

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 13, 2024

CLEMENTS: Good afternoon. Welcome to the Appropriations Committee. My name is Rob Clements. I'm from Elmwood, and I represent Legislative District 2. I serve as Chair of this committee. We'll start off by having members do self-introductions, starting with my far right.

ERDMAN: Steve Erdman, District 47.

LIPPINCOTT: Loren Lippincott, District 34.

WISHART: Anna Wishart, District 27.

McDONNELL: Mike McDonnell, LD 5: south Omaha.

DOVER: Robert Dover, District 19.

DORN: Myron Dorn, District 30.

ARMENDARIZ: Christy Armendariz, District 18.

CLEMENTS: Assisting the committee today is Cori Bierbaum, our committee clerk; and to my left is fiscal analyst, Mikayla Findlay. Our page today is Ella Schmidt. If you're planning on testifying today, please fill out a green testifier sheet located on the side, side of the room and hand it to the page when you come up to testify. If you'll not be testifying but want to go on record as having a position on a bill being heard, there are yellow sign-in sheets on the side of the room where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record after today's hearing. To better facilitate today's hearing, I ask that you abide by the following procedures: please silence your cell phones. When hearing bills, the order of testimony will be introducer, proponents, opponents, neutral, and closing. When you come to testify, please spell your first and last name for the record before you testify. Be concise. We request you limit your testimony to five minutes or less. Written material may be distributed to the committee members as exhibits only while testimony is being offered. Hand them to the page for distribution when you come up to testify. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will begin today's hearing with LB942. Senator Dorn.

DORN: Good afternoon. My name is-- Senator Clements and members of the Appropriation Committee, my name is Myron Dorn, M-y-r-o-n D-o-r-n. First off, I want to thank everybody for having this special committee hearing or committee meeting. Thank you very much for taking the time

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and being a part of this. Earlier this session, I introduced LB940-- LB942 to this committee to increase nursing facility provider rates. And unfortunately, that request did not make it into the budget. A few weeks ago, Senator, Senator Armendariz raised the idea to increase the provider rate tax, which then in turn draws down significant federal dollars. The Governor's Budget Office worked on a solution to help address funding needs of the nursing homes by increasing the provider assessments paid by nurs-- nursing facilities from the current \$3.50 per resident day to \$9 per day. Nebraska first established a nursing facility provider tax when it was passed by the Legislature in 2011. AM2895 is the result of the cooperation between the Governor's budget people, the health care association who represent nursing facilities, and my office. In the simplest of terms, AM2895 would allow nursing facilities providers to see the overall increase in their Medicaid rates beginning July 1, 2024, but the increased \$9 per day tax payment by the nursing fal-- facilities would not be due to the state until October 31 of 2024. In my conversations with Speaker Arch and the Governor's Office, the intent is to advance LB942, as amended with AM2895 to General File, with the amendment then becoming the bill. Due to that fact that we are in legislative day 42, I looked for a bill that may accompan-- accommodate this amendment. Currently, LB130 is on Final Reading, and I've asked the Speaker to hold this bill with the intention of pulling it back to Select File so that AM9-- AM2895 could be amended into LB130. As a reminder, LB130 creates a separate and distinct budgetary program within the Department of Health and Human Services, identified as the Medicaid nursing facility service program. I think this amendment would be a good fit. There will be a representative from the Health Care Association who can provide answer-- who can also answer any technical quotion-- questions you may have. I ask for your support for this amendment. We did pass out a copy of the amendment to everybody. And also on the second page behind where my introductions were, there is the-- this sheet is-- details some of the fiscal stuff. This came-- comes from the Governor's fiscal people when they-- we visited with them. The line in the green is what the effect would be this year. And then it moves on down to show the next year or whatever and stuff. So it would have a very, very positive impact this year in-- for-- and this is for just the skilled part of the nursing homes. It's not for the assisted living part. There are few nursing homes in Nebraska that are assisted living. It would not be for their provider rates. It's just the skilled part because of the medical care or-- that they are receiving from that. So some of, some of the, I call it, the technical questions of the, of the budget process are-- that, that-- those numbers came from the Governor's fiscal staff.

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CLEMENTS: All right. Are you-- is that your opening on the amendment?
Is--

DORN: Well, this was kind of the opening on the amendment. This is opening on AM2895, yes.

CLEMENTS: All right. And are you open to questions from the committee? Committee, do you have questions? I want to just point out that Fiscal Office is saying LB130 originally created a new budget program, but it doesn't anymore. And is that-- is there-- can somebody speak to that? We'll-- all right. We'll let the Health Care Association comment on that. I'm being told it codifies the procedure of earmarking the por-- the portion in Medicaid. So we'll, we'll get, we'll get some reaction to that from the--

DORN: Yeah.

CLEMENTS: --testifier. Seeing no further questions-- oh, Senator Dover.

DOVER: I was just looking at your spread-- or, the spreadsheet here. And then on the top it says, across the top it says, tax amount-- \$7, \$8, \$9. So I'm guessing that's just looking at different amounts per day that-- day's underneath that. But then it has-- then next-- to the right is 5.5% estimate, 3% estimate, 4% estimate. So can you just tell me [INAUDIBLE] what the different column-- obviously, looks like they settled on \$9 per day. And why did they settle on \$9 per day?

DORN: This is what Lee Will explained to me. That is-- if you look at that, that's the \$9 per day. And Senator Armendariz, you help out here if I'm explaining this wrong. That is the level that they would start out at this first year. And that is the amount-- and the-- and as you go on down for the nursing facilities-- not nursing-- the nursing home facilities for the skilled part, that would be an influx then of \$23 million-- \$23.8 million into all of those skilled nursing homes or whatever. The way I had it explained to me-- and I, I don't know if I'm wrong. You help me out. The second year, this is-- the column right next to it, that's what they would be using the second year. And is that right? Or Jalene, Jalene will, will go, go into more detail.

DOVER: I can ask--I can ask when she comes up.

DORN: Yeah.

CLEMENTS: Any other questions? Seeing none. The first proponent is welcome, please.

JALENE CARPENTER: Good afternoon, Chairman Clements and members of the Appropriations Committee. My name is Jalene Carpenter, J-a-l-e-n-e C-a-r-p-e-n-t-e-r. I'm the president and CEO of Nebraska Health Care Association. I'm here today on behalf of our 184 nonprofit and proprietary skilled nursing facility members in support of AM2895. The bill is very simple. It would replace the language from LB942 with an increase in our nursing facility provider tax. For a little reference, under federal regulation, a state may collect an assessment from certain type of health care providers, such as nursing homes. According to the National Council for State Legislators, 45 states have a nursing facility provider tax. In Nebraska, the state collects the tax on a per-- quarterly basis. These dollars are then added to the legislation-- the amount appropriated from the Legislature. And then federal law considers this a state payment to Medicaid providers, which qualifies for that federal match, which is currently 58%. Nebraska, as mentioned, established this in 2011 as a \$3.50 per day resident tax. With a few exceptions, the proposal would change that \$3.50 to \$9 a day. This would create approximately \$28 million that is paid by Nebraska nursing facilities that would then qualify for approximately \$38 million in federal matching funds. It would be used to reimburse nursing facilities in proportion to their facility's Medicaid days. I want to be clear: one of the federal regulations for a provider tax is that it cannot make all providers whole. They have to have winners and losers. So depending on the population a facility serves, there will be a small number of providers who pay into the tax that may not receive that full amount back, while others who serve a larger portion of Medicaid residents will benefit more. AM2895 is a really important step and is going to allow our nursing facilities the opportunity to work together with the administration and with the Legislature to ensure we develop a broad solution to this very complex situation our nursing facilities are currently in. I want to be clear: increasing the provider tax is a huge help and an increase overall, but it does not cover the current deficit in the cost of care. And then I cannot promise that it would prevent further closures because there are facilities already very much so on the brink right now. That being said, I want to make sure I articulate how incredibly gracious and supportive we are in ensuring this will help move the needle forward and take that really important step. I want to thank Senator Dorn for introducing the amendment but also Senator Armendariz for continuing to fight for solutions to find a path forward. I can answer questions that you might have, or if you want me to address the questions you already had.

CLEMENTS: Well, we'll open it up for questions.

JALENE CARPENTER: OK.

CLEMENTS: Thank you. Senator Dover.

DOVER: Yeah. I actually kind of figured out part of this thing because it seems as though, for some reason, they have seven, seven days, \$8-- \$7-- \$8, \$9 a day. But then they jump over and they start showing what's--

JALENE CARPENTER: Percenta--

DOVER: --is actually the percentage of-- as, as a percentage of revenue.

JALENE CARPENTER: Correct.

DOVER: And they're putting it at the bottom, and they're throwing it back on top as the header of the column. So then-- my question would be then-- so it's \$9 a day. But then it-- in, in-- I'm guessing this is the second year-- and it goes to \$31.03 a day. Or was that--

JALENE CARPENTER: So what-- in conversations with the Governor's Office-- so there is a cap on how much you can leverage the provider assessment. It's-- the cap is generally considered at about 6% of annual revenues. So that's why they put those numbers out there of, of-- if we were to, quote, max out our provider assessment, what would that bring in? Our conversations were very clear: let's, let's take this conservative step, let's evaluate and ensure that our current provider tax, how it is currently constructed, is most beneficial in trying to achieve our goal of ensuring we have access to care. So it is projection of what we could potentially leverage moving forward.

DOVER: You're saying the \$9 is-- is the current--

JALENE CARPENTER: The \$9 is what the amendment would do.

DOVER: OK. But you did go as high as \$31.03?

JALENE CARPENTER: That would max us out, correct.

DOVER: OK. So you don't have what would be the income for the second year after you're actually receiving those funds?

JALENE CARPENTER: Correct. That-- currently, with the amendment, only change we're making is moving from that \$3.50 to \$9, with the

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understanding that we'll work in the interim to determine what that next step might be.

DOVER: Good. My last question is, is there any-- my last question is, is there any-- so you said \$9 a day. Is there any reason you do that versus a percentage of expenses or cost or--

JALENE CARPENTER: That's one of the conversations of wanting to work in the interim because our current statute is the per day, which, as we've seen, that has eroded as a percentage over time. So in the interim, we will be evaluating, should we look at a percent of revenue or should we keep it constructed as it is as a per day, to where we come back to the Legislature to, to ask for that increase?

DOVER: All right. Thank you.

JALENE CARPENTER: Yep.

CLEMENTS: Senator Armendariz.

ARMENDARIZ: Thank you. Thank you for being here. So you pay the tax into the state. It gets matched at 58% of what you pay in by the federal government.

JALENE CARPENTER: Yep.

ARMENDARIZ: And then does the state also distribute those back to the organizations as well?

JALENE CARPENTER: Yes.

ARMENDARIZ: And at, at what rate? How much do they keep in the state and how much are they giving you-- turning around and giving you right back?

JALENE CARPENTER: So currently, they take a very nominal fee for the administrative costs. Last time I verified, I believe it was approximately \$150,000. So they're-- the majority of our-- the money that has come down from the federal government goes back to facilities.

ARMENDARIZ: As well as the assessment you paid in?

JALENE CARPENTER: As well as the assessment that you paid in, yes.

ARMENDARIZ: OK. That was what I wanted you to clarify on the mic that, although you are paying this assessment tax, they're going to turn it

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back over to you once you capture the federal funds. And then you get to keep pretty much both.

JALENE CARPENTER: Correct. And there are those outlier facilities--

ARMENDARIZ: Gotcha.

JALENE CARPENTER: --that potentially will have paid in the full amount of tax and will not recover what they paid in.

ARMENDARIZ: And that is because they don't serve a Medicaid population--

JALENE CARPENTER: Or a very small Medicaid population, yes.

ARMENDARIZ: OK. Great. That's my understanding. Thank you for clarifying.

CLEMENTS: Other questions? Senator Dover.

DOVER: My last question is, so the \$150,000 per year, that basically makes this-- and no cost to the state? Because you're covering the, covering the administrative costs?

JALENE CARPENTER: Yes. And they've been administering it since 2011. There's really no change by increasing the amount of the assessment that would cause any additional cost.

DOVER: All right. Thank you.

CLEMENTS: The green column, is that fiscal year '24 and fiscal year '25-- the \$9 would applying this fiscal year already?

JALENE CARPENTER: It would apply-- the rates would be effective July of '24, and they would start paying in their portion in October of '24, yes.

CLEMENTS: OK. So it's only in the next fiscal year and not this one. All right. And then-- and-- oh. And it would continue into future years. Are you planning to look into the percentage--

JALENE CARPENTER: Yes.

CLEMENTS: But we'd have to change that--

JALENE CARPENTER: Correct.

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CLEMENTS: --\$9 to some different formula. Then I'm, I'm seeing fed-- the line is "fed plus up." Is that the fed map-- that's the \$38.251 million. Is that what you mentioned that--

JALENE CARPENTER: Right. That, that's the federal match that would then come through.

CLEMENTS: That's the \$38 million. But then the-- with the added tax taken out, you're ending up with with \$23.7 million.

JALENE CARPENTER: So the overall impact when you take out what providers pay in-- so if you look at just the net impact, that's that 20-- close to \$24 million.

CLEMENTS: All right. That's, that's what I-- that's what I assumed and-- let's see. So-- any other questions from the committee? Seeing none. Thank you for your testimony.

JALENE CARPENTER: Thank you.

CLEMENTS: Is there-- are there additional proponents? Welcome.

JOHN MEALS: How we doing? Good afternoon, Chairman Clements, members of the Appropriations Committee. My name is John Meals, J-o-h-n M-e-a-l-s. And I'm the chief financial officer for the Department of Health and Human Services. I'm here to testify in support of AM2895, which will increase the quality assurance assessment-- or the QAA as I'll reference-- paid by nursing facilities from \$3.50 to \$9 for each resident day. Department's worked with both Governor's Office and the Nebraska Health Care Association on increasing the QAA as an avenue to increase federal financial participation to match revenue from the QAA to be paid out to providers in their rates. This increase in the QAA to \$9 per day would provide an effective increase of about 5% in total funds, net of the amount paid by providers through the assessment, without increasing the amount appropriated in general funds. The department will continue to work with the Governor's Office and Health Care Association to discuss future increases in a manner that works for both the association and the state of Nebraska. Thank you for the opportunity to testify. And I'd be happy to answer any questions.

CLEMENTS: Are there questions? Seeing none. Thank you for your testimony. Additional proponents? Good afternoon.

ANDY HALE: Good afternoon, Chairman Clements and members of the Appropriations Committee. My name is Andy Hale, A-n-d-y H-a-l-e. And I am vice president of advocacy for the Nebraska Hospital Association.

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And I'm here to support AM2895. The NHA has 11 members that operate a hospital and a nursing home. Many rural hospitals who've stepped away from their nursing homes to preserve access to hospital care in their communities. If you look at the financial headwinds nursing homes have faced, it's easy to see why these hospitals felt they had to abandon these facilities. Increases in rates have been appreciated, but they have not caught up with costs. When a nursing facility closes its doors, hospital patients that need specialized care found in nursing facilities may be forced to have extended stay in our hospitals, therefore depriving that patient with the appropriate level of care that they may require. With an aging population where there are no nearby long-term facilities, hospitals have been housing individuals which they're unable to provide that appropriate quality of care. Additionally, there could be a ripple effect and additional strain on the rural communities when a nursing home closes: employees lose jobs, those families have to relocate, and that is impacted on the tax base-- excuse me-- the tax base in that community. All small communities suffer when they have to close. We want to thank Senator Dorn and his staff and this committee for their support over the years for all of our facilities on looking at these reimbursement rates, increasing them when appropriate, and looking at different funding streams. So with that, I ask that you support AM2895.

CLEMENTS: Are there questions? Seeing none. Thank you for your testimony.

ANDY HALE: Thank you.

CLEMENTS: Are there other proponents? I would request Ms. Carpenter come up to discuss the-- one question about whether we had a statutory change in how the budget program is-- is it changed or into a different program or-- how is it earmarked?

JALENE CARPENTER: No, Mikay-- I believe Fiscal ga-- articulated it correctly. We worked with the department. Doesn't create its own program. We worked with the language. It does codify the process of how the nursing facility provider rates are funded and start, yes.

CLEMENTS: They will be-- will be able-- they will be reported separately, is that-- we'll be able to track them? It'll be earmarked? OK. All right. OK. Thank you.

JALENE CARPENTER: You're welcome.

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CLEMENTS: Oh. Were there any other questions? Excuse me. Thank you for answering that question. Any other proponents? Are there any opponents? Seeing none. Any neutral testimony? Seeing none. Senator Dorn, you may close.

DORN: Would just make a quick comment. I, I thank Jalene very much for coming up and clarifying the financial part of this very much. And again, I will reiterate: thank this committee very much for taking the time to, to work through this process. Thank you very much.

CLEMENTS: Are there any other questions? Seeing none. That concludes the hearing on-- excuse me. We have some online comments. We have 8 proponent position comments, 0 opponents, and 0 neutral. That concludes the hearing on AM25-- AM2895 and LB942. Thank you very much.