prone to errors. According to a study conducted by Johns Hopkins Medication Outpatient Pharmacy, 89 percent of handwritten prescriptions failed to meet best practice guidelines or were missing information that would otherwise be prompted by an electronic prescription system. With electronic prescriptions in contrast to the prescription is understandable and do not-- and you do not see these types of errors occurring, I mentioned earlier that more than half of the states are requiring or will soon require the utilization of electronic prescriptions for controlled substances. All of Nebraska's neighbors, with the exception of South Dakota, have enacted this type of legislation. Since the introduction of this bill, we have received several concerns from affected parties, and I am offering an amendment to address these concerns. And you should all have that amendment. I would like to commend and thank those who expressed their legitimate concerns and for their good faith

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discussions. Those discussions have resulted in this amendment, which I believe addresses such concerns and improves the bill. The amendment does the following: At the request of Nebraska Pharmacists Association, it removes the exemption for mail order prescriptions. At the request of Nebraska Medical Association, it removes the requirement for prescribing doctors to report prescriptions to the Health Information Exchange, or NeHII. This does not lessen the effective-- effectiveness of the legislation as the actual dispensed medications are being reported. At the request of the Nebraska Dental Association, it relays the effect-- it delays the effective date for dentists to January 1, 2024. Dentists prescribe opioids less frequently than medical doctors. This will allow those who need to adjust their procedures a reasonable amount of time to do so. At a minimum, this amendment also substantially reduces the fiscal note. Cost factors in the fiscal note deal with HHS reporting to the Health Information Exchange and the University of Nebraska Dental College acquiring new software. The amendment eliminates or addresses both of these concerns. But I did notice this week that the Attorney General in Nebraska entered into a settlement with a company, resulting in \$2.6 million settlement to Nebraska to be used to combat the opioid epidemic in the state. So some funding may be available there if it is needed. Thank you for consideration of this bill. And at this time, I'd be open to questions. But there are individuals behind me that would take questions also.

**ARCH:** Are there any questions? Seeing none, thank you. First proponent for LB583. Good afternoon.

**RICH OTTO:** Good afternoon. I'm Rich Otto, R-i-c-h O-t-t-o. Chairman Arch and members of the committee, thank you for the opportunity to speak in front of you today and a special thanks to Senator Murman for introducing LB583. I'm testifying in support of LB583 for the Nebraska Retail Federation, the Nebraska Grocery Industry Association, and the National Association of Chain Drug Stores. This legislation would require all controlled substance prescriptions to be issued electronically through a secure transmission from a prescriber to the pharmacy. We support the use of electronic prescribing for many reasons. Those include improving safety and security in the prescribing process; it reduces medication errors and handwriting errors; it makes patient care more efficient; improves-- improves tracking of prescriptions that would allow you to know if the

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prescription was actually filled, how many times it was refilled. It also reduces fraudulent and altered prescriptions. Sometimes people can alter the strength or the quantity on a paper script. Across the nation, there continues to be substantial growth in the use of e-prescribing. Recent data from Surescripts 2019 indicates that 85 percent of all prescriptions were issued electronically. However, within that total, only 31 percent of those controlled substance prescriptions were e-prescribed. So there is room for improvement in e-prescribing of controlled substances. Recognizing the importance role of e-prescribing to curb the opioid crisis, Congress enacted federal legislation covered under Medicare Part D to electronically-- require electronic transmissions starting this year. That was-- the penalties for that were rolled back to January of 2022, which coincides with the language of this bill as well. So we've seen a lot start, but if they haven't done it so far, there is no penalty till next year. So long story short, electronic prescribing is just one essential step-- step to help curb the opioid addiction and controlled substances. Our pharmacy members truly support this. I did want to address the amendment. We appreciate all the associations and parties that came forward. It was a good faith effort in the negotiation of the amendment. As Senator Murman pointed out, there is the two-year delay for dentists. Dentists are probably at a lower rate currently of utilizing e-prescribed. Two years gives them a little more time to get to that point and to budget for it. Some have asked, it's going to be about \$400 per year per prescriber for dentists if you want to know the costs going forward. Cost is another factor as far as the fiscal note and some of the other parties with the Medical Association. As Senator Murman said, the reporting to CyncHealth, formerly NeHII, has been eliminated. That does reduce costs for dentists, doctors, and the state because the fiscal note, nearly all of it was [INAUDIBLE] in my impression, to that reporting. The School of Dentistry did factor in there. But again, they get two more years to try to budget for that cost. And then finally, there was a third portion for the pharmacists in regard to mail order. I believe they're testifying and can talk about that portion of the amendment if you have any questions there. Appreciate your time. I'll answer any other questions, but we urge you to advance the bill.

**ARCH:** Questions? Senator Hansen.

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**B. HANSEN:** Thank you, Chairman Arch. I don't know if I missed it or not, but did they mention what the penalty would-- would be?

**RICH OTTO:** There is no penalty in the bill so some may question that. Our answer to that is when it's the law, most Nebraskans follow the law. And so it is just one that we would encourage the doctors to do it there. We assume that most will do it. There are some other exemptions so there will still be paper scripts. This doesn't get every control, not every single prescription that's a controlled substance will be electronic because of the exemptions. And we feel that the penalty isn't necessary for doctors to comply, doctors and dentists.

**B. HANSEN:** Is that a state penalty or a federal penalty?

**RICH OTTO:** There is none.

**B. HANSEN:** OK.

**RICH OTTO:** Now, there may be under Medicare Part D and others could-- the Medical Association is testifying later. They could answer the penalties under Medicare.

**B. HANSEN:** That's what I was wondering. OK, all right. I'll ask somebody later so.

**RICH OTTO:** Appreciate it.

**ARCH:** Other questions? I just have one. The statistic that you quoted, the 80 percent e-prescribing now, the 31 percent controlled substance prescribing. That's stark difference in-- in electronic prescribing, e-prescribing,

**RICH OTTO:** Right. The one comment I would say on that, that's 2019, I would assume that has narrowed since 2021 and the Medicare portion going into effect this year. So I would-- we can get you more current numbers. There was a stark difference. We see some progress, but we feel this bill is needed to keep closing that gap.

**ARCH:** I mean, honestly, that it would be very concerning that-- that there would be less, that much less e-prescribing going on just for controlled substances.

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**RICH OTTO:** Absolutely. I agree, Senator.

**ARCH:** Thank you. Any other questions? Seeing none, thank you for your testimony.

**RICH OTTO:** Thank you.

**ARCH:** Next proponent for LB583. Seeing none, first opponent for LB583. Seeing none, is there anyone that would like to testify in a neutral capacity?

**BOB HALLSTROM:** Chairman Arch, members of the committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Pharmacists Association in a neutral capacity on LB583. As both Senator Murman and Mr. Otto have indicated, we had some, raised some concerns with regard to the provisions of the bill that would have excluded mail order pharmacy from the e-prescribing requirements. We didn't think that was appropriate. When you listen to Senator Murman talk about the safety and the security, those we think ought to apply equally to mail order pharmacy scripts as well. And in addition, it's not excluded under the federal law with regard to the Medicare Part D requirements. So we don't think there should be an exception on the state level either. My pharmacist friend, Marcia, back here indicated to me that one of the issues that might result in less of a percentage, the question that you rendered, Senator Arch, is that it's a different system. It's more costly. So without the requirement, it may be that there's a reluctance to expend those monies prematurely. So that may give some explanation as to that differential. We appreciate Senator Murman's willingness to go with the amendment that we've proposed. We're neutral here today, but with that amendment, we would be supportive of the concept moving forward. We also want to thank Rich Otto and his grandfather, Jim, for working with us to put the amendments together.

**ARCH:** Thank you. Any questions? Seeing none, thank you for your testimony.

**BOB HALLSTROM:** Thank you, Senator.

**ARCH:** Is there anyone else that would like to testify in a neutral capacity?

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**DEXTER SCHRODT:** Good afternoon. Happy Friday. Chairman Arch and members of the committee, my name is Dexter Schrodtt, that's D-e-x-t-e-r S-c-h-r-o-d-t, vice president advocacy and regulation for the Nebraska Medical Association. We are here neutral on LB583 with the amendment presented to you today. We'd like to thank Senator Murman for addressing our concerns and for signaling that he does not want to place additional burdens on Nebraska's physicians with this bill. For your reference, the piece of LB583 we had concerns with can be found on page 9, lines 5-9 of the green copy. This language would have increased cost to physician offices because adding capabilities such as transmitting prescription information to the health information exchange or the prescription drug monitoring system to the existing software platforms physician offices already had in place and already under contract would be quite cost-- costly to add. The NMA did not see the purpose in this language because prescriptions covered by this bill are already entered into the PDMP when dispensed, hence the bulk of this information would be duplicative and therefore unnecessary to require. With the amendment taking care of that concern, we do still remain neutral on LB583 because the NMA has a standing policy not to support mandates on the practice of medicine. However, as you've heard before, in the case of requiring electronic prescriptions for controlled substances, we do recognize the horse is out of the barn on that one due to the CMS requirement for electronic prescribing that went into effect last month on January 1, and the enforcement delayed until January 1 of next year due to the COVID emergency. Also, I'd add, while nothing official has been announced, we have heard some conversations that commercial payers might begin to go this route in the near future. So again, the NMA would like to thank Senator Murman for his desire to work with stakeholders and to find a balance between moving technology forward in healthcare without overburdening physicians with unnecessary regulations. With that, I thank you for your time. And real quick, Senator Hansen, to answer your question, I believe typically the federal punishments either come in the form of fines or hindrances on the DEA licenses required to prescribe controlled substances.

**ARCH:** Thank you. Are there any other questions? Senator Hansen.

**B. HANSEN:** So would that fine, since we're moving dentists back two more years, will they-- will they be fined at all? Because is this-- is this pertaining to all prescribers?

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**DEXTER SCHRODT:** That I'm not sure, Senator. I'm not sure how that CMS requirement applies to dentists. I do know that it's Medicare-- Medicare Part D and Medicare Advantage plans are what's required. How that pertains to dentists, I'm unsure.

**B. HANSEN:** Just curious.

**DEXTER SCHRODT:** Yep.

**B. HANSEN:** All right, thanks.

**ARCH:** Other questions? Seeing none, thank you for your testimony.

**DEXTER SCHRODT:** Thank you.

**ARCH:** Is there anyone else that would like to testify in a neutral capacity? Seeing none. I don't have any information on letters received or--

**GERI WILLIAMS:** [INAUDIBLE]

**ARCH:** I don't know. Well, I will-- we'll make sure we communicate that. Senator Murman, you're welcome to Close.

**MURMAN:** Thank you all for consideration of this bill. For the reasons stated, I ask you to support this bill that adds an additional layer of safety for our prescriptions in the state and brings Nebraska in line with most of the country. I'd ask you for timely consideration and to move this forward out of committee.

**ARCH:** Thank you. Any questions? Any final questions for Senator Murman? Seeing none, thank you very much. This will close the hearing for LB583 and it will close the hearings for the day. And we're going to go into Executive Session.

**WILLIAMS:** Are we going to do that here?