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Health and Human Services Committee
January 19, 2007

[LB86 LB103 LB203]

The Committee on Health and Human Services met at 1:30 p.m. on Friday, January 19, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB203, LB103, and LB86. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: None. [LB203]

SENATOR JOHNSON: Welcome to the public hearing of the Health and Human Services Committee for the Nebraska Legislature. Let's begin by introducing senators that are here. And as you...many of you know there, we will get up and leave, and Senator Erdman is obviously at somewhere else testifying or introducing a bill there, so expect people to come and go as we go on. However, here comes Senator Erdman in the door, but first of all, to my far right is Senator Dave Pankonin from Louisville; Senator Phil Erdman from Bayard; Tim Gay, who is the Vice Chair of this committee, from Papillion; Jeff Santema, our legal counsel. And I guess I better introduce myself. I'm Senator Joel Johnson from Kearney. And then to my far left is Gwen Howard from Omaha; Senator Tom Hansen from North Platte; Senator Arnie Stuthman from Platte Center; and Erin Mack, who is our committee clerk. Now a couple of things and I'm going to emphasize them a little bit here for the first few sessions because things are just a smidge different than what they've been in past years. First of all, these proceedings are recorded and they are transcribed. If you have a cell phone, please shut it off. We did threaten to shoot people at sunrise if (laugh) anyone goes off, but then I thought maybe we better not do that since I often carry a cell phone. The committee will first hear proponent testimony, followed by opponent, and then neutral. We would ask that you watch yourself in the length of your testimony. If you have a three-page letter and drone through that, I can tell you, you will not be well-received. So try and hold your testimony to about three minutes and it would be much appreciated, not only by us, but more importantly the people behind you, because if you're one of the last people of the day and you came from Scottsbluff and you're last and you're talking at 5:30 in the afternoon, you're not only going to be last but you're going to be least because the attention span of this committee is going to be pretty well shot by then, and that's not fair to the last people. So in an attempt to be fair to everyone, we want you to be quite reasonable. We're not going to run a clock or anything like that, but we ask for your cooperation. Now there is a testifier sheet that is available in the back and at the table for those that wish to testify publicly. Please fill it out completely because the transcriber needs that to match with the testimony. When you come forward, please not only state your name but spell it for the record. And, as Ron has done here, please come to the front when you want to testify so that we have a nice orderly transmission from one to the next. Then another last thing or two is we have pages here. They will be glad to help you. If you have printed material, we'd like you to have 12 copies. If you didn't make 12, they will be glad to make copies for you to pass around. I think that's close to all of the instructions that I've been given. If there are any of those of you that

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don't wish to actually testify in person but do want to show your support or opposition to a specific one of our bills there, we'll make sure that you have a sign-in sheet available to register your feelings one way or the other. With that, let's begin with our first bill of the day. It's LB203 and Senator Tim Gay, who's our Vice Chair. [LB203]

SENATOR GAY: Good afternoon, Senator Johnson and members of the Health and Human Services Committee. My name is Tim Gay. I represent the 14th Legislative District and I am here today to introduce LB203. LB203 was brought to me by the Nebraska Health Care Association and is intended to improve the process that healthcare facilities use to challenge alleged violations of state and federal regulations. Federal law provides that a facility must have the opportunity to challenge an alleged violation or deficiency through an informal conference review. Under Nebraska statutes, the informal review is currently conducted by a representative of the Department of Health and Human Services Regulation and Licensure. Since the department is often the agency inspecting the facility, this process does not ensure an impartial review. In addition, oftentimes deficiencies involve a physician's recommended plan of care, and our existing statutes do not require that a medically qualified professional is consulted when appropriate. Allegations of serious deficiencies can be very costly for these healthcare facilities. LB203 would offer an alternative method by which an informal review conference could be conducted. Facilities could opt to utilize peer review organization, which is an impartial, physician-directed organization. Federal law already requires that each state have this in place in such an organization to ensure the compliance with the Medicare laws. Facilities opting to challenge a deficiency through the alternative process would be responsible for covering those costs, so this bill is revenue neutral. The current method which would still be retained is financed through the licensure fees and federal funding. It is my understanding that Department of Health and Human Services did have some concerns with the current language in LB203, and representatives from the Nebraska Health Care Association have been working to address those concerns. As recently as this morning we did have a meeting with them. Their testimony is following mine, and they will provide more insight on the need for this bill. Thank you for consideration of LB203, and I'll try to answer any questions you may have. [LB203]

SENATOR JOHNSON: Any questions of Senator Gay? I don't see any. [LB203]

SENATOR GAY: Thank you. [LB203]

SENATOR JOHNSON: All right, can I see how many proponents we have? One, two, three, four, half a dozen or so. All right. Opponents? Okay. Let's proceed. Thank you. [LB203]

BRENDON POLT: (Exhibit 1) Good afternoon, Chairman Johnson and members of the committee. My name is Brendon Polt. That's spelled P-o-l-t. I'm the assistant executive

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director of the Nebraska Health Care Association, and I appear in support of the provisions of LB203. The Nebraska Health Care Association represents approximately 400 nursing homes and assisted-living facilities. LB203 is the result of a groundswell of healthcare providers and physicians pleading for an improvement in the review process provided by the state to challenge alleged violations of state and federal regulations. Doctors and other healthcare professionals at the grass-roots level are fired up and they're begging for an alternative. LB203 simply adds an alternative informal conference review with a peer review organization which...with which the state has contracted. A "peer review organization" is a term used in Medicare law. It refers to a physician-directed organization organized to share information about best practices in healthcare with physicians, hospitals, and nursing homes. Senator Gay indicated all costs to conduct this alternative informal conference would be paid by the facilities that select to use it...or that elect to use it. The reason this bill is needed is that the existing statutes, the way they're structured, do not ensure sufficient impartiality in the existing informal conference, and to not set forth any standards or qualifications for the reviewer. I will make my testimony more brief, and I have more written on this in my testimony, which I'll submit, but I do want to address the concerns that came up after the bill was three-parted that the department had raised. There was two issues. The first was whether providing for an independent IDR, as drafted the bill would create an unconstitutional delegation of power, and whether the provision in the bill that the existing department representative not make diagnoses or conclusions for which he or she is not licensed, whether that would create a fiscal impact or is otherwise necessary. Regarding the delegation of the IDR to a contractor, while any contract under this bill, as drafted, would necessarily be subject to the authority of the department director under federal law, we've provided with some proposed...we've provided the committee with some proposed amendments, that I understand the department is comfortable with, that would make it very clear that we're not attempting to do something that would be inconsistent with federal law, and that's remove the state completely from the IDR process. The state's authority over the IDR process is governed under federal regulations. According to the federal Centers for Medicare and Medicaid Services, I quote: While states have the option to involve outside persons or entities they believe to be qualified to participate in this process, it is the states, not outside individuals or entities, that are responsible for the informal dispute resolution decisions. So it's clear that the federal government allows this, but does require the state to retain control. We're comfortable striking the requirement pertaining to the existing representative's diagnoses or conclusions. However, I do want to note that the department maintains that it's current practice that this representative consult licensed professionals or doctors for any medically based deficiencies. And so if this is the case, then it's unclear to me why there would be a fiscal impact by codifying what is existing practice. And I would also respectfully offer that if this is the current practice, the state might consider documenting these communications with physicians in the IDR decision, and provide them when requested in discovery requests preceding administrative appeals or otherwise provide them to the doctor or the physician so that those individuals know that

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those have been considered by the state. After me, you will hear some examples from facilities and physicians of instances where they felt aggrieved by the existing IDR process. Thank you for hearing my testimony, and I'm happy to answer any questions. [LB203]

SENATOR JOHNSON: Thank you. Any questions? Senator Erdman. [LB203]

SENATOR ERDMAN: Brendon, your testimony said that you're going to have some other folks give examples, but generally what type of alleged violations are we talking about? [LB203]

BRENDON POLT: I think the most problematic for the industry is where there's an issue involving resident care, where possibly the facility...that the doctor has recommended that, for example, an individual not be restrained because they believe that the person's dignity and need to be able to move around freely is taken into consideration, and so they don't restrain the individual. But then they fall and then there's a surveyor that comes and the resident is injured and then they question, well, why was this allowed to happen. And then there's a feeling that the factors that led to the physician's determination weren't considered. It was simply he fell; that must mean that there was a harm level deficiency; it must mean your negligent. That's it. So that's the feeling out there. [LB203]

SENATOR ERDMAN: Okay. [LB203]

SENATOR JOHNSON: Any other questions? Thank you very much. [LB203]

BRENDON POLT: Thank you. [LB203]

DALE MICHELS: (Exhibit 2) Senator Johnson and members of the Health and Human Services Committee, I'm Dr. Dale Michels, M-i-c-h-e-l-s. I'm a family physician, private practice here in Lincoln, Nebraska, have the privilege of being president of the Nebraska Medical Directors Association. The Nebraska medical directors are physicians who provide medical directions nursing homes across Nebraska. I'm testifying strongly in favor of LB203 on their behalf. I'm also testifying in favor of LB203 on behalf of the Nebraska Medical Association as a member of their Commission on Legislation. I've been in practice for 32-plus years now and over 30 years as a medical director, currently in three facilities. The current nursing home survey process, as you know, is at the outset...let me say at the outset that nursing home medical directors and nursing homes want to provide good care. If there's a problem, especially related to the care of residents or, as far as I'm concerned, patients, correct it and move on. Surveys are required by CMS of the federal government. The state of Nebraska HHS has been delegated to do those surveys in Nebraska. There are also fire surveys, I believe, and there are surveys that sometimes the federal government will come in and do some

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oversight surveys. They're based on interpretative guidelines which have been developed nationally. The key word, of course, is "interpretive," because they are subject to some interpretation. Not every possible situation can be dealt with through guidelines and regulations. HHS has developed levels of citation that they can give to a finding during the survey, so if they find a deficiency they can give a level, a tag, it's called, or level of care. Often there's a difference of opinion about the condition in a nursing home regarding the documentation of care and the findings of Health and Human Services. Health and Human Services has the capability to close a nursing home or facility to new admissions, or revoke their license based on their findings. And nursing homes have, of course, the right to request review of that decision or contest it. Current review process, as I understand, is outlined in the current statute. I won't go through that. LB203 simply provides an option for informal dispute resolution that's not there. In my opinion, it seems to be much more of a fair process, as outlined in LB203. Currently, if a review of the surveyor's decision is requested by the nursing home, the director of that particular division who signed off on that survey appoints another member of the survey department to be the hearing officer--i.e., the department becomes both the prosecutor and the judge. LB203 allows, at the request of the nursing home and at their expense, for an outside entity contracted to review the decision made by HHS, and provide an opinion regarding that decision based on the clinical evidence of the record of the patient, the findings of the survey team, and the pertinent interpretative guidelines. Can be a contract with any organization recognized as a peer review...providing peer review services; must be approved by HHS. So it's not the nursing home that contracts with this organization. There is, as I understand it, no fiscal impact to Health and Human Services since this review process is requested by the nursing home and paid for by them. HHS already has to review and spend time to present their case under the current process. And there are several other states, and I believe they're mentioned for you, that have developed a variation of this same process to increase the objectivity and fairness of the survey findings. I know that as far as the NMDA, or the Nebraska medical directors, HHS was concerned about the added wording beginning at the bottom of page 2, line 26, which I believe has been referenced: "The representative shall possess experience in ensuring the quality provision of health care services and shall not make conclusions or diagnoses for which he or she is not licensed." The same language is actually used on page 5, line 5, but perhaps with a different intent. The practical problem for us is that the surveyors do not always take into consideration the notes, impressions, and findings of the patient or resident's physician or the medical director of the facility and so, therefore, we feel that's significant. We would recommend for consideration the language which would simply say, "All findings, conclusions and diagnoses made by the physician attending the resident or patient and the medical director shall be considered by the surveyor and during any subsequent procedure contesting the outcome of the survey. So in summary, NMDA supports LB203. The NMA, Nebraska Medical Association, supports LB203. We think it adds a good option. It's not a requirement. The process would be fairer. There's no fiscal impact. And I thank you for your time. If there are any questions,

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I'll try and answer them. [LB203]

SENATOR JOHNSON: Any questions of Dr. Michels? Dale, I see none. Thank you. [LB203]

DALE MICHELS: Okay. [LB203]

SENATOR JOHNSON: Ron. [LB203]

RON JENSEN: Chairman Johnson, members of the Health and Human Services Committee, my name is Ron Jensen. I'm a registered lobbyist appearing before you today on behalf of the Nebraska Association of Homes and Services for the Aging, which is an organization made up exclusively of nonprofit nursing and assisted-living facilities, and also incorporates the Nebraska Adult Day Care Association. We're here today to thank our colleague association for working with Senator Gay and getting this legislation introduced, and express our support of it. As some of you know, I'm, myself, an erstwhile healthcare administrator. Surveys are one of those things in life that you just got to have, but nobody really likes them much. And why would you? The surveying agency, whether it's the state or one of the accreditation commissions, shows up at the door of your place and goes through it like Sherman through Georgia, and they look at everything. A lot of those things are totally subjective. The temperature in the walk-in is either going to be within the acceptable range or it's not, but a lot of them are quite subjective, like treatment planning and execution. We think that the opportunity to bring additional professional expertise of an independent nature to the resolution of differences over some of these more subjective standards would be very welcome, be very appropriate. And again, we're pleased to see this legislation introduced. Want to express our support of it. [LB203]

SENATOR JOHNSON: Thank you. Any questions of Mr. Jensen? Ron, thank you. [LB203]

RON JENSEN: Thank you, Senator. [LB203]

GEORGE VOIGTLANDER: (Exhibit 3) Good afternoon, Chairman Johnson and members of the Health and Human Services Committee. I am George Voigtlander, V-o-i-g-t-l-a-n-d-e-r, a family physician from Pawnee City. I am the medical director of two small nursing homes, as well as a board member and past president of the Nebraska Medical Directors Association, and a member of the American Medical Directors Association. I have taken care of residents in long-term care facilities for over 25 years. I will speak in favor of LB203. There have been problems with the informal dispute resolution process. Many providers feel that it is not impartial, that the same department that found the alleged deficiency is being asked to decide if they made an error in citing that deficiency. This process has obvious conflict. I have seen problems

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personally with the IDR. I was involved in one instance in which my facility was cited for a high-level deficiency for failing to provide surveillance urinalyses. The Infectious Disease Society of America specifically advises against this, and in an editorial by the president of AMDA, the American Medical Directors Association, Dr. James Lett, condemned this as harmful to patients. It leads to inappropriate use of antibiotics with the potential for harm from the unnecessary drugs. In his concluding sentence, Dr. Lett exhorted long-term care physicians to not be intimidated by the surveyors and to do the right thing for their patients. Both the Infectious Disease Society of America and AMDA condemn treatment of asymptomatic bacteria, that is bacteria in the urine without signs or symptoms of infection, which is exactly what these surveillance tests are trying to find. The deficiency, however, was upheld, but at a lower level of severity. Another problem that other medical directors have told me about involves pressure sores in debilitated dying residents. Patients at the end of their lives, due to cancer or other wasting diseases, have shutdown many of their organ systems, including the skin. This is inevitable. Even when the attending physician documents that this is an unavoidable part of the basic disease and the IDR fault is found with the facility. Often treatment of these sores is not only futile, but causes added burden and pain to the resident. In this instance, the nonphysicians on the panel have contradicted the physician, who is well-acquainted with the case and used his medical training and experience to make a medical determination and acted on it by ordering a specific plan of care. In this instance, the deficiency was upheld and usually at, from what I understand, at the same level of harm. I first heard about a process such as outlined in LB203 from physician medical directors from Michigan. The quality improvement organization in Michigan, MPRO, has been successful in this process in several states. The physicians felt that they were able to discuss the situation with other physicians familiar with long-term care and to come up with a rational, clinically meaningful determination about the quality of that care. LB203 appears to provide a way to protect our most frail and vulnerable citizens in a way that is fair to the providers of their care. Although punishment for failure to provide optimal care appeals to the more vengeful in society, it has failed to improve the care of the elderly. Care fails not due to greed or even ignorance, but more often from lack of resources, both human and material. By statute the survey process is punitive. LB203 would allow it to be at least less unfair. Thank you for allowing me to address your committee, and I'd be glad to answer any questions you may have. [LB203]

SENATOR JOHNSON: Thank you. Any questions of Doctor? I see none. Thank you very much. [LB203]

GEORGE VOIGTLANDER: Thank you. [LB203]

ALEX WILLFORD: Good afternoon, senators and Senator Johnson. My name is Alex Willford, A-I-e-x W-i-l-l-f-o-r-d. I'm the director of postacute services for A.J. Merrick Manor in Fremont, Nebraska. Thank you for providing me the opportunity to present my

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support for LB203. A.J. Merrick Manor annually has an inspection conducted at the facility to obtain licensure to provide services for residents who are Medicare and Medicaid. During the annual inspection, a Health and Human Services team member made mistakes in citing a specific deficiency. As such, A.J. Merrick Manor received a deficiency related to wound care. The deficiency was appealed to informal dispute resolution offered currently to the long-term care providers. In my presentation at informal dispute resolution it was clear to the manager of the informal dispute resolution that the stage one pressure ulcer was not a stage one pressure ulcer, as defined by medical terms. It was a discoloration of skin pigmentation. The resident's physician, my medical director, who oversees the medical care provided at A.J. Merrick Manor, provided written testimony that the wound was not a stage one pressure ulcer. Upon investigation by the informal dispute resolution manager, it was determined that the inspector had not reviewed the wound and read medical records accurately. With documentation from physician and known errors identified by the informal dispute resolution manager, the scope and severity was reduced, but the deficiency was not removed from A.J. Merrick Manor's report. A.J. Merrick Manor reports is posted at web sites for the public to view. It is believed to be important to the providers, public, and insurance companies have the most accurate information available to them. This information is used by providers to make determination on resident admission and reimbursement. I appreciate your time in allowing me to provide you with the specific information that would support an alternative to the option of current IDR process. [LB203]

SENATOR JOHNSON: Any questions? I have one. [LB203]

ALEX WILLFORD: Yes, sir. [LB203]

SENATOR JOHNSON: We've been sitting here listening to the testimony of various people. One of the things that came to mind to me is this, is we are in an age where in an effort to become more transparent as to the best hospitals, the best doctors and the best whatever, that we are now going on-line with this type of information. It would seem to me that for the public to make the best judgment they can regarding the facility or the physician or whomever, that we would have to devise the best system that would give the most accurate information that goes public. Your comment about that. [LB203]

ALEX WILLFORD: Senator Johnson, I agree with the concept that information has to be accurate and available to individuals to provide transparency to the consumer, to providers, and to insurance companies. I also feel that the system has to be fair and equitable, and that there has to be opportunity to provide information that is appropriate, that is measurable, and is unbiased. And with that, again, providing an opportunity for transparency would allow another form of informal dispute resolution. [LB203]

SENATOR JOHNSON: Thank you. Any other questions? Thank you very much.

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[LB203]

ALEX WILLFORD: Thank you, senators. [LB203]

SENATOR JOHNSON: Any other proponents? [LB203]

BRUCE RIEKER: (Exhibit 4) Senator Johnson, members of the Health and Human Services Committee, it's my pleasure to be here. My name is Bruce Rieker and I'm the vice president of advocacy for the Nebraska Hospital Association. And on behalf of the 85 hospitals in Nebraska and the more than 35,000 they employ, the Nebraska Hospital Association wishes to go on record as supporting LB203. I won't go through reiterating to you what this bill stands for, but we support it for the reasons laid out by so many of the witnesses prior to us. If I may, we do support this legislation because it allows the party seeking a review of a citation the option, and we emphasize the option for them, at their cost, to go through this process. This independent, objective third-party review would provide an objective assessment, ensuring that all parties' rights are protected. We believe that the creation of this alternative informal conference process is also not an indictment of the Department of Health and Human Services. Rather, we believe it creates a mechanism that provides the opportunity for the third-party peer review that can help both the department as well as our healthcare facilities provide the quality of care that Nebraskans so deserve. And if I may add, there are four states that have already implemented a similar process to some degree of success. Those are Illinois, Indiana, Wisconsin, and Michigan. And, Senator Johnson, if I may, if I read the bill correctly, in response to the question you asked the previous witness about giving the most accurate information, I believe that in this bill, in subsection...let's see, Section 71-453, subsection (2), that I believe that it was an important part of this bill that says that the deficiency statement would be removed from one's record if it found to be in error, and I think that that is something that is critical to all of our healthcare facilities. So if that is still a portion of this bill, and we believe that that is a significant portion of this as well, it...again, we would urge the committee to support and advance LB203 and we appreciate your attention to our perspective. [LB203]

SENATOR JOHNSON: Any questions for Mr. Rieker? Yes, sir, Senator Pankonin. [LB203]

SENATOR PANKONIN: Thanks, Senator Johnson. Mr. Rieker, I guess this could be a question to about anybody. Just as I'm reading on this peer review and the organizations that can do it shall possess experience, and can you give me examples of organizations? I mean, what...who would do this peer review? What qualifications would they have to know, so we can feel that the public is also protected for independents and competence. [LB203]

BRUCE RIEKER: Uh-huh. Oh, I think that those requirements would have to be laid out,

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but one organization that I know of that could do this, and they can speak to their qualifications to this more than I could, is a similar organization here in Nebraska. There are third-party entities that are already charged with similar responsibilities and I believe that that would be an entity that could do that. [LB203]

SENATOR PANKONIN: So there is organizations out there that should be qualified. [LB203]

BRUCE RIEKER: Yes. I don't believe that you would have to create new organizations, but this would be something that...I don't know how the state would proceed to put out a request for proposals, but there are entities already in Nebraska and around the country that are able to do that. [LB203]

SENATOR JOHNSON: Any other questions? Thank you. Any other proponents? Seeing none,...oh, I'm sorry. [LB203]

NICKI BRIGHAM: Good afternoon, Chairman Johnson and members of the committee. My name is Nicki Brigham, spelled B-r-i-g-h-a-m. I am a registered nurse and the director of nursing at Morys Haven skilled nursing facility in Columbus. I am testifying in support of LB203 because this bill will provide a more impartial review using consultation of physicians when necessary. In our particular case, this would have been of tremendous benefit. From our experience, I would like to explain why I feel the IDR process, as a whole, was frustrating and ended in a very unfair result. On August 17, 2006, representatives from our facility took part in the IDR in hopes to revoke a G level deficiency cited by the state surveyors. I do not want to go into explicit details of the tag or the resident, but feel I must give you some information to support my feelings on how the current process is conducted and why I feel immediate change is needed. Our final report from the surveyors alleged that our facility failed to provide interventions to maintain the skin integrity for one of our residents. The resident is very complicated and at the time of survey all supporting documentation was presented to the surveyors. Evidently, this was not enough and we were cited at the G level. Immediately we decided to use the IDR process to dispute this deficiency, as I truly believe we do care for all of our residents and do everything in our power. I was very pleased to learn about the process, until I learned that the outcome would be in the hands of a retired state surveyor. As a new director of nursing, I was somewhat confused as to how this would be a, quote, impartial process. However, I was adamant to have the opportunity to prove that it was a resident's medical condition and not failure to provide interventions that ultimately caused her breakdown. Please let me clarify that the breakdown was not pressure related but more of a dermatitis. Despite my hesitation on how the process could be fair, I spent hours putting together physicians' diagnoses, past medical histories, past skin problems, medical treatment records, nurses' notes, and the list goes on and on. I wanted to ensure I had all the documentation and support I needed to win the IDR. It was probably one of the most time-consuming projects I've ever

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undertaken but, in my mind, well worth the fight. Unfortunately, after being part of the process, I had a completely different take on everything. The retired surveyor that sat in on our process was very pleasant, however, I felt a definite leaning towards what the surveyor cited. I felt very prepared and confident in pointing out the resident's diagnoses of a chronic skin irritation given by the physician, as well as 34 other diagnosed conditions related that contribute to her problems, but did not feel this was taken in consideration at all. Not only does her past history and diagnoses speak for her problems, but we also provided a letter from her primary physician stating her diagnoses, conditions related, and that we as a facility acted appropriately in regards to her problems and current plan of care. I felt as if this meant nothing to her, and she seems more interested in cross-referencing the surveyor's reports and did not acknowledge outright any of her ongoing medical problems, as stated by the physician. She did ask why we didn't put her in a recliner, as the surveyor suggested at the time of survey. To me, this was simply a suggestion of the surveyor's and not a standard of practice. If the issue was pressure, the recliner may have been an alternative intervention, but not in this case. At the same time, I clearly provided the resident's current plan of care, including a very regimented repositioning schedule. Again, the recliner was brought up. Near the end of the process I explained that I found it somewhat disturbing that we were cited such a high deficiency on skin but neither surveyor examined the skin condition of that particular resident during the survey. The skin breakdown was three months prior to their entrance, and did not even watch any cares or do a thorough examination of this resident. They simply went off skin sheets. The retired surveyor looked very puzzled but could not give me any answers. Our medical director was present, as well, and he asked many questions regarding the process and why the deficiency was given, and again no answers. Needless to say, we were all discouraged about how the process was conducted and that the resident's medical diagnoses past history and letters from her physician stating her condition were not taken into consideration. As the end of the process neared the retired surveyor explained that even if she was in favor of dropping a cited deficiency, it would still have to be approved by the head of the department, which blew my mind and at this point I wondered why we wasted our time and energy on the whole process. I truly believe the current process is unjust and if given the unfortunately opportunity of going through it again, I would have to pass. Thank you for your time. [LB203]

SENATOR JOHNSON: Thank you. Senator Stuthman. [LB203]

SENATOR STUTHMAN: Thank you, Senator Johnson. Nicki, maybe you made this statement early on, but this retired surveyor,... [LB203]

NICKI BRIGHAM: Uh-huh. [LB203]

SENATOR STUTHMAN: ...can you explain a little bit more what that is or the process there? [LB203]

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NICKI BRIGHAM: Well, she was a state surveyor that had retired out of the profession, and so that is who conducted our IDR process. [LB203]

SENATOR STUTHMAN: And it was a state one,... [LB203]

NICKI BRIGHAM: Yes. [LB203]

SENATOR STUTHMAN: ...or a private one? [LB203]

NICKI BRIGHAM: State. [LB203]

SENATOR STUTHMAN: The state. [LB203]

NICKI BRIGHAM: Uh-huh. So I felt like it was not a very impartial review. [LB203]

SENATOR STUTHMAN: Okay. And how often do state surveyors come in, or do... [LB203]

NICKI BRIGHAM: They come in yearly unless there's a complaint survey. And any time, whether it's a complaint from family, resident, staff, they do come in on complaint surveys as well. [LB203]

SENATOR STUTHMAN: Okay. Thank you, Nicki. [LB203]

NICKI BRIGHAM: Uh-huh. [LB203]

SENATOR JOHNSON: Any other questions? Thank you very much. [LB203]

NICKI BRIGHAM: Thank you. [LB203]

JOHN PINKERTON: Good afternoon again, Chairman Johnson, everybody. I actually wasn't going to say anything, but... [LB203]

SENATOR JOHNSON: You need to give your name and spell it. [LB203]

JOHN PINKERTON: Oh, John Pinkerton, Liberty House, Pinkerton Places. We're a provider of assisted-living services for disabled people, with an emphasis on people with a mental illness across the state. [LB203]

SENATOR JOHNSON: Yeah. But, John, I know who you are and I know how to spell your name, but the person listening doesn't. [LB203]

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JOHN PINKERTON: Oh. J-o-h-n, Pinkerton, P-i-n-k-e-r-t-o-n. [LB203]

SENATOR JOHNSON: Thank you. [LB203]

JOHN PINKERTON: Thank you. I wasn't going to say anything but, Nicki, we've had the exact same example--a hearing by an impartial ex-HHS employee, a great little lady that we thought everything went fine, we thought we explained everything to her very well about some problem, deficiencies they said we had; it did no good. It was a waste, total waste of time, and we feel we were very wronged. We have people with mental illness and we've got a great, great, great problem since the regional centers have been closed. The hospitals are full of people. They call us with people they say are stable on their meds and everything; turns out we've been lied to. We end up with some of these people and we've got three right now that we are trying to take care of, but truly they are above our level of care, and truly there is no place for them to go. I've talked to Ron Sorensen at length about it last week and this week. He asked me if we had a suggestion box or a complaint box where these people could complain, and that's not a very good solution. We're trying to keep people safe and there is no safe place for these people to go since they cannot get into a regional center. The regional center's closing will go down in history as the biggest mistake this state ever made, I believe, because of people and society's safety is put at risk. We are trying to do our part by keeping that are possibly above our level of care, and we've got three right now that literally don't have any place to go, and HHS has no solution. If we terminate their residency with us, I can guarantee you they'll be in the justice system very soon and they'll be a much bigger problem than they are now. But the closing of the regional centers is becoming a huge problem. And here we are, trying to do our part, and we had a complaint with one of these people, as an example, and the person, an attention-seeking type personality disorder, called the police. The police and APS show up at our doorway. We get cited for not calling APS ourselves. We didn't even know this...what was going on. You know, our people are free to do what they want, you know, but they can call the police, they can call APS, anything else. But here APS is at our premises; we get cited for not calling APS. I don't know what they wanted us to do--wait till they left and then call them again, say it happened? But this type thing that goes on, when you're trying to...truly trying to do your best and find a safe place for people to live, we could use some slack, you know, from somebody, but Licensure definitely does not give any slack. They are not impartial in any of their complaint procedures at all that we can determine. We just think this law could be very useful, and there does need to be some adjustments made somewhere and...if you want the best operating system you can get. And believe me, we're trying. (Laugh) But... [LB203]

SENATOR JOHNSON: Okay. Thank you. Any questions of Mr. Pinkerton? Senator Stuthman. [LB203]

SENATOR STUTHMAN: Thank you, Senator Johnson. John, you mentioned about...I

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think it was the surveyor that was an ex-HHS employee. [LB203]

JOHN PINKERTON: Sounds like the same gal. (Laugh) [LB203]

SENATOR STUTHMAN: But...but they were an employee or whom now? [LB203]

JOHN PINKERTON: HHS. Oh, they were retired, as far as I could determine. [LB203]

SENATOR JOHNSON: Called back to duty would be a fair statement? [LB203]

JOHN PINKERTON: I believe that would be it. [LB203]

SENATOR STUTHMAN: They were retired, but they were still working for HHS?
[LB203]

JOHN PINKERTON: Called in especially for this maybe after retirement assignment, but they were old, older than me (laugh) and so they...I took them as retired, and that was my understanding. They were a retired person and they were just called back in to do this. And we thought they were...seemed impartial and seemed like they were listening, but after we got done we were very surprised at the outcome. [LB203]

SENATOR STUTHMAN: That, you know, and I'm totally not clear on, yet they must still be an employee or a contractor under HHS then. [LB203]

JOHN PINKERTON: Maybe, maybe an independent contractor at this point. I'm not really sure what their status was, but I understand they had separated from HHS on a permanent basis, and then came back in (inaudible). [LB203]

SENATOR STUTHMAN: Okay. [LB203]

SENATOR JOHNSON: I could see where they might be a part-time employee that's called back. [LB203]

JOHN PINKERTON: Yeah. Yeah. I suppose. But... [LB203]

SENATOR STUTHMAN: Or a contract person. [LB203]

JOHN PINKERTON: ...but we didn't get the idea they were impartial. We did at the meeting, but we didn't after (laugh) the meeting was over, after I got the ruling. But anyway, we do think this needs some attention. [LB203]

SENATOR JOHNSON: Senator Hansen. [LB203]

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SENATOR STUTHMAN: Thank you. [LB203]

SENATOR HANSEN: Thank you, Senator Johnson. Mr. Pinkerton, who would you suggest do that peer review then in the case like out in North Platte? [LB203]

JOHN PINKERTON: Possibly some retired persons that might have something to do with mental health, in our case at least for these type of things, maybe somebody that's... [LB203]

SENATOR JOHNSON: We got...John, we got to address the whole bill, so I think that's...Senator would like, you know, let's look at it from... [LB203]

JOHN PINKERTON: Anybody that doesn't work for HHS. [LB203]

SENATOR JOHNSON: Okay. [LB203]

SENATOR HANSEN: Okay. [LB203]

JOHN PINKERTON: That's all I...about all I can say; somebody that's impartial. That's all I can say. [LB203]

SENATOR HANSEN: Okay. [LB203]

JOHN PINKERTON: But NAMI or MHA people could possibly help. [LB203]

SENATOR JOHNSON: Yeah. Just want to address the broad scheme of things,... [LB203]

JOHN PINKERTON: Oh, okay. I'm sorry. (Laugh) [LB203]

SENATOR JOHNSON: ...is what I'm trying to get to. Yeah. [LB203]

JOHN PINKERTON: Uh-huh. But just...we didn't get an idea that it was impartial at all, and I've heard other people had...in similar situations that had the same opinion. But just somebody with common sense. (Laugh) So... [LB203]

SENATOR JOHNSON: Okay. Any other questions of Mr. Pinkerton? Thanks, John. [LB203]

JOHN PINKERTON: Thank you. [LB203]

SENATOR JOHNSON: Any other proponents? How many opponents do we have for testimony? [LB203]

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RACHEL PINKERTON: No, I'm sorry. [LB203]

SENATOR JOHNSON: I'm sorry. Go right ahead. [LB203]

RACHEL PINKERTON: I'm Mrs. John Pinkerton, John's wife. I have been a housing provider primarily for people with serious mental illness for several decades now, so I have been accountable to HHS in one or another of its manifestations. So this...it's...for the most part I think we're blessed with a very high caliber of individual in our...who is called to work in our bureaucracy and I have a lot of admiration for a lot of the people in the field. But we do have a failed system in many ways and Regulation and Licensure is probably the most glaring example of that. And I think if you would just please file away the passion that you've been hearing from people and keep in mind. Thank...I'm very appreciative to Senator Gay for LB203, but this is just like kind of a foot in the door to maybe get some more common sense and common decency in this process. I'm on the state board of the National Alliance on Mental Illness, NAMI Nebraska, and Coercion Free Nebraska is something you'll be hearing more about. It's a very exciting initiative that I'm very pleased to be part of. We have a national speaker who comes and talks about recovery focus services. Her name is Beth Caldwell. [LB203]

SENATOR JOHNSON: Ms. Pinkerton, I don't want to cut your off,... []

RACHEL PINKERTON: Okay. The... [LB203]

SENATOR JOHNSON: ...but we do need to keep on the subject and...because the clock is going around. I'm sorry. [LB203]

RACHEL PINKERTON: Okay. Well, don't be surprised if we come back and say, yes, this is great but what we really need to do is privatize all of Regulation and Licensure, because we're not getting collaborative, strength-based leadership where we really need it and deserve it. Thank you. [LB203]

SENATOR JOHNSON: Okay. Thank you. Wait, don't rush off; might have a question of you. Any question of Ms. Pinkerton? I don't see any. Thank you very much. [LB203]

RACHEL PINKERTON: Okay. Thank you. [LB203]

SENATOR JOHNSON: Any other proponents? Well, we'll proceed to opponents. Any opponent testimony? Seeing none, neutral testimony. [LB203]

J.ROCK JOHNSON: Chair Johnson and members of the committee, my name is J. Rock Johnson; it's initial J., Rock, R-o-c-k J-o-h-n-s-o-n. I appreciate very much, Senator Gay, that your...the opening of...that...well, I'm saying I tried to find the intent

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statement today and couldn't find that, so with the opening, it gave me more information about this bill. I don't really find a definition of "independent peer organization." There's reference to physicians, but...and I heard quoted in testimony a federal definition, so I'm somewhat confused about what that definition would be. There was testimony that there are such organizations, third parties that are already charged with similar responsibilities, but again there were no examples given of this so-called independent peer organization. A comment was made that this...that prior to this bill that Health and Human Services was acting both as a judge and a prosecutor and there was an obvious conflict. I'm not sure that, if one sees a conflict, that that's resolved by the fact that it's the director, who would contract with this independent peer organization that isn't defined, and who would, in fact, be paying for the services. My initial reaction to the bill without having had any of this additional information was, why? There appears to be a process in place. We have heard some anecdotal evidence of the worst. I should like to hear more statistical evidence about how the previous operation has worked prior to making these kinds of decisions. My understanding is that the state operations manual, the SOM, does have interpretive statements, but those are interpretative statements generated by the Center for Medicare and Medicaid Services to be of assistance to the state operators and that the state...the state surveyors, rather, are operating under the auspices of the Center for Medicare and Medicaid Services. So if we're having the kinds of problems people are bringing up, and I'm not sure of the extent of them nor, again, the definition of an "independent peer review," my suggestion would be that we have someone, were we to go this route, who would represent the interest of the patients or the clients, someone in the nature of an "ombudsperson" or guardian ad litem, whatever reference you might make. But if we're going to add this additional layer of discussion and there's such strong feeling that Health and Human Services is not...I shall not say acting in bad faith but people aren't as pleased with them as they should be, they feel, then perhaps we need someone to represent the patients, the clients, the residents of the facilities under the Health Care Facility Act. [LB203]

SENATOR JOHNSON: Any questions of J. Rock? Thank you very much. [LB203]

GREG SCHIEKE: (Exhibit 5) Good afternoon, Senator Johnson, members of the committee. My name is Greg Schieke, G-r-e-g S-c-h-i-e-k-e, and I'm the senior vice president for a company called CIMRO of Nebraska, and we are the Medicare quality improvement organization in the state of Nebraska. Our organization has basically become now known as the quality improvement organization, but in statute we are defined as a peer review organization by federal law. And I've provided you a couple of handouts that I hope will provide a little information on what our organization is, what we do, and I'll be very brief and basically give you the opportunity to...if you have any additional questions to ask me of that. But CIMRO of Nebraska, by statute there has to be a quality improvement organization contracting with Medicare within every state, and we're that organization in Nebraska. We're a 501(c)(6) not-for-profit Nebraska corporation. And we contract with Medicare to improve the quality of care provided to

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Nebraska Medicare beneficiaries. We do that in partnership with a number of entities, including the Health and Human Services Regulation and Licensure, with trade associations, and with the actual healthcare providers. A good portion of our contract with Medicare is to do peer review, which is physician review of the care provided, and that's basically detailed within the second handout that I've provided to you. How we accomplish that is to use physician reviewers who are practicing physicians throughout the state of Nebraska. We have over 80 physician reviewers that we actively use to review care. They are scattered throughout the state. We use like settings in terms of geography and resources to review care. For example, we don't have a physician from Omaha review care provided to, let's say, Gordon, for example. And so we use like specialties. We don't have specialists reviewing family practice care, etcetera. If LB203 would actually come into passage and become law, we would be more than happy to work with all of the parties to provide an additional option for review. I'll leave it with there and thank you for your time and ask you if you have any questions. [LB203]

SENATOR JOHNSON: Any questions? Yes, sir, Senator Pankonin. [LB203]

SENATOR PANKONIN: Thank you. Thank you, Senator Johnson. So you were the group that the first testifier mentioned that would be a potential... [LB203]

GREG SCHIEKE: We are that group. [LB203]

SENATOR PANKONIN: Okay. [LB203]

GREG SCHIEKE: Yes. [LB203]

SENATOR PANKONIN: And to me this is the whole aspect of this bill, what it really comes down to, because I think we have an obligation. And let me just tell you a little about my background, as my former public life before this I was mayor of Louisville and the city of Louisville owns their care center, assisted...we just added assisted living. Before that I was on the advisory board for the care center at one time, so I've dealt with these issues. I know the perspective, what you've been through, and when the last time we replaced our care center manager, I made sure we hired a former surveyor to help us do a better job. But...and we've had good care at that facility, I think, and I know how difficult it is, really do. It is very tough work to satisfy all that. On the other hand, I think we have an obligation to obviously make sure those patients are treated as fairly and with the best quality care possible under very difficult circumstances. So how do you feel like your organization can do that? [LB203]

GREG SCHIEKE: Our primary goal is to make healthcare in Nebraska the best in the nation, and that's what drives our staff. It's our vision. We...it's what motivates us as an organization. And to do that, part of it is impartiality, and I think that's...we can lend an extra set of eyes in cases where a physician is needed to review a chart or perhaps a

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panel of two or three physicians to provide that level of impartiality. Extra set of eyes--we can provide that. Think what we do in terms of working with healthcare providers to improve quality of care ultimately ends up in better processes that end up with better care and, therefore, better survey results when they do get to visit. [LB203]

SENATOR JOHNSON: I have a follow-up question on that. What percentage of the time would you say that you agree with the original assessment now, far as that the person doing the survey the first time was essentially right and in the punitive action they recommended and so on? [LB203]

GREG SCHIEKE: Right now, we don't review any care as a result of a survey or in any way related to the survey. Our...the care that we review basically comes to us from complaints, from referrals, and is part of a random sample of care. So I wouldn't have any way of answering. [LB203]

SENATOR JOHNSON: Okay. So you just have the ability to do this, but you don't have the actual experience of follow-up at this time then. [LB203]

GREG SCHIEKE: That's correct. [LB203]

SENATOR JOHNSON: Yeah. All right. Thank you. Any other questions? [LB203]

SENATOR PANKONIN: Just one more, Senator Johnson. [LB203]

SENATOR JOHNSON: Sure. Go ahead. [LB203]

SENATOR PANKONIN: Would there be other potential organizations, vendors, that you know of that would be able to do this at this time? [LB203]

GREG SCHIEKE: I believe so, and I'm not going to be able to quote Nebraska statute to you, but I believe another organization within Nebraska would qualify as a peer review organization. As I mentioned, there is a peer review organization in every state. I believe there would be no barrier from our colleagues in any of the other states to provide that service within Nebraska. [LB203]

SENATOR PANKONIN: So my question is leading to would there be, you know, several to choose from and... [LB203]

GREG SCHIEKE: Potentially, yes. [LB203]

SENATOR PANKONIN: Yes. Okay. [LB203]

GREG SCHIEKE: You bet. [LB203]

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SENATOR JOHNSON: All right. Thank you. Any other questions? Thank you very much. [LB203]

GREG SCHIEKE: Thank you. [LB203]

LUISA ROUNDS: Good afternoon. My name is Luisa Rounds and I'm a University of Nebraska medical student from Omaha, and I just wanted to approach the Senator's question about those that would be eligible to do a peer review. As a patient advocate, I think it's important whoever in this role would look at all the disciplines. Because you're reviewing doctor's orders, by having a physician or retired physician or someone in a retired role take over healthcare reviews would be difficult with the constantly changing healthcare environment. Constantly research is being placed, constantly evidence-based protocols, policies, so forth, so whoever is in the role I wanted to propose that the committee look at the facts of who would do it. Someone who would be able to collaborate with all the disciplines and be a part of a team that would understand what these interventions are, what the doctor's orders are, versus someone who's retired. Ten years ago the protocol for pressure ulcers or the types of pressure ulcers have changed. So I just wanted to display, as a patient advocate, to please look at the disciplines and whoever does this review know the facts of the current research and current protocols. [LB203]

SENATOR JOHNSON: I need you to spell your name. [LB203]

LUISA ROUNDS: My pleasure. It's Luisa. [LB203]

SENATOR JOHNSON: Say it again; then spell it, please. [LB203]

LUISA ROUNDS: Luisa, L-u-i-s-a, and last name is Rounds, like a circle, R-o-u-n-d-s. [LB203]

SENATOR JOHNSON: Fine. Thank you very much. Any questions? Thank you very much. Any other neutral testifiers? [LB203]

JOANN SCHAEFER: (Exhibit 6) Good afternoon, Senator Johnson and members of the Health and Human Services Committee. My name is Joann Schaefer, S-c-h-a-e-f-e-r. I am the director of the Department of Health and Human Services Regulation and Licensure, and the chief medical officer. I'd also like to mention I'm a board-certified and licensed family physician in the state of Nebraska. I'm also here to testify in a neutral capacity for LB203. In the green copy of this bill, introduced version, the department believes that the use of contractors to hear contested cases is a viable option. We have, for several years, exercised this option by contracting with persons who have the type of expertise to render a decision on issues being disputed. This approach is allowable

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under existing statutory authority, yet the statutes hold the department responsible and accountable for any contractor's decision. We believe that LB203 could lead to the following adverse circumstances, and I will shorten my testimony: unlawful delegation of departmental regulatory function to a nongovernmental agency; compromise the roles of quality improvement processes; LB203 would create additional cost to healthcare facilities and the department for a new or different system in assessing costs for collecting and tracking fees paid by these facilities for these informal conferences; LB203 would create a system that would theoretically require a facility to undergo two separate informal conferences to dispute the deficiencies cited under either state or federal regulations. I also want to make a special note that in the 16 months that I have had this position not one case that's been appealed under the informal process, nor under the formal process, to reach my desk so that I can make an additional ruling. And in the six and a half prior tenure that the prior CMO served, only one case came to his desk. We did meet with Senator Gay and the Nebraska Health Care Association and the proposed amendments addressed our concerns. Specifically, the proposed amendment strikes "independent" and adds language that the peer review organization shall be a representative of the department. The part addresses the delegation issue. The striking of the language in Section 3 regarding the qualifications of the representative addresses our fiscal concerns as well. We appreciate your consideration of the department's position and would be happy to any of your questions. And I brought Helen Meeks along to assist me with anything that I should not be able to answer. [LB203]

SENATOR JOHNSON: All right. Any questions. Doctor. [LB203]

SENATOR ERDMAN: Doctor! Wow! [LB203]

SENATOR JOHNSON: Doctor. Just demoted you. [LB203]

SENATOR ERDMAN: Well, it'd probably be a promotion, it sounds like. Dr. Schaefer, some of the questions that I had you actually answered, and a lot of it was kind of the results that have gone on in the past for individuals that have gone through this process. As you sit here and listen to the testimony, and you're fairly new on the job, and have heard some of the complaints under the existing statutory processes, are there improvements that can be made to our existing process in statute, in addition to possibly this new idea? Because regardless of if this new idea is added, we still have a different provision in statute that appears to have some uneasiness from providers and individuals in the state. I mean are there things that come to mind that you see that may make the current process even better, or is it simply the process of allowing you the opportunity to work as the new director to try to resolve some of the perceptions of the process? [LB203]

JOANN SCHAEFER: I would have appreciated the former that you mentioned, without

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giving...being given the opportunity to look at this. In fact, the first time that this was brought to my attention was the arrival of the bill on my desk. So it's...it would be nice to have that opportunity. I certainly understand their concerns and want to make that independent review process as good as it can be. That's why we're here today in a neutral capacity. There aren't...there is not strong opposition to the amendments that they have made. We do want that process to be independent. We are not prosecutor and judge and, contrary to the testimony that was received before, we try to make that as independent as possible. [LB203]

SENATOR ERDMAN: Okay. [LB203]

JOANN SCHAEFER: We hear many cases a year. I, you know, in all the regulatory functions, I must close, you know, 800 cases a year, so we're quite used to being objective. [LB203]

SENATOR ERDMAN: Your testimony about only one case has come to your desk, I'm not recalling. [LB203]

JOANN SCHAEFER: In the prior CMO's. [LB203]

SENATOR ERDMAN: Okay. [LB203]

JOANN SCHAEFER: Actually, none have come... [LB203]

SENATOR ERDMAN: Oh, that's correct,... [LB203]

JOANN SCHAEFER: ...to my desk. [LB203]

SENATOR ERDMAN: ...in the prior chief medical officer. Is that because, as some of the other testifiers, and of course you obviously may not have firsthand knowledge, but just from your experience as to why maybe some haven't come to your desk, is it because the individuals are not choosing to pursue the process in statute? Is it because, as some have testified, that they go through this process and the individual tells them, boy, that's really nice, I may think you're right but it's not my decision, and then the individual gets frustrated and walks away? I mean is there...is that why they don't get to the end, or is it realistically that the decision is upheld and, therefore, never reaches your desk? Because, as I would read the statute, it would appear that it's your authority to dismiss the sanctions, not the individual who hears the case, and maybe that needs to be clarified as well so that it's clear that the people who go through this process know who has the final say. But do you have any knowledge of, the 16 months you've been on duty, that the reason you haven't seen something on your desk is because of failure to pursue to your level, or is it resolving the actual issue and that's why it hasn't come to your desk? [LB203]

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JOANN SCHAEFER: We actually just asked the Nebraska Health Care Association that today about why we have not seen these cases, and that was a concern of mine, and they offered up some possible explanations but they wanted to go back to their membership and ask as well. So I think that's worth investigating because, you know, they have that ability. And I also have the ability to contract or work with the contracted gerontologists that we have, the M.D.s that are specifically trained in this issue, to get their objective opinions as well. So we have the resources there. We have that process set up, and that's not currently being used. And so I would like the opportunity to make sure that that is still done, but certainly want to make sure that, you know, that we address their concerns. [LB203]

SENATOR ERDMAN: And I guess the last question I'll have, not to monopolize the question time here, but when we talk about the surveyors, and it sounds like...and I represent eight counties. We have a number of facilities and a lot of times you hear frustration of homes that are trying their best, whether it's a facility or other establishments, to try to meet the qualifications or the requirements. I'm assuming that the training that the surveyors have to have is pretty extensive. They have to have some knowledge of the conditions in the facilities. They're probably not just folks off the street that you give them a clipboard and say, hey, walk through the Chimney Rock Nursing Home. I mean it's probably more than that. And I guess then the question comes, as they go through their training, and I believe the testifier who's a medical student or...I think that's right, spoke of the changing practices, are those surveyors also trained in recognizing the best practices, understanding the totality of the issues and not just simply looking at a checklist in this process? Because it seems more than just...it seems the reason we've gotten to this point is that something was not agreed to at the surveyor level and then it becomes an appeal, and then the question is, how do you hand that? But it seems like maybe there's some questions about how the up-front process. And it's my own ignorance. I'm not a jack-of-all-trades, like Senator Pankonin here, who's been on the advisory boards to see it firsthand. [LB203]

JOANN SCHAEFER: Well, in the survey process, those are strictly guided by federal regulations and it is somewhat, I hate to use the "checklist," but mandated by a certain number of pieces of material that they have to look at and gather and do. [LB203]

SENATOR PANKONIN: There's a protocol. [LB203]

JOANN SCHAEFER: There's a protocol. You just have to do it that way. And we have looked behind surveys where they follow up with federal surveys to come back and make sure that we're doing it exactly the way we are reporting that we're doing it, or we will get zapped with a fine as well. [LB203]

SENATOR ERDMAN: Uh-huh. [LB203]

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JOANN SCHAEFER: So there is a certain amount of that. They are not at the level to make diagnoses and medical opinions about things. They are to collect information regarding those things when it's appropriate. So... [LB203]

SENATOR ERDMAN: Okay. Well, I will look forward to some follow-up information. I'm sure you'll be working with Senator Gay and... [LB203]

JOANN SCHAEFER: Absolutely. [LB203]

SENATOR ERDMAN: Okay. Thank you. [LB203]

SENATOR JOHNSON: Doctor. (Laugh) I've got Doctor on the brain here. Senator Howard. [LB203]

SENATOR HOWARD: Thank you, Senator Johnson. I have two questions and I just would like some clarification. So I always find it kind of a mistake to assume things when I would have the opportunity to ask you. These surveyor positions, are they staff positions with Health and Human Services? Are they contract positions? Who are these people? [LB203]

JOANN SCHAEFER: No, they're staff positions, regular surveyors are, yes. They're staff. [LB203]

SENATOR HOWARD: So they're not retired individuals that have come back, like we were discussing earlier. [LB203]

JOANN SCHAEFER: No. [LB203]

SENATOR HOWARD: They are staff positions. [LB203]

JOANN SCHAEFER: They are staff positions. [LB203]

SENATOR HOWARD: And then can you explain or just tell me a little more about this. It says specifically the proposed amendment strikes "independent" and adds language the peer review organization shall be a representative of the department. How would that be different from how it's working now? [LB203]

JOANN SCHAEFER: Well, it allows them to go forward with their idea of having a separate process that the facilities pay for, but what they wanted would delegate our authority to outside of government, which we are not allowed to do. So it was just a mere correction to that one portion. [LB203]

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SENATOR HOWARD: Okay. [LB203]

JOANN SCHAEFER: It was just a technical fix to their language. [LB203]

SENATOR HOWARD: Okay, so that this... [LB203]

JOANN SCHAEFER: I'm sorry that wasn't more clear. [LB203]

SENATOR HOWARD: Oh. So the surveyors are employees, but this proposal would be not internal employees. [LB203]

JOANN SCHAEFER: They are representative of the department, correct. We can't delegate our statutory authority, so there has to be a link to the department formally. [LB203]

SENATOR HOWARD: Okay, so right now you can't contract out. [LB203]

JOANN SCHAEFER: This was just to correct the language in their original green paper. I don't think I'm answering this correctly. Helen...or do you want to...it's your amendment, so I don't want to goof up the... [LB203]

BRENDON POLT: There's...don't confuse the IDR person. [LB203]

SENATOR ERDMAN: Brendon, you'll have to come forward. [LB203]

SENATOR JOHNSON: Yeah. Why don't you come on up and talk into the... [LB203]

JOANN SCHAEFER: Come on. If I can...can I ask Brendon to come up? [LB203]

SENATOR JOHNSON: Please. And then you can talk into the microphone. [LB203]

BRENDON POLT: I'm Brendon Polt, for the record. [LB203]

SENATOR JOHNSON: And, yes, thank you, identify yourself. [LB203]

JOANN SCHAEFER: Thank you. [LB203]

BRENDON POLT: I think that what I'm perceiving is there's a misunderstanding. The IDR person is not the same person as a surveyor. [LB203]

JOANN SCHAEFER: Right. [LB203]

SENATOR HOWARD: Okay. [LB203]

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BRENDON POLT: So the retired individual is the IDR representative. Under current statute, the surveyors are staff of the department, I think. [LB203]

SENATOR HOWARD: That helps. Thank you. [LB203]

SENATOR JOHNSON: Any other questions? All right. Dr. Schaefer, thank you very much. [LB203]

JOANN SCHAEFER: Thanks. [LB203]

SENATOR JOHNSON: Any other in neutral testimony? [LB203]

ABBIE WIDGER: Hi. My name is Abbie, A-b-b-i-e, Widger, W-i-d-g-e-r. I'm an attorney and I am general counsel for Nebraska Health Care Association and represent several long-term care providers in the state of Nebraska, and Brendon Polt asked me to testify in response to Senator Erdman's question about the appeals process and what happens after IDR, and several reasons. Brendon called me this morning and said, why aren't there more appeals? And I went back and looked through my records, in order to answer the questions that were presented. We have appealed, in the last 14 to 16 months, approximately five IDR decisions, be it assisted-living or a nursing facility. After the appeal through the state process, we have reached a resolution on those and a settlement agreement with the department, so there was no active trial before a hearing officer in which the director, Dr. Schaefer, would have to make a decision. With regard to Dr. Raymond, who was the chief medical officer prior to Dr. Schaefer, I can remember two trials in front of Dr. Raymond and...well, they wouldn't be in front of him. It would be the hearing officer. Also, Bob Lepp is an attorney with Workman Lepp in Omaha, and he represents a lot of long-term care providers as well, and I know of at least three trials that he had in which Dr. Raymond was asked to issue a decision. Beyond that, I don't know how far back you have questions on there. There are a lot of reasons that facilities, after IDR, do not go ahead and ask for a state appeal and follow through with the administrative process. One of those is we have a huge disconnect between the federal system and the state system, and I don't know how much detail you want me to go into. But when they've talked about scope and severity here today, deficiencies are based on a scope and severity and we usually talk about a G level as a harm level deficiency. Those deficiencies, that's a federal citation. When the surveyors come in, they're surveying...when the state surveyors come in, they're surveying under federal deficiencies and they're surveying state licensure, so when we talk about the scope and severity and the harm level--A, B, C, D, E, F, G, and above--those are the federal citations. Along with that you have a state survey. The deficiencies are identified on one document but there will be two citations, a federal and a state. The federal process that we can't do anything about, unfortunately is if, after revisit...because after you get a deficiency you issue...you put in a plan of correction as a facility, the

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surveyors come back out and make sure you fix the problem. If you fix the problem and there's no remedy imposed, there's no denial of payment for a new admission, there's no ban on admissions, you have no federal right of appeal. So that federal G level deficiency that's out there for everybody in the world to see is there forever unless you can get it removed at IDR. If you don't agree with the IDR decision but there's no remedy, you're stuck. Nursing home compare, your OSCAR reports, all the federal stuff, that's out there. So...but you still have the state deficiency, and so a lot of facilities may decide to go through with the state appeal, but a lot of facilities say, I can't get rid of the G level deficiency, so what? And they walk away from it. That's why I think the facilities believe that it's so important to add an alternative to the current IDR process, because if you have a more complex medical issue you may have a panel of physicians, like the individual from CIMRO talked about, that's reviewing those complex medical care decisions. It becomes very important to try and get your deficiencies removed at IDR because of that federal disconnect and the no right to appeal. Also, if you can't get rid of the G level deficiency, you may file a state appeal for the purpose of convincing the insurance carrier that you shouldn't have an increase. If you have a simultaneous nursing issue or administrator issue, you may decide to go ahead and file your state appeal. But generally, for the most part, if you can't get rid of the federal deficiency because you've cleared on revisit, it's, frankly, not worth it. So do you have any questions? [LB203]

SENATOR JOHNSON: Yes, Senator Erdman. [LB203]

SENATOR ERDMAN: Okay. I don't... [LB203]

ABBIE WIDGER: Now that I've thoroughly confused the issue, you can yell at Brendon for making me come up here, because I didn't want to do this. (Laughter) [LB203]

SENATOR ERDMAN: I don't think I'm ignorant, but I might be wrong. [LB203]

ABBIE WIDGER: No, this is... [LB203]

SENATOR ERDMAN: Okay, you have the process. You have...you're cited for the federal standards as well as the state licensure and say, what, your G...what is it? [LB203]

ABBIE WIDGER: It...yeah. [LB203]

SENATOR ERDMAN: Just what is the title of it? It's a... [LB203]

ABBIE WIDGER: It's a federal deficiency. They call them tags. And then each tag that you get is given a scope and severity. [LB203]

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SENATOR ERDMAN: So if you get a G... [LB203]

ABBIE WIDGER: If you get a G, that means it's harm. [LB203]

SENATOR ERDMAN: I don't...I understand, I'm just staying what is it called officially if you get a G? Is it you get a...is there a...it's just called a G? [LB203]

ABBIE WIDGER: It's a G, yeah. [LB203]

SENATOR ERDMAN: Okay, you got a G. [LB203]

ABBIE WIDGER: It's called a G. [LB203]

SENATOR ERDMAN: You got a G. [LB203]

ABBIE WIDGER: Scope and severity is a G. [LB203]

SENATOR PANKONIN: So what's an A (inaudible)? [LB203]

SENATOR ERDMAN: You got a G. I probably should have got a few in schools but I...they didn't have that option. (Laughter) So you get a G and you go to the state and then I guess my question is, so you can appeal, and the federal, after you go through IDR, is the state IDR or is there a state statute that process or is that a separate process as well? And does the state have the ability under our existing process to remedy that since the state may be the one doing the inspection? You know, I guess I'm trying to understand. [LB203]

ABBIE WIDGER: No, I know what you mean. See, federal law 42 C.F.R. Section 43, and I can't remember the subsite, Helen probably would remember it,... [LB203]

SENATOR ERDMAN: Blah, blah, blah, yada-yada. [LB203]

ABBIE WIDGER: ...says that the states have to have an informal dispute resolution process. [LB203]

SENATOR ERDMAN: So that's where you resolve the issues. [LB203]

ABBIE WIDGER: So that's...right. [LB203]

SENATOR ERDMAN: And if you can't resolve the issue in IDR, it doesn't do you any good to appeal because you're not going to get rid of your federal G. [LB203]

ABBIE WIDGER: Correct, because... [LB203]

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SENATOR ERDMAN: And so that's...that's the crux of this. Isn't not necessarily our process that's broken, even though some folks would agree that IDR isn't treating them as fairly as it should. It's the fact that if you can't resolve it there, there's no value in appealing because you won't get rid of it because the federal regs don't allow you to do that. [LB203]

ABBIE WIDGER: If you have no remedy then you have no right to do a federal appeal to get rid of the federal. You can appeal through the state to get rid of the state licensure, hopefully, but you've...so, yes, that's why... [LB203]

SENATOR ERDMAN: So that IDR process becomes even more important... [LB203]

ABBIE WIDGER: Absolutely. [LB203]

SENATOR ERDMAN: ...because that is your only option. [LB203]

ABBIE WIDGER: Yes. [LB203]

SENATOR ERDMAN: And then this gives you an alternative to IDR that would also allow you that opportunity then as well, or...? [LB203]

ABBIE WIDGER: What LB203 would hopefully do is for the facility to look at this and say, I want to go with the current process and prepare the information and work through the current process, the current IDR process, or to look at their deficiency and to look at their medical record and say, you know, this individual is very complex, this is a really hard issue, maybe our documentation wasn't as easy to read as what it should have been so we confused the surveyors, but when we go back and look at it we really believe that, given the complexity of this individual, given the dual diagnosis, given everything that's going on, we would like a panel of physicians to review this, we would like a peer review organization to look at it, so we're willing to pay the charges for that to have that done. Because every G level...I'm going too far here. I'll shut up. [LB203]

SENATOR ERDMAN: Let me just finish with this then. So it would be your opinion that the way that LB203 would be outlined is that you would have two options to remedy any state or federal citations. [LB203]

ABBIE WIDGER: No. It's an either...it's an...you get... [LB203]

SENATOR ERDMAN: But I'm just saying you would have the choice of going the traditional manner that's in statute now, or you'd have this new option, but you would have those options and either one of those options could remedy both the state or federal citations that you may receive. [LB203]

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ABBIE WIDGER: Correct. That's the hope. [LB203]

SENATOR JOHNSON: Any other questions? I'm reminded of my conversation with my predecessor. He says, all the easy laws have been passed. (Laughter) Thank you very much. Anyone else? [LB203]

JOHN PINKERTON: Jeff says I'm going to get shot if I say anything else. Is there anything? I think I have something that deals with the crux of the matter if I can just talk for 30 seconds. [LB203]

SENATOR JOHNSON: The only question is, is you've testified on one side and one to the other... [LB203]

JOHN PINKERTON: Could I... [LB203]

SENATOR JOHNSON: ...and, John, we'd have to go back to everybody else and offer them the same opportunity at every time. So I, you know... [LB203]

JOHN PINKERTON: I thought I had something very important to say (inaudible). [LB203]

SENATOR JOHNSON: I think you might approach us privately afterwards or something. [LB203]

JOHN PINKERTON: Okay. Okay. [LB203]

SENATOR JOHNSON: So anyhow, any other neutral testimony? Senator Gay. [LB203]

SENATOR GAY: Thank you, Senator Johnson, members of the committee. This bill, in summary, I appreciate everyone coming in and sharing their thoughts with the committee but, in summary, this bill was never intended...is no indictment on the current system and the current way we have it. Health and Human Services, like I say, this morning we had a great meeting, good people. I think everybody involved here wants a good resolution. I think what this is, is an improvement in the process. Unless we have confidence in the process of how this...how these situations are remedied, I think we're in big trouble. Senator Johnson, you alluded to this can be on your public record. There's very important things here and I think if there's no confidence in the providers that they're getting a fair hearing on any review, that's trouble. If you've ever worked in an environment where you've had to...had regulators come in and they review everything and you don't feel...you know, you just, well, throw up your hands and do whatever they say, you don't feel very good about it. This is just an improvement, it's a revenue neutral improvement best of all, I think, that it would provide a different avenue

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to go be heard and people would feel they have a voice in the situation, in their situation, which is a...can be a huge financial detriment if it goes the other way. Like I say, I don't think anyone has an intention...everyone has good intentions to take care of the patients and do a good job. This is just, again, an improvement on the process. And thank you for your consideration. [LB203]

SENATOR JOHNSON: Thank you very much. Oh, questions? Senator Pankonin. [LB203]

SENATOR PANKONIN: We both have questions. A lot of paper here,... [LB203]

SENATOR JOHNSON: All right. [LB203]

SENATOR PANKONIN: ...Senator Gay, but do we have a copy of these proposed amendments, the specific written copy of what...I mean we have reference to proposed amendments, but... [LB203]

SENATOR GAY: No. This...and I apologize. [LB203]

SENATOR PANKONIN: The actual language? [LB203]

SENATOR GAY: I apologize for that. This morning in our meeting this was...this was brought up. Jeff was in the meeting and we will prepare that. [LB203]

SENATOR PANKONIN: So we'll be working on specifics? [LB203]

SENATOR GAY: Yeah, we will. We will prepare that. [LB203]

SENATOR PANKONIN: Okay. [LB203]

SENATOR GAY: So... [LB203]

SENATOR JOHNSON: Senator Erdman, you have a question? [LB203]

SENATOR ERDMAN: Well, I had that question, but he's probably lucky that you had people to testify at Brendon's request, otherwise it would have been probably pretty difficult for you to answer the questions, at least so that I could have understood them. So I'm glad you were prepared, Senator. [LB203]

SENATOR GAY: Well, actually I think I could have. I did...one thing, Senator Erdman, I bring this bill in doing my own research. I still believe I'm, as I said many times and I will say many times, to introduce new programs and review boards and all that, I'm not a big fan of that. After listening and doing my own research on a lot of these issues, and

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having meetings, I still believe there's a need for this. And again, it comes back to one word, "confidence." Unless we have that in this system, I think it's...it can be improved, and that's how you would improve it to give some confidence by the people that are being reviewed. It's a critical issue in any regulatory environment. [LB203]

SENATOR JOHNSON: Thank you, Senator Gay. Shall we proceed immediately? That's the end of testimony on LB203. Senator Erdman will open on LB103. You want to take just a second and while people clear out, Phil, and we'll stretch here. Could we all have a seat, please? Senator Erdman, would you proceed. [LB203 LB103]

SENATOR ERDMAN: (Exhibit 2) Whew! Mr. Chairman, members of the Health Committee, esteemed members of the Health Committee, I'm before you today. My name is Phil Erdman, representing the 47th Legislative District. I usually went on to some rant about how great it would be to have Chimney Rock on the quarter usually, but we've taken care of that so hopefully we can take care of some other issues today. LB103 is a bill that was brought to my attention by the Department of Health and Human Services. I'll briefly read what the bill does and Dr. Schaefer will be following me with more detailed descriptions of the intent. I also have a letter that I received from a operations manager from a ambulance service in Scottsbluff that I'll distribute to the committee as well. LB103 allows Health and Human Services Regulation and Licensure to release patient data to healthcare providers. Existing data release laws for EMS, emergency medical services, data and trauma data prevent the Department of Regulation and Licensure from facilitating the transfer of patient information to treatment facilities. This bill changes Section 71-5185 and 71-8249 to permit the department to facilitate this transfer. The proposed changes will do the following: It will provide more accurate and complete patient information to healthcare providers, it will reduce redundant data entry and collection, it will reduce errors caused by duplicate data entry, it will provide for effective and efficient use of web-based data collection systems, and finally it will help fulfill the requirements of the Nebraska Statewide Trauma Systems Act. Again, I have distributed a letter from Mr. Shawn Baumgartner. He is the operations manager from Valley Ambulance Services. That letter has also been distributed to the department for their review and possible comment if appropriate today. [LB103]

SENATOR JOHNSON: And so entered. Any questions of Senator Erdman? Don't see any, Phil. All right. We kind of cleared out the room a fair amount. How many proponents do we have? One. How about that? Have you ever been first? Dr. Schaefer, thank you. [LB103]

DR. JOANN SCHAEFER: (Exhibit 3) My testimony, as you will note, has several technical references to the statutes, but let me just describe to you in a picture what this law will do. [LB103]

SENATOR JOHNSON: You know, I can't help but resist the temptation to have you say

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your name and spell your name. (Laugh) [LB103]

DR. JOANN SCHAEFER: Oh gosh, I'm sorry. Joann Schaefer, S-c-h-a-e-f-e-r. When I read this, it somehow sounds so much more complicated than it is, so here's the picture. Basically, right now we have a web-based system that we cannot use for tracking trauma. It is currently only used in the EMS world, and if you were to be in an accident on I-80, say, out west, the ambulance can arrive on the scene and start putting in information about the information that is gathered at the scene on you. You are then transferred to a hospital, and that information has to be shut off then, because there's no way for us--when these laws were written, nobody knew what computers and web-based technology would do--so there's no way for us to transfer that information to the hospital, and we actually have to shift back to a paper sheet, and that paper sheet, then, goes to that first hospital. If that hospital, then, calls in LifeFlight, there is an additional paper sheet that then picks up--or a fax or a carbon copy--then picks up and is taken on the LifeFlight, then is taken to the trauma center, where there is more yet paper taken. There is no clear, seamless transfer of that patient's information of what happens from the scene to what happens to the patient at the trauma system. So by having the web-based ability, it allows for that clock to start ticking from the second the EMS folks arrive on the scene to the second that that patient follows all the way through the system, wherever they may wind up. It allows you to track the times and obviously increase the quality improvement of the system and the trauma-based services, which will become more imperative as our trauma system is growing in the state. But most importantly, it will allow the accurate transfer of that information which, sometimes paper records leave out information and causes great harm to patients. On the concerns that have been brought about the HIPAA, obviously, it was be HIPAA compliant, and it is currently run that way, and it also should be noted that once the patient has transferred out, that information is now longer viewable, so they're left out of that system. So in other words, when the patient is down into the hospital and the trauma center and the tertiary care, the EMS provider that got them there cannot look up, and go up the system to see what's happened to that patient, for patients' rights and respect and confidentiality. So this is what that law does: It allows us to enact that web-based software which was federally purchased. There is no fiscal impact to us. It will just provide better, more seamless care, and hopefully, provide a way of measuring the quality of our trauma-based care here in the state, as well. I'll be happy to answer any questions about that. [LB103]

SENATOR JOHNSON: Any questions of Dr. Schaefer? Senator Howard. [LB103]

SENATOR HOWARD: Thank you, Senator Johnson. Well, this sounds like something that certainly is necessary. Is there any downside or any risk here at all? Confidentiality risk or anything that... [LB103]

DR. JOANN SCHAEFER: Not that we can come up with. Web-based systems have

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been used; this is widely used in other states and cities. So it's just keeping up with the times. The EMS has submitted some concerns with those types of issues, and we will look into every one of them, make sure that they are addressed, and we'll be happy to make sure that that's taken care of. But this is just keeping up with the pace of technology, keeping the laws up with the pace of technology and how we share information. [LB103]

SENATOR HOWARD: Thank you. [LB103]

SENATOR JOHNSON: I'm kind of reminded of the same that happened years ago with the cancer registry, where we developed quite a first-class cancer registry throughout the state. And then the people that could use it to come to different conclusions didn't have access to the information, so we were just collecting information for information's sake. Senator Pankonin. [LB103]

SENATOR PANKONIN: Thank you, Senator Johnson. Dr. Schaefer, the...and we have been e-mailed in our office--I'm sure everybody was on the committee--on this letter from Shawn Baumgartner. Have you had a chance to look at that, these proposed amendments or changes that had come in, that was passed out here? Have you looked at this? [LB103]

DR. JOANN SCHAEFER: We just got that this afternoon. [LB103]

SENATOR PANKONIN: Just got it, as well. So... [LB103]

DR. JOANN SCHAEFER: And so we will take a look at it. [LB103]

SENATOR PANKONIN: Will take a look at it, good. Just want to make sure, because I wasn't sure if that would be what your intent...or what you thought would be...would make this better, but I want to make sure we look at it. [LB103]

DR. JOANN SCHAEFER: Yeah. Our intent is to change the Regulation and Licensure side, not certainly anything that affects the EMS side of that. This is just a transfer of information via the...and a legal matter. [LB103]

SENATOR PANKONIN: Thank you. [LB103]

SENATOR HANSEN: Senator Johnson? [LB103]

SENATOR JOHNSON: Yes sir, Senator Hansen. [LB103]

SENATOR HANSEN: Dr. Schaefer, one quick question about HIPAA. HIPAA regulations are so strict that how can you share between medical facilities someone's

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private medical information, without violating HIPAA? [LB103]

DR. JOANN SCHAEFER: It...we are, being the authors of that information and it's being trans...it's like an EMR, an electronic medical record, on that patient. So it's the patient's own record is following them through their system, so... [LB103]

SENATOR HANSEN: Doesn't that usually take the patient's signature? [LB103]

DR. JOANN SCHAEFER: You know, it does. I don't know if you have implied consent in a trauma situation or not. I... [LB103]

SENATOR HANSEN: That would be my question. [LB103]

DR. JOANN SCHAEFER: That will be...we will certainly... [LB103]

SENATOR HANSEN: Okay. [LB103]

DR. JOANN SCHAEFER: ...make sure that we have... [LB103]

CURT WEISS: Dr. Schaefer? [LB103]

DR. JOANN SCHAEFER: Yes. [LB103]

CURT WEISS: Dr. Schaefer, can I address that? [LB103]

SENATOR JOHNSON: Yes. [LB103]

DR. JOANN SCHAEFER: This is... [LB103]

SENATOR JOHNSON: Yes, could we have him join you, please? [LB103]

DR. JOANN SCHAEFER: I'll invite Curt... [LB103]

SENATOR JOHNSON: And you'll need to give your name and spell it, if you would, just to help us out. [LB103]

CURT WEISS: My name is Curt Weiss, W-e-i-s-s. I'm administrator of data management for Regulation and Licensure. Our web-based system right now captures the patient's signature, so we have the signature. [LB103]

SENATOR JOHNSON: What if they can't sign one? [LB103]

SENATOR HANSEN: Yeah. [LB103]

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DR. JOANN SCHAEFER: You know, when they can't sign one in a trauma... [LB103]

SENATOR HANSEN: If they can't sign one. [LB103]

CURT WEISS: If they are unconscious, obviously, they cannot. [LB103]

SENATOR HANSEN: What about... [LB103]

DR. JOANN SCHAEFER: We'll have to check. I really don't know. [LB103]

SENATOR HANSEN: Excuse me. What about if there's just coughing from a bad fire they just got out of and still can't sign? I don't know. I don't know all the circumstances that might be. I just question whether this is going to be a violation of HIPAA, and unfortunately, it's not going to work. But I hope it does, for Senator Erdman's sake. [LB103]

DR. JOANN SCHAEFER: Well, currently we do that, and all that patient information is transferred paperwise, with the same...that same violation would be taking place, currently, because we provide the same information in the paper form. So whatever we're doing in the paper form currently is the same thing we would be doing, just electronically. So I'll just have to check and see why it is that it gives you the implied consent when you're transferring the patient via a trauma and they cannot speak for themselves. But we'll be happy to get back to you about that. [LB103]

SENATOR HANSEN: Okay. [LB103]

SENATOR JOHNSON: Okay, if you'll get that information back to the committee, why... [LB103]

DR. JOANN SCHAEFER: You bet. Okay. [LB103]

SENATOR JOHNSON: All right. Any other questions of Dr. Schaefer? I don't see any. Thank you very much. [LB103]

DR. JOANN SCHAEFER: Thanks. [LB103]

SENATOR JOHNSON: Any other testifiers? I didn't see any. No negative? No neutral? And the good Senator Erdman waives closure. That is the end of our discussion on LB103. Next is Senator Howard. Would you open on LB86? Senator Howard, yes, go ahead. [LB103 LB86]

SENATOR HOWARD: (Exhibit 1) Thank you. Thank you, Chairman Johnson and

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members of the Health and Human Services Committee. I am Senator Gwen Howard, and I represent District 9 in Omaha. I'm here today to introduce LB86, which I call the good neighbor bill. The bill itself is really quite simple. Any applicant for a license from the state of Nebraska to operate an assisted living facility, center, or group home for the developmentally disabled person, intermediate care for the mentally retarded, mental health center, psychiatric or mental hospital, rehabilitation hospital, or substance abuse treatment center in a residential zone must notify by certified mail any neighborhood association within 500 feet of the proposed facility. This bill simply does what any good neighbor should do when moving into a new neighborhood. The bill does not place any additional restrictions on where group homes may locate. It does not create any additional regulations on the operation of group homes. The only burden being placed on those applying for a license is that they send a letter to the neighborhood association, not every resident in the neighborhood. Some group home providers would argue that this places an unfair burden on them. I would disagree with that point of view. I would point out that if someone wanted to open a neighborhood bar or a convenience store that sells liquor, they must notify the neighborhood about their plans as a part of the liquor license process. I would also point out that many of the newer housing developments have very restrictive covenants that limit how property can be used. Many of those covenants require homes be used only for single family housing. Many have strict restrictions on the landscaping and the color of the house. If a property owner wants to do something contrary to the neighborhood covenant, they must notify and get approval from the neighborhood board. No one seems to be complaining that these covenants are an unfair burden. Shouldn't every neighborhood in the state have the same notification as those neighborhoods that are protected by covenants? This is truly a grass roots bill. There are no highly paid lobbyists working for the good neighbor bill. The bill was brought at the request of concerned neighborhood residents who give countless hours of their time making their communities better through community support. I would like to give the committee letters of support--and those have been distributed to you--from several neighborhood associations, as well as from Omaha city councilman Garry Gernandt, that they would like entered into the record. The good neighbor bill would make George Norris proud, because this is how he believed our legislative system should work, by listening to the concerns of the average person. Over the past few years there have been several highly publicized situations between group home operators and neighborhood associations. This is especially true in my district, which covers midtown Omaha and has a very high concentration of group homes. Last summer I served on a group home task force that was put together by the Midtown Neighborhood Alliance--and you have a copy of that--which is an alliance of 11 midtown Omaha neighborhood associations. This task force was created to look at how to address the concerns of both families living in the neighborhood and group home providers. What made this task force so effective was that it not only included neighborhood representatives but also elected state and city officials, city housing code regulators, and representatives from Santa Monica House and Community Alliance, both of which operate group homes in our area. Over the summer this task force met

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several times a month. There was very fruitful discussion on the concerns by all sides, and I think everyone on the task force felt that they had a better understanding of one another. I have made copies of this report for you to review. One of the recommendations of the task force was the need to improve communication between group home operators and neighborhood associations. The good neighbor bill does that. When there is a clear line of communication, there is less chance of rumor and misinformation. It would be a wrong assumption that a neighborhood is automatically going to fight the locating of a group home in their area. Santa Monica is one of the many examples in my district, where a group home has become an excellent neighbor and has been welcomed by the neighborhood. Santa Monica House has actively participated in the association of the activities of the Joslyn Castle Neighborhood Association for several years. Santa Monica House has always been very open and up front with the neighbors, which has allowed for a very positive relationship. It is my hope that the group home providers who do provide an important service to our state would take advantage of this opportunity to build a bridge of goodwill with their neighbors. Secrecy only leads to mistrust and misinformation. The good neighbor bill would provide an opportunity to avoid the contention and apprehension that is inevitable when there is no communication. I think that we can all agree that the current system is not working and only results in controversy and antagonism at the local level. I would ask that the members of this committee listen to the people that you represent, and ask yourself why someone would oppose reaching out to neighbors and keeping them informed about what their program has to offer. During the task force discussions, the group home providers in attendance felt this was the best way to avoid unnecessary problems. I believe that by passing the good neighbor bill we will actually reduce the number of concerns between the neighborhoods and group homes. I ask for your favorable consideration of LB86, the good neighbor bill. [LB86]

SENATOR JOHNSON: Well, first of all, let me say that we have letters of support from a Steve Schwab on LB86 and a letter of neutral position on LB86 from Health and Human Services System. (Exhibits 9A and 9B) I have one question, and someone else kind of asked me to ask you, and what it is, is this, is that somewhere in your language of the bill it says, but not necessarily related instances, or something like that. And it seemed to that person that that kind of left things open-ended, as far as the notification is concerned, and where did notification start and end, and so on, with that added sentence that was in your bill. [LB86]

SENATOR HOWARD: Well, if I'm understanding the question correctly, the notification originates with a proposed group home. [LB86]

SENATOR JOHNSON: Yeah, I understand that. But then there's a sentence in there that...where are we at, Jeff? Here we go. "Any person desiring to obtain a license from the State of Nebraska to operate a facility in a residential zone, including, but not limited to an assisted living facility, center, or group home for the developmentally disabled, an

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intermediate..." and on and on. [LB86]

SENATOR HOWARD: Right, right. [LB86]

SENATOR JOHNSON: The question that this person had brought to us is where, you know,...which ones end up being the ones that have to make the notification, when you put in that caveat of "but not limited to." In other words, if you built a dog house--to be a little bit ridiculous, but just to point out the emphasis--would you have to make notification to all the neighbors, if you did that? [LB86]

SENATOR HOWARD: We...that is not the intent. The intent is... [LB86]

SENATOR JOHNSON: I realize it is not the intent, but it could...the problem is that some people don't see it as clearly as you, and if you then went ahead with some type of facility and didn't notify you or the neighbors, then they would be, you know, breaking the law, or visa versa. Which facilities are you going to say have to do this? I mean, that's another way of putting it. Yes. [LB86]

SENATOR HOWARD: Possibly, this is the easiest way to explain it, or with the most clarity--facilities that would be requesting a license through the state of Nebraska. [LB86]

SENATOR JOHNSON: Okay. [LB86]

SENATOR HOWARD: Okay. [LB86]

SENATOR JOHNSON: That's...yeah, that gives me a good answer, but see, I couldn't get that out of there, and that's what I had a question about. [LB86]

SENATOR HOWARD: Possibly a bill drafting problem. [LB86]

SENATOR JOHNSON: Whatever, but that's the answer I needed to be aware of. Thank you. Senator Erdman. [LB86]

SENATOR ERDMAN: Senator Howard, just technical questions. The term "residential zone," is that a term of art that's defined somewhere? Or is that referring to something specific? I guess I'm not aware if we have residential zones in Bayard, or if we just have a residential area, because some places may not have formal zoning. Is that referring to an area that is zoned residential, or is it just simply an area that's used for residential housing? [LB86]

SENATOR HOWARD: It's my understanding in Omaha, and I'll speak from that perspective, that areas that are zoned residential are considered to be family homes,

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single residence. [LB86]

SENATOR ERDMAN: So your intent is that the areas that are zoned that way is what you're targeting? [LB86]

SENATOR HOWARD: That would be true. [LB86]

SENATOR ERDMAN: Okay. Then the other question that I have is on the notice. You don't necessarily notify the neighbors; you notify the neighborhood association, and then if they don't have a neighborhood association, then you notify the clerk of the city or village in which the facility is to be located. So if you don't have an association, you don't actually notify the folks that are 500 feet from where that's going to be. [LB86]

SENATOR HOWARD: No, absolutely not. [LB86]

SENATOR ERDMAN: You actually send it to the clerk of the city or the village. [LB86]

SENATOR HOWARD: You are correct. [LB86]

SENATOR ERDMAN: And then the final question that I would have is, in my professional experience with associations and appraising, most of them do have covenants that are enforceable, in the event that someone would violate that. In your task force, in circumstances in Omaha where you're most familiar with, were some of the issues that arose because the facilities may have been located without their knowledge and weren't complying with those covenants, or was it just simply an opportunity to gather information up front? Because obviously some situations have happened here in Lincoln. You've had some facilities located in Omaha, from the letters that I've scanned. Are there issues that may have been resolved, had those associations--and I'm assuming there are some representatives here who are able to maybe more effectively address that, so this might just be a precursor, but generally, if you have an amendment to a covenant, it has to require all homeowners, not just the association, to agree to that, and so there is an enforcement provision. I'm just trying to figure out how that couples with this, to make sure that we're not overdoing what might be punitive in some people's minds. [LB86]

SENATOR HOWARD: And that's a good question. I'm going to leave some of the answer of this to the neighborhood association, but I will tell you, my district, District 9, is in probably the oldest section...one of the oldest sections in town, and I don't believe there really were covenants in place that would address these things, which, covenants would certainly have probably answered the questions. [LB86]

SENATOR ERDMAN: And a lot of it depends on what association it is, because you could have an area of Lincoln and call it a neighborhood association. It may not be a

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formal association; it just may be a group of folks that have a desire to see that area redeveloped, as opposed to a literal planned-unit development or something, where you actually had developed it in an area with covenants and all that, to actually balance how that is developed. So that additional information would probably be helpful. [LB86]

SENATOR HOWARD: Well, in Omaha we do have registered neighborhood associations. There's a listing of those that are kept with the city, and so those are...when I refer to a neighborhood association, those are the groups I'm referring to, not just a group of folks that have gotten together and have decided they would like to make some changes. [LB86]

SENATOR ERDMAN: But those would also be recognized in Lincoln. I'm assuming that they have the same registry. My distinction is, you have some that are organized under a developer or as a planned-unit development that have covenants in place, as a part of their actual structure, and then you may have some that would organize after the fact, where an entire region of a city would gather together as a formal association. And that would probably be the circumstances where they don't have the covenants in place. [LB86]

SENATOR HOWARD: That's correct. [LB86]

SENATOR JOHNSON: The question that Senator Erdman--and I think he probably said them better than I--that's the type of thing that I was trying to allude to, and so on, so we're kind of on the same track here, so that the language is addressed to the, you know, the people that we want to notify. And so it isn't, you know,...there's a specific way in which it's done or not, and to whom and not to whom, and so on, so. Yeah, another question. Senator Pankonin. [LB86]

SENATOR PANKONIN: Thank you, Senator Johnson. Senator Howard, being from a town of a city of the second class, much more community, this is my first exposure to registered neighborhood associations. And is that something that's in statute, what a registered neighborhood association is? [LB86]

SENATOR HOWARD: I don't know if that's in the statute necessarily, but we recognize registered neighborhood associations in Omaha and Lincoln. I referred to earlier, there is a listing of them that's kept down in the mayor's office. They're organized, they have by-laws and officers. [LB86]

SENATOR PANKONIN: Okay. I was just curious about how that all works, whether there could even be...you know, they probably have elections maybe for officers, but if there could be competing groups in those neighborhoods and just how that all worked, and what influence officially they had in city government. [LB86]

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SENATOR HOWARD: They do have election of officers. And I would add, I don't consider your city second class. (Laughter) [LB86]

SENATOR PANKONIN: Well, it is by statute. (Laughter) [LB86]

SENATOR JOHNSON: But at any...I think all three of us are kind of looking at this, basically from just different viewpoints, but with the same thing, that we notify the right people and then, that the person who is going to build the facility doesn't then come into trouble for "not notifying" all the people that were on the list or visa versa, and so on. So that's our caution that we're trying to... [LB86]

SENATOR HOWARD: And that's a good point, and I do have a neighborhood representative here that worked on the task force that can possibly clarify that more. [LB86]

SENATOR JOHNSON: Okay, let's go on to them, then. If there are any other questions...yes, Senator Gay. [LB86]

SENATOR GAY: Just one question, Senator Howard. When you have planning and zoning in the communities anyway, your planning and zoning department posts...do they have to post on these, or...I know if you're in a residential area on these group homes, and I guess I'm looking for the law there. Do they have to post now, anyway? [LB86]

SENATOR HOWARD: You know, I'm going to defer that question, too, to Jim Farho, who is really much more knowledgeable about the zoning restrictions, but I know that's one of the issues they really grappled with. [LB86]

SENATOR GAY: Because I've had complaints where people...well, we didn't see the sign, and there are contentious issues down the ground. But they're always usually posted, where we're from. [LB86]

SENATOR HOWARD: Yeah. I think he can give us a little more information on that. [LB86]

SENATOR GAY: Thank you. [LB86]

SENATOR HOWARD: You're welcome. [LB86]

SENATOR JOHNSON: Okay, fine. All right, any other questions? Oop, Senator Stuthman. [LB86]

SENATOR STUTHMAN: Thank you, Senator Johnson. Senator Howard, in part of your

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closing statement you stated that this was mainly to avoid unnecessary problems. Is this meant to be that the problem of having somebody move in and you weren't aware of it, or is it to keep everything out of a community? [LB86]

SENATOR HOWARD: No. In my opening presentation I had stressed that, especially the Joslyn Castle neighborhood has Santa Monica House in their neighborhood, and they are a good neighbor. I think they've been there 20, 25 years, and partner on a lot of activities for children and things in the neighborhood. And they have a good relationship, good working relationship. But I can give you a good example of where the problem comes in. I received a phone call yesterday from a person, actually who is a lobbyist here, and they said, I can tell you what happened to me. She said, there's a facility for Alzheimer's patients that's going to be opening up next door. She said, I don't object to Alzheimer's patients and I don't have a bias against them, but it was very much a shock when I found that the house next door would be used for that purpose and I didn't know ahead of time. So this can really alleviate a lot of that impact of not knowing that you're going to be living next door to a facility that has more than one family living there. [LB86]

SENATOR STUTHMAN: But with this bill, being notified, there would be the possibility that that place would never have been put there. They would have never been able to open it up because of probably the resistance in the neighborhood. I mean, this is the thing that really concerns me, you know. Are we getting ourself into something where some of these places can never be put anywhere? [LB86]

SENATOR HOWARD: That's certainly not the intent of this bill. Let's wait until Jim comes up, and he can tell you his personal experience with that. [LB86]

SENATOR STUTHMAN: Thank you. [LB86]

SENATOR JOHNSON: Another question, Senator Gay? [LB86]

SENATOR GAY: Yes, one more. Senator Howard, Senator Erdman brought up a subject that went through my mind, where you have locations in Nebraska where you have planning and zoning. But some of the smaller communities in the state may not--don't--have that kind of facility. But shouldn't this be...I mean, why statewide? Shouldn't it be a community's choice, because you could go to the planning/zoning and change this and have a city council change their ordinances? Why should the state, in your opinion, get involved in this? Or...because you bring up Omaha neighborhoods, and I... [LB86]

SENATOR HOWARD: Well, it's actually a state issue, because the state does provide the license, and so it's not local. If it were something that the city would provide the license or would issue that, then I would agree with you. It would be more contained.

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But where it is across the state,...and I've received letters from other communities that have had the same things. It's really not as isolated as might initially appear. [LB86]

SENATOR GAY: Okay, thank you. [LB86]

SENATOR JOHNSON: Senator Erdman. [LB86]

SENATOR ERDMAN: Too many questions for you, Senator. [LB86]

SENATOR HOWARD: (Laugh) I would say! [LB86]

SENATOR ERDMAN: And this is again maybe more information for us, because we've had similar bills that may have given us a different take on a similar idea, and the question I would have to follow up with Senator Gay's is, is part of the requirement for licensure to comply with local zoning and ordinances, and that's just a question I don't know the answer to, and I don't expect you to know. I just thought as you go through this process and we analyze what I think you're asking us to do as a committee, and potentially as a legislature for our policy for the state, truly understanding--and there are probably individuals that have experience that may be able to answer this, as well. But you know, Tim says, what if that is the right option? I guess that might be another question, is if there is a way to resolve. You need to go through zoning. You know, if you go to build a livestock facility, you have to have zoning and special conditions permit to even get to the door to get a permit from DEQ or EPA. And so it's just a matter of understanding the licensure process probably more, in addition to what I think you're asking us, and that is the actual relationship between the licensee, or potential licensee, and the community in which they would reside. [LB86]

SENATOR HOWARD: Well, and again, I'm going to leave part of that to Jim, but I will say that one of the problems in this whole process was the breakdown between the state and the city. For example, if a community would apply for a license for six individuals and the state would issue that, but they would inform the city that they were going to have four people living there. So sometimes there was some really "conflictual" information that was being shared. But again, Jim will be able to answer that more accurately. [LB86]

SENATOR JOHNSON: Any other questions of the good Senator? Seeing none,... [LB86]

SENATOR HOWARD: Thank you. [LB86]

SENATOR JOHNSON: You bet. I have a note here. There's a letter of support submitted from Jim Blue on LB86. (Exhibit 10) All right, how many testifiers do we have in favor of this? One, two, three, four, five. All right. Opposed? One, two, three. All right,

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and any neutrals? One, two. Okay, we've got about ten, and again, let's be to the point, if we can. We don't want to restrict. Go ahead, sir. [LB86]

JIM FARHO : (Exhibit 2) Thank you. Chairman, Committee, pleased to be here. My name is Jim Farho, F-a-r-h-o. I'm with the Midtown Neighborhood Alliance. Glad to see that Gwen did a great job up here in the...I'm the author of the report that you have in front of you. So I thank you for that. I did create a big sign, and what I'd like you to take a look at, if you have that report in front of you, is the map...I believe it's the last page in back. And maybe that kind of gives you a little perspective of why our task force was created. And as Gwen mentioned, we are a neighborhood alliance of now 13 neighborhood associations, representing 60,000 people in the city of Omaha. And with that representation, we look for things that are common across neighborhoods, okay, and these 13 neighborhood alliances. What you see here is basically a map that was created by University of Nebraska-Omaha. We asked them to tell us who's licensed as group home, group care facility, that they defined, and they created this map for us, and it is very well-put-together information they had available to them, and the references are at the bottom of the map. And what I've outlined there in red really just shows...and that should be on the last page of the handout there. There's no map? [LB86]

SENATOR JOHNSON: No. [LB86]

JIM FARHO: Well, okay. Maybe I did bring some copies. [LB86]

SENATOR ERDMAN: We can make copies, as well. It might not be in red, but... [LB86]

JIM FARHO: You should have enough there. What the map is going to show you that you couldn't see,...and it will show you that...a red outline of our neighborhood alliance as it was at the time--which was only 11 neighborhood associations; we've added. Dundee Memorial Park wanted to be added to our association, along with historic Bemis Park. What that shows you is what we felt is a concentration of group homes within the area, and what we asked is that...what the neighborhood said is, why do we have a concentration? One of the things about our neighborhood group is that we have 13 historic districts, recognized by the state of Nebraska. We have the Gold Coast neighborhood, which is an historic district. We have Field Club, and we also have Dundee. I'm sorry, we have four--Bemis Park, which is another historic area. And what we've seen is, these are very historic homes, old homes in the city of Omaha, built around the turn of the century. So they're large and because the move out west has caused the price of those houses to still be very moderately priced...but they're large, 3,000, 4,000 square-foot homes that you can fit a lot of people into. So from an economic point of view if you're running a group home, it's easy to concentrate them in one area. You can get some older homes, you can fit a lot of people in them, and that's why...one of the reasons we think we see a concentration in our area, in our neighborhood. I live actually kind of in the middle of that map--so I have a lot of group

homes around me--in an historic house. Once President Coolidge actually spent the night in my house at one time. It was built in 1892, built by a banker, a large older home, but I have a number of group homes around me. And to tell you the truth, I don't have a problem with them. They are people that need help, and the idea is that we're not trying to keep people away; we're saying, if one is going to come in, there are some things you can do to be successful. You don't have to push them away. I have four kids, so it's not I'm worried about my kids playing outside. They're fine. We're used to the urban environment; that's what we have. And just being notified--the neighborhood association being notified as what we're asking here--will help us understand what's happening. Is it good, is it bad? The cities have their laws and regulations on whether their spacing is correct on group homes or not. As you can see here, spacing is an issue. We like the scattered that we see in the other parts of Omaha, so what you're seeing really is kind of the I-680. So I-680 is by the Westroads. If you think of the interstate out there, and then to the river. So we see a good spattering, but we see kind of a splotch in the middle. And the idea is, with this bill, is not only our neighborhood, but others would be able to see where concentration is, and you can be aware of things. So the idea behind our recommendations and putting our task force together was, take a look and say, hey, how can we make these successful? Society being what it is, there's going to be problems--people need help. We're not saying that shouldn't be done. It should be done. They have every right to live wherever they need to be. And one of the things...our top recommendation from group care provider is, connect with your neighbors, and that's all this is asking. This bill, I see it as a one letter going out, just letting the neighborhood association know, whether you're in a rural area or you're in the city of Omaha, in the midtown area. Just let us know, so we know. And is it part of the fabric of the neighborhood? We embrace people coming in. So really, that was the key. On page seven, we just said, connect with neighbors. If you want to be successful, connect with the neighbors, and we're asking for one letter, it sounds like, one letter to a neighborhood association. I could go on and on, but I do want to allow other people to have time at the mike. Is there any questions I can answer for you? [LB86]

SENATOR JOHNSON: Senator Erdman. [LB86]

SENATOR ERDMAN: Jim, right? [LB86]

JIM FARHO: Yes. [LB86]

SENATOR ERDMAN: Jim, there's a couple questions. One, this list, it seems to be more extensive than the list in statute, and you know, like a fraternity is not listed on here, but it's on your map. So it might just be a question of how you define, because these are all group residential housing, and if that's what you're intending to get at, is those scenarios. The other question I have, or two questions. One is, what if the facility is not located within a city. We have facilities that I'm aware of in Lancaster County that are outside city limits that are group home, group residential housing. Is it your intent

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that this not just be limited to those areas where there's an association, and when there's not, it goes to the city? Would you also say the county clerk, in the event that...I mean, is that...because obviously, your goal is not, as I understand your testimony, is information. If there's a situation where you feel like people don't have the information, they're not able to be able to begin the relationship that you envision, working together. You still have the same loophole, if you will, that maybe the facility isn't within the jurisdiction of a community. They get no notice under your bill, either. Is it your idea that that could be addressed, as well? [LB86]

JIM FARHO: Let me try to answer both questions. I'll take the first one, the easiest. What you saw on the map and what we put together, there were the definitions used by the city of Omaha, not by the bill. [LB86]

SENATOR ERDMAN: Oh, okay. Okay. [LB86]

JIM FARHO: And that was in those...group homes are more than eight unrelated persons living in the same facility. So that was the definition there, and fraternities would fit in that, and I wouldn't see this legislation touching that. This is more directed at people getting license from the state, from Health and Human Services. This is one of the steps of many that they go through to get licensed by the state as a group care facility provider. So does that answer your question, Senator? [LB86]

SENATOR ERDMAN: Yeah, it does. And then the question about the county--areas outside of a municipality, essentially. [LB86]

JIM FARHO: That's a good question. I really didn't think about outside of...my jurisdiction really is within the city of Omaha, a built-up, urban environment. However, when I read it, it was like okay, how would I handle that if I was, you know, in another city outside of the planning zone that I'm in? And I thought it, to my reading or my understanding, it did make sense that it would be able to cover. You know, you got to make a law, not just for Omaha--it really--or Lincoln or municipalities that are larger, that may want to have this done. But it's all of the state. So the way I read it, it seemed to make sense that if there is no neighborhood association there, make sure somebody in the area knows that hey, someone petitioned the state and is getting (inaudible). One thing that we noticed, in talking with Health and Human Services, who came down to Omaha, during our sessions was, there isn't a good communication link back to the city that one of these...you know, that someone is going to get a license. That communication could be increased. There's many recommendations we made in here, asking the state to do, and Health and Human Services to do. This doesn't really address those yet. There's more things, I think, that could be done to help improve that communication. This is asking for the communication from the provider, potential provider, with the neighborhoods, not Health and Human Services even talking to the municipality, whatever it might be, whether it's a large urban environment or a county

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clerk, or whoever it might be. [LB86]

SENATOR ERDMAN: Just one last, Mr. Chairman. [LB86]

SENATOR JOHNSON: Yeah, go ahead. [LB86]

SENATOR ERDMAN: So in the event--and I'm assuming that in your association you're familiar with the zoning that the city of Omaha has established--I'm assuming, and again, you'll correct me, I'm not familiar with Omaha, I'm familiar with places like Scottsbluff, Gering, and Bayard, their zoning has specific designations for specific areas. And some uses are not allowed. [LB86]

JIM FARHO: Right. [LB86]

SENATOR ERDMAN: So is your zoning area multiuse zoning? In other words, do you have zoning such as R...we call it R-1, single-family residential. [LB86]

JIM FARHO: Right. [LB86]

SENATOR ERDMAN: You know, so you go down that list. Obviously, these facilities are meeting the zoning requirements; otherwise, they wouldn't be able to be located there by the city planning commission. Is that issue...I mean, is that an issue, as well, or... [LB86]

JIM FARHO: No. [LB86]

SENATOR ERDMAN: Okay. [LB86]

JIM FARHO: To tell you the truth, Senator, no, it's not an issue for me, as far as being in a neighborhood that is predominantly zoned R-7 and R-6, similar to yours, but it allows for higher density of people, and people within, and it allows for group homes, so that isn't an issue. And we do make recommendations to the city of Omaha to review their zoning. They have some clean-up work to do, too, is the way we saw it, to define things better within their zoning laws. And municipalities would have that obligation, we feel. Does that answer your question, sir? [LB86]

SENATOR ERDMAN: Yeah. [LB86]

SENATOR JOHNSON: Senator Pankonin. [LB86]

SENATOR PANKONIN: Thank you, Senator Johnson. Sir, as I said before, I'm not familiar with these neighborhood associations. This Midtown Neighborhood Alliance has 11 neighborhood associations. Are they defined...and I'm close enough to Omaha, I'm

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familiar with, when you talk about Field Club, kind of generally where that's at. But are they defined by streets, or is there a kind of a common definition of neighborhood associations, about how many blocks, square blocks, or how are they defined? [LB86]

JIM FARHO: A very good question. Those community groups are defined by the residence, and these neighborhoods have been, and neighborhood associations, been around for years. So... [LB86]

SENATOR PANKONIN: Okay. Are they in statute, then? Are they recognized? [LB86]

JIM FARHO: They are not in statute. They are listed, for the Omaha ones--I'm not sure about other cities--but they're listed by the mayor and recognized by the mayor. So if you want to create a new neighborhood association or you want to split from the current one you are, you have to actually go to the city and make sure, hey, we are going to change our association boundaries. If you're changing your boundaries and you're trying to take a piece of a neighborhood that's already established, the city will let you know you can't cross the boundary. This is Field Club's neighborhood already. You need to talk to Field Club if you're really trying to think your community needs to be changed. They need to change their boundaries, also. [LB86]

SENATOR PANKONIN: Would it be fair to say that these different associations have a different way of letting residents know, I mean, whether some e-mail, some there's a newsletter, or how does that work? I mean, even if this notice was given, how would you know that people affected would be notified? [LB86]

JIM FARHO: The ones that are in our boundaries typically have a meeting once a month. Newsletters, which are a great fundraiser for a lot of neighborhood associations within Omaha, you run ads for the local businesses and things like that, so there's a lot of newsletters that are out there and e-mail blasts by these associations. We do a lot of communication with all, now 13, associations via e-mail and other communication that's out there. So monthly meetings. [LB86]

SENATOR PANKONIN: Thank you. [LB86]

JIM FARHO: Um-hum. [LB86]

SENATOR JOHNSON: I'll ask a question. I think we kind of go back to the same type of question that we were asking Senator Howard, in that the...in much of your testimony you keep referring to the city and the neighborhood looking at it from that standpoint. But you know, we're talking about putting together a state law, and that's, I think, the concern of virtually everybody behind the table here, is that, you know,...and another word that you kept using several times was the word "somebody." Well, just who is that somebody, see, that you notify or whatever? And I think that's the problem that so many

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of us are expressing in different ways here, is that yes, this might be just fine for a neighborhood association in central Omaha, but one size might fit all...you know, we've got people here who live in North Platte and Platte Center. Those two right there, you know, are entirely different ones, outstate. And so that's the kind of things that...we don't question anybody's good intent here, but there's kind of the rule of unintended consequences, and it's a big rule. And that's what we're trying to avoid. [LB86]

JIM FARHO: Um-hum. So your question for me is, Senator, who's the who, or the...? [LB86]

SENATOR JOHNSON: Yeah, who is the who, and who's the somebody? [LB86]

JIM FARHO: (Laugh) The who is, in the way I read the legislation that's proposed in front of you today, and to vote on, is notifying the neighborhood association. If there isn't a neighborhood association, notify the municipality. That's the way I read the law in front of you today. [LB86]

SENATOR JOHNSON: And if there isn't a municipality? [LB86]

JIM FARHO: And I'm not a legal expert, either, so maybe that's how you need to write the law. But if it needs... [LB86]

SENATOR JOHNSON: But we're not writing it. [LB86]

JIM FARHO: ...to be sharpened,... [LB86]

SENATOR JOHNSON: I mean, someone else brought their proposal to us, and that's what we're trying to get to. Senator? [LB86]

SENATOR STUTHMAN: Thank you, Senator Johnson. The thing that really concerns me, and I've been on a county board prior to this, is you know, there are methods in place of notification. You know, there's planning and zoning. There's methods that are for notification of the public, open meetings law, or anything like that, where they are to be posted. I think if we put this extra layer in on having to notify those associations, we're going to put a real additional expense on counties to mail all of those letters out to everyone. Or are you just going to mail a letter out to the association? [LB86]

JIM FARHO: What I read the law is that the group care provider that is going to open the facility, as part of Health and Human Services, they need to submit...they need to send one letter to one association, because they're not going to...or if it's, you know, if it's on the border of two associations, yeah, they'd have to send two letters. I don't know what a letter, a certified letter, costs. I haven't sent one of those, but I think the burden... [LB86]

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SENATOR JOHNSON: How would they know whether there's one or ten associations? [LB86]

JIM FARHO: How would they know? [LB86]

SENATOR JOHNSON: Yes. [LB86]

JIM FARHO: Is that part of Health and... [LB86]

SENATOR JOHNSON: No, I'm asking... [LB86]

JIM FARHO: I'm not the author of the bill here. (Laugh) [LB86]

SENATOR JOHNSON: But see, these are the kinds of questions that we're... [LB86]

JIM FARHO: That's fine. [LB86]

SENATOR JOHNSON: ...trying to ask so that...and we're not trying to ornery or anything like that. But if we put all of these things into place, somebody is going to ask those of us. And you know, we don't know. We need guidance as to these type of questions that they're asking. You know, they've all been kind of the same kind of questions, and maybe she's got someone else, or Senator Howard or someone, has got the answers, but... [LB86]

JIM FARHO: There is a map of...Senator, there is a map of all...I can only speak for Omaha. I'm not familiar with others. [LB86]

SENATOR JOHNSON: But see, this...we're talking about a state law, see? [LB86]

JIM FARHO: And I appreciate that. [LB86]

SENATOR JOHNSON: And that's our difficulty with what we're saying here, and I don't know if there's someone else that can help us with this, but this is the kind of thing that we have to know. [LB86]

JIM FARHO: Um-hum. Absolutely, I believe in that, too. [LB86]

SENATOR JOHNSON: Thank you. [LB86]

JIM FARHO: And I can tell you that... [LB86]

SENATOR JOHNSON: Well,... [LB86]

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JIM FARHO: ...if there's a neighborhood association,... [LB86]

SENATOR JOHNSON: ...believe me, we're not trying to beat up on you, by any means. [LB86]

JIM FARHO: No, I don't feel beat up at all. I want to help answer the questions, and I do want to see this move forward. [LB86]

SENATOR JOHNSON: Sure, yeah. And...but that's the kind of questions that we have to know, this being a state statute that we're being asked to implement here. [LB86]

JIM FARHO: Right. [LB86]

SENATOR JOHNSON: So, any other questions? Senator Hansen. [LB86]

SENATOR HANSEN: I'd just like to make one observation, I guess. Five hundred feet is not very far. It's only 166 steps. You get very far west of Omaha, 5,000 feet isn't very far, so. [LB86]

JIM FARHO: You're right. I agree with you. [LB86]

SENATOR JOHNSON: Any other questions? Thank you for trying to answer our questions and... [LB86]

JIM FARHO: Thanks for your time. (Laugh) Thank you. []

SENATOR JOHNSON: Well, we didn't discourage you, anyhow. (Laugh) Thank you for coming forward. (See also Exhibit 3) [LB86]

FRED FREYTAG: Good afternoon, Senator Johnson and committee. I can see your frustration here, and I'll try to answer some of the... [LB86]

SENATOR JOHNSON: You need to give us your name and spell it, please. [LB86]

FRED FREYTAG: Oh, sorry. My name is Fred Freytag, F-r-e-y-tag, on the last name. I'm past president of the Witherbee Neighborhood Association here in Lincoln. I'm not here representing the neighborhood, because notification of this came a little bit quick, and we didn't have anything in place. But I want to...we have dealt with some group home issues and things before, so that's why I'm here to talk about the notification being a good thing. I want to address a couple of things. Number one, we've talked about neighborhoods and by-laws and covenants. Neighborhood associations generally don't have covenants, because they are, as Jim said previously here, where a group of

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people got together to find an area of town, and called it a name, their association. Membership is voluntary. Like here in Lincoln--I think Omaha is the same way--you can go down to the mayor's office here in Lincoln, you can go on the city web site, and you can look at the entire city, what neighborhood associations are where, what their boundaries are. The contact information is available right there on the web site. Some of the neighborhoods have web sites themselves. Most of them have newsletters that go out, some of them monthly, some of them quarterly, some of them bimonthly--semimonthly, I mean. Some neighborhoods, when they have particular issues, bring flyers out to particular areas to make that specific area in that neighborhood aware that something is going on. We have done that in the past, even when the city wants to make some changes, let's say in zoning, or a builder comes in. We go out and we notify the neighbors. So if there's an entity out there notifying the neighborhood organization, then they can go out and notify all the individuals in that area that it pertains to. Homeowner associations are defined usually by builders when they develop an area and covenants are enacted--very, very different than the neighborhood association. Dues have to be paid, you have to be a member, you have to comply with all the laws and rules, not only what the city has, but also what the covenants are. So I'd like to make a suggestion to make a distinct difference here in this bill between neighborhood associations and homeowner associations, to add that in there, because...and that they are registered with the city. If they're not registered, they may be in existence, but they may not be registered, so you don't know who their contacts are. Presidents change, secretaries change, so I think it's important that that contact information is available. But it's great to have timely information from somebody. Oftentimes, just like with this, we weren't aware of this bill coming forward. We didn't have enough time as a group, even though we have e-mail and we can do a quick e-mail survey of the members, we don't really have the ability, since it's all run by volunteers, to bring everybody together and talk about it, just like it would be great to have the notification of someone coming to do business in your neighborhood that can somehow affect it. And there's good providers out there, and there are some that are not so good out there. And it would be great to have some dialogue with these people, number one, to find out who to contact, see what their record is, not to keep them out of the neighborhood, but to talk with them to see how it's going to affect, how you can work together. When you get notified at the eleventh hour, it's too late to do anything. And I think it's great to be able to work right from the beginning together, and it's not to keep everybody out of the neighborhood. If you look in Lincoln where group homes are located, you will find out that they are in what we call the most affordable neighborhoods. Well, that's some of the older parts, some of the... [LB86]

SENATOR JOHNSON: Someone has already defined those for us, and the hour is getting late, so I'd prefer if you wouldn't repeat that. [LB86]

FRED FREYTAG: Okay, all right. It would be nice to spread that around. So I guess I...I hope I have clarified the difference between homeowners and neighborhoods

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somewhat. I'd just like to say again that it's best to be able to have that communication with these people ahead of time, and have them notify. I'd like to suggest that in smaller towns other than Omaha and Lincoln, that don't have neighborhood associations, or maybe homeowner associations, that maybe some people within a certain radius of where a house is going to be placed be notified, and those lists are usually available from the city, you know, who lives where, or through some mailing services. So that's really all I have at this point. Thank you. [LB86]

SENATOR JOHNSON: Okay. Any questions? Okay, thank you. [LB86]

JASON SMITH: Hello, senators. I'm Jason Smith, J-a-s-o-n, last name S-m-i-t-h. I am president of Deer Park Neighborhood Association, and I'm representing them. Also, I'm representing Old Market South/Dahlman Neighborhood Association. Both areas cover approximately 16,000 people. I won't reiterate from what's been said before. I'll just jump into--actually, I put the wrong sheet in there--the idea that I believe, in reference to areas outside of a municipality, that we should just add...in that phrasing it would say, the clerk of the city, village, or county, and I believe it's justifiable that this is a state issue and not just a municipal issue, not just Omaha or Lincoln, due to their dense urbanism. Obviously, the licensure goes to the state, and that's an important foundational issue as to why this should be a state law, and the fact that if you just talk about Omaha and Lincoln, those are a significant population within the state. I can say that from our experience, beyond those statements, that we as a community do care about these facilities, in general, all of them that are listed off here, and the more specific ways they can be defined. And we don't want to push them out. We care about people, just as others have said, in that we are an urban community and we do want to be around people, and we do respect the people that are around us. But in reference to the phrasing, they are a residential zone, there are certain areas, and we feel that at a certain time and a certain place with a certain facility, residential zones may not be the best place for certain types of these facilities. But maybe all of them would be right, but we just want to have the notification ahead of time so that we can collaborate, for the betterment of all involved. All people are equally important in a situation that may be intensive when it comes to dense or nondense populated areas, but that's all. We want to be able to collaborate for the best of all people, and I truly believe that this is a state issue and not just a local, perhaps city council type of issue. And then one more beyond that that I stated. We, the Deer Park Neighborhood Association, the other that I mentioned, Old Market South/Dahlman is their name, have created an alliance together, the approximate 16,000 or more of us, when we ran into an issue of a juvenile sex offender facility wanting to place themselves in a assisted living center. There's an assisted living center that we truly enjoy having in the community for the older population. And we felt that that was inappropriate. We banded ourselves together, essentially to insist that it would not be put in that facility for a couple reasons, one being that the security was not good enough, that these youth could possibly get out into the neighborhood, and secondarily, due to what I just stated with the type of facility,

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that it was elderly people in a high-rise tower, where they could potentially wander through that facility. So those were the reasonings and justification as to why we essentially insisted that that facility not be there, but it's not that we don't...we feel that there should not be these type of facilities, because again, we care about all people involved. We believe that there's a right place and a right time for facilities as these listed. But again, we just want notification, and based on the experience that we've had, we're not approaching this in a negative way. We're approaching this in a neutral that says we believe we should simply have notification, for the betterment of that facility and the betterment of the neighborhood, that are equal entities. And I'd like to answer any questions that you don't feel were properly answered before. [LB86]

SENATOR JOHNSON: Any questions? [LB86]

SENATOR GAY: Senator? [LB86]

SENATOR JOHNSON: Senator Gay. [LB86]

SENATOR GAY: I have one question. You had mentioned you're in a metropolitan area. Where I come from, Sarpy County, we have a lot of sanitary improvement districts. They're in the city's ETJ, or extraterritorial jurisdiction on zoning, but yet it could be a county residence. [LB86]

JASON SMITH: Um-hum. [LB86]

SENATOR GAY: And then I was looking through here, if we contact the homeowners' association, sometimes they don't have those, and the county can't really do any zoning in those areas. So there's a little bit of overlap. You got any ideas how that could be remedied? [LB86]

JASON SMITH: In the case of the county clerk, you're saying? [LB86]

SENATOR GAY: Well, in the case of an SID in any area. As a sanitary improvement district, it could be in the city zoning, but yet it's still in the county. [LB86]

JASON SMITH: Yeah, within that zoning juris...planning. [LB86]

SENATOR GAY: How would you...how do you go around that? And maybe, you know,...that just popped in my head,... [LB86]

JASON SMITH: I think... [LB86]

SENATOR GAY: ...because you're in a metro area, where you have a planning commission and some other things,... [LB86]

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JASON SMITH: Um-hum. [LB86]

SENATOR GAY: ...but I still go back to this as a local issue somewhat, because every county is going to be different, and every village and city. And enforcement seems to be a problem, but you got any ideas that you could share on that? [LB86]

JASON SMITH: And you're just asking if it's... [LB86]

SENATOR GAY: Well, how would you enforce in a sanitary improvement district? [LB86]

JASON SMITH: Yes, with...outside the... [LB86]

SENATOR GAY: How is this enforced, if there's no homeowners' association? [LB86]

JASON SMITH: Yeah, outside of the municipality, in a county or SID... [LB86]

SENATOR GAY: Yes. [LB86]

JASON SMITH: ...or county area where it would be broad spread and yeah, no pinpoint to go to, basically. [LB86]

SENATOR GAY: Um-hum. [LB86]

JASON SMITH: I think that probably, not boundaries, "proximities" can be worded within this law to default to the those points, where if it's within a proximity of certain governmental entities or neighborhood associations that would be designated by that governmental entity... [LB86]

SENATOR JOHNSON: Let's see, I think we're going back, if I might just add to his question, we're going back to these neighborhood associations, and what he's telling you is there aren't any. [LB86]

SENATOR GAY: If there were none, do you have any ideas? I mean, if you don't, that's okay. [LB86]

SENATOR JOHNSON: Okay, that... [LB86]

JASON SMITH: And if...okay, then...I mean, I think it could be put in the local newspaper. I mean, if you're talking about an area that there isn't neighborhood associations, it's going to be...it's not going to be a very densely populated area, so I think that there's other things...if it needs to be put in the wording, then there's other

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ways, like the local newspaper that could be done. And it's not like you're having to reach hundreds of thousands of people. You're taking care of a high percentage of the population of the state of Nebraska that is covered by neighborhood associations. So that very small percentage... [LB86]

SENATOR JOHNSON: But sir,... [LB86]

JASON SMITH: Yes. [LB86]

SENATOR JOHNSON: ...this is a state law, and for those people that aren't notified, they have, you know, a complaint with the law that we craft,... [LB86]

JASON SMITH: Um-hum. [LB86]

SENATOR JOHNSON: ...because they're not notified, see? And I think all of us just keep coming back to the same thing,... [LB86]

JASON SMITH: I understand the contradiction. [LB86]

SENATOR JOHNSON: ...as where you want the notification of this group, but by whom and to whom? [LB86]

JASON SMITH: And I just think that it can be reworded to where there can be a solution for that. [LB86]

SENATOR JOHNSON: Okay. [LB86]

JASON SMITH: And so obviously, this is not the time to reword it. [LB86]

SENATOR JOHNSON: Senator Pankonin. [LB86]

SENATOR PANKONIN: Senator Johnson, I just want to make one more comment, and I mean, I think it'll go on to the same thing. I mean, I would even want a legal opinion. If a registered neighborhood association isn't defined by statute and is just a registry of informal, historical associations which I think is great--I think it's a great...I'm glad Omaha has them. I don't know how active they are in Lincoln. I do know they're active in Omaha. But I don't even know...if I was an attorney for one of these other groups and a registered neighborhood association isn't defined in the state statute, like a village is, or a second class city is, or city of the first class, I don't know how it even would be...I guess I would want that opinion, as to if it's even legal. Why would you have to notify an informal group of citizens? I mean, it might be good neighbor policy. I think that's all great, and the intent is great, but I think we're seeing so many holes here, that we're going to have to rework this whole thing, if we're going to make much progress. [LB86]

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JASON SMITH: I agree, yeah. [LB86]

SENATOR PANKONIN: I think we're all learning that, from talking about it. And I just...that's why I came back, and I think that's why Senator Johnson is coming back to it. If that's not a...if those groups aren't recognized in statute, I don't know how you can do this. [LB86]

JASON SMITH: But...and... [LB86]

SENATOR JOHNSON: And as far as doing it locally, if I might just interject for a second, why can't zoning authorities or the cities notify these people right now? [LB86]

SENATOR PANKONIN: Yeah, if they have the registry,...if we notified the city of Omaha, why couldn't they...I mean, that's why I asked, you know, how many blocks are they and whatever? So it's all...it's been historical and informal. I don't want to say informal--you register. But if these groups would notify the city of Omaha and then put that responsibility on the city instead of these people, I mean, it would be hard to know...that's why I asked about, you know, and we got this map and there's 11 of them in that one area. There's a lot of them. How many are there in the city of Omaha, registered associations? [LB86]

JASON SMITH: Good question, yeah, yeah. [LB86]

SENATOR PANKONIN: So I just think... [LB86]

JASON SMITH: But of course, they're connected to the municipality, in the sake that whether or not they're... [LB86]

SENATOR JOHNSON: But that being the case, then why can't the city do what we're asking to make a state law of? [LB86]

JASON SMITH: Well, then, I would just default back to the idea that the license has to be acquired from the state, and then where do we draw the line there, with the fact that there is a relation to the state? And then it creates potentially a burdensome bureaucracy, and potentially, a misin... [LB86]

SENATOR JOHNSON: Yeah, see, we're...there's no one here that's questioning your intent. What we're... [LB86]

JASON SMITH: I'm just laying out justification for it. [LB86]

SENATOR JOHNSON: ...we are having a problem with is the unintended

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consequences, and that's what we're trying to get people to address, is all these different things and... [LB86]

JASON SMITH: Um-hum, and I appreciate that, okay? [LB86]

SENATOR JOHNSON: ...you know, we need help. [LB86]

JASON SMITH: So that's what I'm willing to do, as the president and you know, volunteer of the civic... [LB86]

SENATOR JOHNSON: Well, again, none of us have any intention of, you know, beating up on witnesses or anything like that. That's not our intent at all, but there is the question here of, you know...everybody's talking about the cities and the neighborhoods and stuff like that. Well, there are the Platte Centers of the world, and it's our duty to make sure that things are done right in Platte Center, as well as in a section of Lincoln or Omaha. [LB86]

JASON SMITH: Right. Thank you, and I just think that it can be reworded and solved, relatively simply. [LB86]

SENATOR JOHNSON: Okay, great. Thank you very much. [LB86]

JASON SMITH: Thank you. [LB86]

CATHY BEECHAM: Good afternoon, senators. First of all, I know it's been a long day, and thank you all very much for staying so late. I wish I had a pot of coffee I could pass around for everybody. My name is Cathy Beecham, Cathy with a C, and it's B-e-e-c-h-a-m, and I'm an executive board member of the Near South Neighborhood Association here in Lincoln. We're located just southeast of the Capitol, so you may go through our neighborhood on your way to get some lunch sometimes. I had a whole list of things I was going to say, but I think I'll just jump in and talk about the questions that you seem to have first, at least my little two cents of ideas. And the first one that comes to my mind is, why can't the cities take care of the notification? And the first thing that I'm hearing is that Senator Howard mentioned that most of the time or many times, the cities are not receiving notification from Health and Human Services, and I think that that is a big part of the problem, is that the cities don't know what's happening at the state level. The licenses are issued at the state level, and so I don't think we can expect the cities to notify, or the counties to notify people, because I don't think that they're getting the notification from the state. And I think that is part of the reason that this issue is coming to you, rather than to a local city or a county government situation. In terms of notifying folks that aren't in an urban area, within a neighborhood association--and this is just off the top of my head--but my guess would be that everybody in the state has some place that's a source of local government for them, whether it's a county

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government, or their own municipality. So if there's not a...my thought would be, for a care facility, they contact the city to find out if there's a neighborhood association listed. Or if there's not a city there for them to contact, they contact the county. And I think we could do some kind wording like that, and if that's not the case, then I think we say, well, within 500 feet or 1,500 feet. We look up the address, and if it's a rural area, there's probably going to only have to be one letter that goes out, anyway. So it may take a small amount of research, but you know, research is what all of us have to do in our day-to-day lives. It's what I would have to do if I want to find out about a care facility coming to me, unless I get a letter. So I think it's fair to ask that, you know, five or ten minutes be spent doing a little bit of research to find out where, you know, the local place is...excuse me, the local seat of government is. And I think that that definitely...it sounds like it definitely needs to be reworked in the wording for this bill. Very quickly, what I would tell you is, our neighborhood association did vote in favor of this. We have 1,300 residents living within our neighborhood. We have 500 members of our neighborhood association. We do have by-laws and elected officers who serve two-year terms. Basically, I think that...we have a lot of group homes in our area. We are not opposed to group homes. And I think that, especially with the closing of the regional center, there's a real push in the state to go back to community-based healthcare. And I think the key to community-based healthcare is to let folks in a facility be part of a community. That's the entire purpose of closing the regional center, is to make them part of a community. I think notifying a neighborhood association--we're asking for one letter--I think is a great step towards doing that. We would relish the opportunity to invite a facility representative to one of our meetings to talk to them about the services that are available in our neighborhood, in terms of buses, that kind of thing; also, to talk to them about the issues in our neighborhood. Some areas have higher crime, and crime impacts residents of a facility just like it impacts nonresidents of a facility--talk to them about sidewalk maintenance, talk to them about all the things that are part of our neighborhood. Also, get a contact information from someone at the facility so if there is a concern, we can talk to them directly, figure out how to best solve it. And talk to them about the opportunities to be part of the community. Some of our group homes in our area participate in our neighborhood trash clean-up. They come to our neighborhood ice cream social. So I think that this is really working...everybody working together to partner to make these facilities part of a community, to make residents in these facilities neighbors, and let us treat them like neighbors. And you know, it just dispels a lot of myth and misinformation about group homes. I think group homes play a really important role. I think these facilities play an important role, and I think the best way to make community-based healthcare a success is to make people part of a community, and I think this is an important step towards that end. So thank you for your time. [LB86]

SENATOR JOHNSON: Senator Erdman. [LB86]

CATHY BEECHAM: You've got the grin that says that you're going to nail me on something. Go ahead. (Laughter) [LB86]

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SENATOR PANKONIN: No, we're grinning because he told us not to ask any more questions. [LB86]

SENATOR JOHNSON: Yeah. (Laugh) [LB86]

SENATOR ERDMAN: That was it. That was it. [LB86]

SENATOR PANKONIN: He just caught himself. [LB86]

SENATOR ERDMAN: And I thought, you know what? I just have to, because I want to make sure that we have time, as the Chairman pointed out, being a Friday and all, folks have places to go. Here's the rub, okay? [LB86]

CATHY BEECHAM: Um-hum. [LB86]

SENATOR ERDMAN: I'm an appraiser, I go out and look at homes. And if the home doesn't meet what the zoning requires, that's an issue. In the same sense, I've been to places where the houses I've appraised and the covenants that they've put in place violated the Fair Housing Act, flat out they do. They violate state law, they violate federal law. You tell that to the developer and they go, oh, I didn't know that. [LB86]

CATHY BEECHAM: Yeah. (Laugh) [LB86]

SENATOR ERDMAN: They find a new attorney pretty quickly, but the problem is still there. Here's what--and I'm not accusing you or anybody else in favor of this--but here's what I think the rub is. The rub is, is that we can't prohibit anyone, especially individuals now that have been classified under the revision of the American Disabilities or the Fair Housing Act--I don't remember what the...Fair Housing Act, excuse me. As of '88, you can't discriminate from an individual for sale, rental, availability of a dwelling, based on a disability of the renter or buyer, any person residing in the dwelling. If your goal is to include these individuals in your community, why do you need to know up-front? [LB86]

CATHY BEECHAM: Well,... [LB86]

SENATOR ERDMAN: And I'm going to answer my perspective,... [LB86]

CATHY BEECHAM: Sure. [LB86]

SENATOR ERDMAN: ...and then I'll give you an idea that may be an alternative,... [LB86]

CATHY BEECHAM: Okay. [LB86]

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SENATOR ERDMAN: ...because here's what I'm assuming the opposition to this is, and here's probably why this isn't sitting right with me. You can find out who has a facility today. We have a list that was given to us in Omaha that says, this is where all of the facilities are. Does your association now invite the existing facilities in your community to be a part of your activities? [LB86]

CATHY BEECHAM: We do, with some of them. We have contacted almost every one, and I'd like to add one thing. The list that you're saying you have is actually not necessarily accurate. We have gotten a list like that before, and the list had a couple around the corner from me who have a daughter with...a foster daughter with Down Syndrome living with them. So the list that we got from the Department of Health and Human Services really wasn't the kind of list that we needed, with contact information and that kind of thing. It was a list that had, I think, everybody with a disability in the neighborhood, and that's not really the same thing. In my mind I think there are definitely going to be neighbors who hear the word "group home" and get very nervous, and so I think as a neighborhood association, I think having this information is really a way to prevent any kind of friction with neighbors. I think it's a way to say, you know, let's get a representative here, let's talk about, hey, who's going to be in this house? How can we incorporate you in? [LB86]

SENATOR ERDMAN: Right, but I don't want to cut you off, but I want to try to make sure that we get...so why don't we just say this? Why not the alternative be, because if you know up-front, you'll have the opportunity to protest the license. If you don't know up-front, then your issue isn't protesting the license; it's a timing issue. If your true goal is inclusion of those individuals in that community, to make sure that they feel part of the community, which was a part of the idea of LB1083--making sure the service is available, but also bringing them closer to their families and to where, hopefully, their home was--why not, then, make the focus on that information that you're currently available to receive, whether from the department--make the department be as accurate as possible--so that you're aware. Because if your goal isn't to fight their application up-front to be licensed as a group home, which any good attorney is probably going to go, excuse me, for housing violation I think we win, why not then go that route and say, let's work with the department to make sure the list is up to date and that those individuals who are interested in knowing who has a licensed facility knows who's in those facilities, knows who the contact people are, and can reach out to them to truly include those folks in the discussion? [LB86]

CATHY BEECHAM: And I think my response would be, for the most part I think that would work. However, we just heard testimony from a gentleman that a neighborhood association did have a concern and protest a license, not on basis of, this shouldn't be a group home, but on basis that it was an inappropriate location of that particular type of facility. And so I wouldn't... [LB86]

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SENATOR ERDMAN: And then that comes back...right. [LB86]

CATHY BEECHAM: ...want to make a blanket statement that says, you know... [LB86]

SENATOR ERDMAN: But then that comes back to a local issue, because if your zoning isn't appropriate, then that's for your location, because if you don't enforce your zoning, you have encroachment and other issues that are inappropriate. If you don't enforce your zoning, you have locations of facilities that shouldn't be there, and so it's also making sure that in the process that we're not hoping that a one-page bill is going to solve everyone's problems, but that local zoning reflects the intent of the people who live in those communities for the appropriate development of that area, while at the same time recognizing there are going to be certain limitations, and rightfully so, on prohibiting folks from living in certain areas. So I think there may be another way to do this,... [LB86]

CATHY BEECHAM: Um-hum. [LB86]

SENATOR ERDMAN: ...if we can truly find out what your intent is. And I don't, you know, I don't...nobody here has said to me, boy, I'd really like to be able to know up-front so I could protest any location. I want to have information; I want to be able to know how this is done. I think there are different ways to do this, but I think the real rub is, you want the information before someone is licensed. Some people may want it for legitimate reasons, but others may not. [LB86]

CATHY BEECHAM: Um-hum. [LB86]

SENATOR ERDMAN: Others may want to actually try to use whatever legal or political authority they have to actually prohibit the location of that facility, and I think that's a poor policy decision. I think that's a poor ethical decision for those individuals; one, because it violates the law, and two, it doesn't show dignity to the people who are affected. [LB86]

CATHY BEECHAM: Absolutely. And I mean, I would agree with you. I just also think that, you know, there has to be...I guess, to my mind I think receiving a letter saying that we're looking at putting a facility in, I don't think is asking for too much. I don't think that, you know,...I mean, trying to find this information, I don't think it's made very public. We certainly have not had any luck. You know, you certainly never get anything from the Department of Administration, saying this licensing is going on. I guess I feel like, you know, I certainly don't want to violate the law, and you know, I do have a problem when people....sorry, getting all tongue-tied at the end of the day. I hear what you're saying. I think that this bill still has merit. I think that asking for a letter,... [LB86]

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SENATOR ERDMAN: I think the idea has merit, and I want to make sure that...and we're going to hear opposition. [LB86]

CATHY BEECHAM: Um-hum. [LB86]

SENATOR ERDMAN: We've heard similar issues like this in the past, and I think some of those concerns, maybe the things that I've shared with you. [LB86]

CATHY BEECHAM: Sure. [LB86]

SENATOR ERDMAN: But what I don't want us to do is to stand in the middle of the forest and try to figure out how to get out, when you can go to 35,000 feet and see the maze and get out. [LB86]

CATHY BEECHAM: Right, right. [LB86]

SENATOR ERDMAN: And so I want to make sure that if there is a way to do what is best for everyone, that that option is available. I think what I'm hearing is that this up-front idea is going to be the rub, because why would you want to know up-front? [LB86]

CATHY BEECHAM: Well,... [LB86]

SENATOR ERDMAN: And that is...your argument is, you want to be able to... [LB86]

SENATOR JOHNSON: Sir? [LB86]

SENATOR ERDMAN: You want to be able to prepare your community for whatever circumstances might be there. The advocates and the folks who are going to be affected by having these facilities may come in here and tell us, we're afraid you're going to try to stop us. [LB86]

CATHY BEECHAM: Um-hum. [LB86]

SENATOR ERDMAN: And that's not a situation that either one of us want to be in, and I think there's a way that we can work this out, if we're not tied to the language before us. [LB86]

SENATOR JOHNSON: Any other questions? [LB86]

CATHY BEECHAM: Thank you very much for your time. [LB86]

SENATOR JOHNSON: Any other proponents? I see none. Let's move to those that are

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opponents. How many do we have? One, two, three. All right. Let's proceed. [LB86]

KATHY HOELL: (Exhibits 4 and 5) Thank you. Senator Johnson, members of the committee, my name is Kathy Hoell, K-a-t-h-y, H-o-e-l-l. First of all, as the first vice-president of The Arc of Nebraska, I would like to submit their testimony in opposition to this bill. I'm not going to read it. You're big boys and girls; you can read it yourself. (Laughter) Okay, now I'm putting on my other hat. I am the executive director of the statewide Independent Living Council in Nebraska. We are an organization that was mandated under the Rehabilitation Act and we work to support independent living for people with disabilities--all disabilities. And the statewide Independent Living opposes LB86. If you substituted one of the other protected classes, protected classes being defined by the Fair Housing Act as amended in 1988--and those are race, color, religion, sex, familial status, people with disabilities, or national origin, the outcry from the public would be so loud a bill of this nature would not pass. It would not get out of committee. But this bill singles out one class, which if you look at the Fair Housing Act violations, Circuit Court of Appeals in District 6 and District 10, they've already ruled against notification for a lot of the same issues that were brought up by Senator Gay and Senator Erdman. I...you confuse me. But anyway, while the intent is notification to increase communications, the unintended result would be there are communities that don't want those people in my backyard. It's a fact of life, and prior notification about these communities, these neighborhood associations, would make that more likely to happen. Now both the Arc and the NESILC realize that the intent is communication, and we are...both our organizations are willing to work to find a better way to do this, but this bill is not it. This bill has too many unforeseen consequences to it. Thank you for your time. If you have any questions, I'll be glad to answer them. [LB86]

SENATOR JOHNSON: Kathy, thank you. Are there any questions of the committee? I think they're tired. [LB86]

KATHY HOELL: They don't know me. (Laughter) [LB86]

SENATOR JOHNSON: Kathy, thank you very much. [LB86]

KATHY HOELL: Okay. [LB86]

SENATOR JOHNSON: Any other opponents? [LB86]

TERRI HOLMAN: (Exhibit 6) Mine is very brief here, so...thank you. My name is Terri Holman, that's H-o-l-m-a-n. I'm testifying on behalf of the Nebraska Planning Council on Developmental Disabilities. Although the council is appointed by the Governor and administered by Health and Human Services, it is a federally mandated independent council. Therefore, the position of the council is not necessarily that of the Governor's administration. The council is comprised of individuals and families of persons with

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developmental disabilities, community provides, and agency representatives that advocate for system change and quality services. The purpose of LB86 appears to be an attempt by community members to promote awareness and inclusion for residents of any newly licensed facility in a residential neighborhood. The belief that this knowledge could promote more positive interactions, acceptance, and communication between neighbors is well intended. However, the council opposes LB86, because we feel that the individual's right to privacy and confidentiality would be jeopardized by this kind of reporting. By moving into a group home, many people with developmental disabilities are making great strides toward becoming more independent, contributing members of their community. LB86 opens the door to judgmental and oppositional attitudes and actions before residents of a licensed facility would ever be able to prove what good neighbors they can be. Thank you for your consideration. [LB86]

SENATOR JOHNSON: Any questions of Terri? Terri, I see none. Thank you very much. [LB86]

TERRI HOLMAN: Thank you. [LB86]

SENATOR JOHNSON: Any other testifiers, please. [LB86]

JOHN PINKERTON: She'll be quick. [LB86]

SENATOR JOHNSON: We're fine. We're fine. We promised when we started that we wanted to try to talk to the last people as well as the first, and we intend to do that. [LB86]

RACHEL PINKERTON: (Exhibit 7) Rachel Pinkerton, R-a-c-h-e-l P-i-n-k-e-r-t-o-n. I won't read this to be brief. Thanks to Senator Howard and others for bringing attention to the challenge Nebraskans face in participating fully in the lives of their communities while living in housing that is licensed by the state. As an assisted-living provider, I have weathered a city council meeting...Senator Hansen, this wasn't in North Platte, by the way...in which legitimate questions and concerns were raised about what kind of neighbors the members of my proposed community living option would be. Unfortunately, the mob mentality of the group as a whole was an obstacle to civilized discourse. And I think this is what the people are trying to prevent. Ignorance, fear, and animosity were in the room, best exemplified by one neighbor who demanded, what color are these people going to be? And I'll say most of the other people kind of shrank back, like I'm not with her. While I see the value of a forum in which a prospective licensee and neighborhood leaders can address potential concerns, it seems clear that to put the burden on a provider to establish this communication in the absence of any zoning implications is discriminatory. As I read LB86, a three-bed assisted-living facility would fall under this proposed act. If I were to become disabled tomorrow and wanted to take in a couple of roommates to help with expenses, I would need a license from HHS

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in order for my boarders to qualify for AABD or Medicaid-waiver funding. Do you really think I should have to notify my neighborhood association in order to apply for such a license? Would it be ethical or even legal for you to require me to do so? Thank you. [LB86]

SENATOR JOHNSON: Any questions? Don't rush off. [LB86]

RACHEL PINKERTON: No. And I took the liberty of adding something. [LB86]

SENATOR JOHNSON: Well, no, if I might say something, is this in response to your testimony, is that I think you bring up the type of unforeseen consequences that's an example of the sort of thing that we need to work through in this bill and give deep attention to. Because this is just one at the end of the day that someone has come up with, and I guess you just wonder how many others there are out there, let alone we've talked to a number of people about this. So thank you for pointing this out to us. All right, any other questions? Thank you. Any other testifiers? Any neutral testifiers? Yes, sir. Let me say that I have a letter here from the ARC of Nebraska, Patty McGill Smith, President, opposing LB86. (Exhibit 4) [LB86]

ROGER STORTENBECKER: (Exhibit 8) Mr. Chairman, members of the Health and Human Services Committee, my name is Roger Stortenbecker. I'm the chief development officer for Developmental Services of Nebraska. We're a small nonprofit organization that provides services to people with developmental disabilities in Omaha, Lincoln, and Kearney. I will be merciful; I won't read my testimony to you. [LB86]

SENATOR JOHNSON: (Laugh) Thank you. [LB86]

ROGER STORTENBECKER: And actually my testimony is a little bit different at this point in this hearing than what I prepared for. Prior to working at DSN...I've been there for four years. Prior to that I was the administrator for the Developmental Disabilities System for Health and Human Services. I've been in this business 30 years and so I've been around the block twice and talked with a lot of people three or four times. I've been to some of these neighborhood association meetings and I can't characterize that they are all one way or the other. They are not. DSN currently has membership in neighborhood associations, and we have some pretty good luck with many of them. There are some that are not quite as nice about things. There are some that we can go to them with our problems where we've got hostile neighbors or those kinds of things, and they'll help us remedy that and other times they will not. So it's the nature of people; it's just the way things go. To answer some of the questions about how this might be done other than a state statute, in the Developmental Disabilities System there is a regulation that requires all contracted DD providers to conduct public education and information. It does not require service providers to share individual-specific information about type of disability, age, race, any of those kinds of things that would be forbidden

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by the ADA or the Fair Housing or any of those kinds of things. So it's very general information. It's what the provider is about; it's what the provider does; it's background general information about developmental disabilities. But it cannot, must not, violate any HIPAA or other confidentiality rules, and it does not require a provider to bow down to violations of Fair Housing Act. Now, municipalities, the city of Lincoln in particular, has some experience at DSN with the city of Lincoln. We believe the city of Lincoln's zoning laws are in violation of the Fair Housing Act and we're testing that right now. I guess we'll find out. The city council decided they would settle with us because they thought we were right; the mayor decided that she didn't want to go along with that. So we're still going to fight this fight and we'll see how it turns out. I can't speak of the city of Omaha because I don't know about that, how it works in the city of Omaha with zoning. I would say that we've had less attention and less hassle in the city of Omaha, although we've also had less contact with neighborhood associations and such in the Omaha area, as well. We have none that are in within the boundaries of the Howard...I'm sorry I can't remember the official name...but in the area there from where this seems to have grown. I would want to reiterate something here about Nebraska has done a good job of providing community-based services to a lot of people. When I first started, the Beatrice State Developmental Center had thousands of people there. Now there are just under 400. So there's been a lot of pressure put on community-based services to rise to the occasion and to lots of neighborhoods across the state, both urban and rural. More pressure is going to come. It's my understanding that Health and Human Services recently was awarded a \$75 million grant for...and it's called Money Follows the Person Demonstration Grant. It is specifically designed to help move 900 Nebraskans from ICF-MR institutions and nursing facilities into community-based settings. Now, two reasons for that: very broadly, one is life quality, and the other is cost savings. And when it comes down to it, I think a lot of what we're talking about here comes to the cost of living. Many of the neighborhoods that group home providers find themselves looking at offer economy, both for the people that we support. When you look at what the people we support get, it's about \$500 a month of cash benefits. And so \$500 a month to pay for your room, your utilities, your food, all of your personal items, doesn't go very far. So congregating is almost a necessity. Just in the paper today I was looking at the rent of apartments. For a two-bedroom apartment sometimes it's well up over \$1,000 a month. Now on top of that, at least for the population of folks that we support, then we're trying to be economical about how we do that as a state. And to enjoy those economies, we talk about a one-to-many ratio: one staff person to many people who need support. Now, all those rates, those reimbursement rates and how much we get paid for each person, is all determined by Health and Human Services. They'll determine if the person is eligible; they'll determine how much is going to spent towards the cost of their care. And then a service providers decides, do you want to sign the contract or not and will you serve that person or not? If we don't have one person or two persons or three persons who collectively their reimbursement amount will cover the cost of having a staff person or two or three, whatever it takes, then we have to start looking at congregating as well. Can we add a fourth person who brings enough income with them

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that we can afford to provide their care? So what ends up happening is that when you start looking at that fourth person or maybe even a fifth in some cases, then you have to start looking at the bigger homes. Those are in the older neighborhoods. Now, the other thing that's a factor here is the services that the people we support use, tend also to be congregated. Most of the people that we support do not drive, they do not have their own cars. They are reliant on us or on public transportation or walking somehow to get to the grocery store, to the pharmacy, to their doctor. And so you find out that we'll congregate our locations where those services are. In rural areas, because of our requirement to provide notification about what it is we're up to, what we do, that's how we've taken on providing notice to the rural locations, although we do not go out of our way. If we had a house, for example, out in the center of their section, we wouldn't go hunt down the neighbor any more than the neighbor would come hunt us and say, hey, I'm moving in next door. If it works out that way, we'll do that, but it's not something that we extend ourselves for. So, with that, I would say that our position, our testimony here is neutral because we think that communicating with neighborhood associations is absolutely essential. It's got to be a two-way thing. One of the...part of the testimony that concerned me here was one about we came together to stop a group home from being placed. Now, what concerns me about that is when we talk about group homes we tend to put them all in a group, whether it's sex offenders, whether it's youth with mental illness, whether it's developmental disabilities or anything else, a group home is a group home is a group home. And that's not true. But the idea of the reaction to the notion of a group home is pretty much the same: Not here if we say not here. So presumably, as Senator Erdman pointed out, presumably the reason for knowing about it in advance would be so that either you could stop it or we could at least have a good open communication so we can come to some understanding about how we would coexist in that neighborhood. So what we would propose is that LB86 would include the amendment that I handed out to you which would provide the protection. Now, that is at the state statute level, so it's a little bigger maybe than what you would like to see because it keeps it all at the state level in statute. But the reason I would say that that is important is our current experience in the city of Lincoln where the city seems to be willing to keep the local ordinances that are in violation of the Fair Housing Act. I'd be happy to answer any questions if I could. [LB86]

SENATOR JOHNSON: Thank you, sir. Any questions? Sir, I see none. Thank you very much. [LB86]

ROGER STORTENBECKER: You're welcome. [LB86]

BRENDON POLT: Good afternoon. For the record, I'm Brendon Polt; that's P-o-l-t. And I'm here representing the Nebraska Health Care Association which includes the Nebraska Assisted-Living Association. And I would just like to go on record in a neutral capacity. Our members don't have a strong problem with having these notice requirements, however we do feel that they're unnecessary and probably duplicative

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because of the public nature in many communities of the zoning commission. Furthermore, we believe it's a bit confusing. For example, when you make an application for licensure, apparently you would have to include, with that notice, that you've made application for licensure...so...which is circular. So which do you do first? Anyway, that's all I'll say, but just wanted to go on record. Thank you. [LB86]

SENATOR JOHNSON: Brendon, thank you. Any questions of Brendon? Thank you very much. Anyone else wish to testify? Senator Howard, would you like to close? [LB86]

SENATOR HOWARD: I'm going to make this really very brief because we're certainly running late. I'd like to thank the members of this committee for listening to the concerns of your neighbors, and I would also especially thank the neighborhood representatives who are so committed to their community and took time off work to come today to testify. It shows their commitment to this issue and to the neighborhood. I think there had been an amendment that was suggested by Health and Human Services that certainly I felt was worth looking at. But any facility covered by the Health Care Facility Licensure Act would be a term, a definition that would be included in this bill. I'd say with that I'm going to simply conclude it and thank you for your time. [LB86]

SENATOR JOHNSON: (See also Exhibits 9, 9, and 10.) Okay. Any final questions? That being the case, we'll call it a day and that's the end of discussion regarding LB86. Thank you and we'll close the afternoon. [LB86]

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Disposition of Bills:

LB86 - Indefinitely postponed.

LB103 - Advanced to General File, as amended.

LB203 - Advanced to General File, as amended.

Chairperson

Committee Clerk