BANKING, COMMERCE AND INSURANCE COMMITTEE
August 21, 2012

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The Committee on Banking, Commerce and Insurance met at 1:00 p.m. on Tuesday, August 21, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public briefing on health insurance exchanges. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: None.

SENATOR PAHLS: I want to welcome you to the Banking, Commerce and Insurance Committee. My name is Rich Pahls. I represent District 31 in the city of Omaha. Today we're going to have a briefing in regard to the Patient Protection and Affordable Care Act. Now we're going to hear from various organizations. I'm going to sort of give you a little bit of background of why some of these organizations were picked. I went back through the transcripts and I was trying to get those organizations that I personally was still unclear where they were on the Affordable Care Act. There are a number, and we will have more people in the future be able to come in front of this committee. But I noticed that there were some organizations I don't think it was made clear enough where they...their concerns, good, bad, or indifferent, about this particular act. So I thought this would be an opportunity to allow those groups to come forth and give us their opinions. And that's all I'm going to say today. Let's make sure that when you walk away the committee has an understanding where you or your organization. And if by chance if your organization is down here and there's nobody here, and that could be because I gave late notice on this, if there's an individual in here from that organization I'd be willing to hear from them. So keep that in mind. And then to just let you know, the Governor and the department, they're going to be going around the state, at least a half dozen meetings. We will have three more meetings on this before the first of November, so we are probably going to have lots of opportunities to gain more information or knowledge from you. So what I will do now, I will start off and I will have the senators introduce themselves starting over with...

SENATOR SCHILZ: Ken Schilz, Ogallala, District 47.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Columbus, Stanton, Platte, and Colfax.

SENATOR LANGEMEIER: Chris Langemeier, District 23.

SENATOR PIRSCH: Pete Pirsch, District 4, west Omaha and parts of Douglas County.

SENATOR McCOY: Beau McCoy, District 39, west Omaha and western Douglas County.

SENATOR GLOOR: Mike Gloor, District 35, Grand Island.

SENATOR CHRISTENSEN: Mark Christensen, Imperial and the southwest corner.

SENATOR PAHLS: And you see Jan Foster sitting over there. She every once in a while gives me the evil eye when I'm not making sure that you don't spell your name correctly or something like that. So like I say, she keeps everything so you can get a transcript later on. And I think our page today is Evan Schmeits from Columbus.

EVAN SCHMEITS: Yes.

SENATOR PAHLS: Thank you, Evan. I think what we will do is we will start right now, and I'm going to start and simply go down the list that you saw in the hallway: the Nebraska Association of Health Underwriters, and the National Association of Insurance and Financial Advisors.

MARK KOLTERMAN: How are you?

SENATOR PAHLS: Just fine, Mark. I'll ask you to spell your name.

MARK KOLTERMAN: Yes. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I'm from Seward, Nebraska, and this afternoon I'm speaking for four organizations. In the essence of time, and our efforts are joint, the PIA of Nebraska, the Independent Insurance Agents of Nebraska, the Nebraska Association of Health Underwriters, and also NAIFA Nebraska. We formed a coalition about a year ago to address the issues of healthcare reform as they pertained to the state of Nebraska. Together, we represent about 4,000 agents and their associates across the state in all 93 counties. I would tell you that all four of our organizations are here today, so if you have specific questions of any organization, they would be glad to speak. Our committee would like to thank the work of this committee as well as the work of the state Department of Insurance. Shortly after the Affordable Care Act was passed, we started working with the Department of Insurance to find out what was in the bill, and how it would affect our agent population and our customers in all 93 counties of this state. About that same time, shortly after this bill was passed, it might have been simultaneously, Director Ramge was appointed to replace the previous insurance commissioner. Also about that same time the department hired two individuals to help decipher what the obligation was going to be of our state as well as to work through all the bureaucratic red tape that was going to be handed to us by Health and Human Services and the federal government. I would tell you that Director Ramge, John Paul Sabby, Michael Sciullo, Martin Swanson, and Eric Dunning, all with the Department of Insurance, have worked very closely with all four of our organizations in the state. They have been up-front and asked us for input from our organizations, and in turn we have shared with the department information that is submitted to us by our national organizations. Needless to say, we have a very good

working relationship with the department. Our agents' associations have always had a good working relationship, but in my tenure as an agent I don't know if it has been any better than it is at the present time. The Affordable Care Act is a very complex piece of legislation which has been tested on many fronts, as you all know, through the courts. It's constantly evolving. It has had a devastating effect on the agents in this state from a compensation point of view; but even under these difficult circumstances, we as agents have been treated very respectfully by all people involved on a state level. Our goal as professional agents in this state is to educate our clients about what is most affordable to them, what their best options are as they choose their health insurance. And we don't take this role lightly. We think, and I can speak for all four organizations, we feel that the role of the professional insurance agent should be the main carrier or the main marketing arm of this program. We have licensed insurance agents throughout all 93 counties in Nebraska, and we have to become educated, we have to carry errors and omissions insurance, and we're there to help our neighbors. If you will allow us to continue to work with the Legislature, the executive branch, and the Department of Insurance, our organizations pledge to you that together we can come up with a state-operated exchange that benefits all Nebraskans. We know and understand insurance and the people of Nebraska; they are our friends and neighbors. And that's where I'll leave my testimony. Do you have any questions for us?

SENATOR PAHLS: Let me start off with a couple of questions. I'm going to challenge the senators up here to really dig deep down, because we need to get some of these things cleared up. I understand being very complimentary of the Department of Insurance. I agree to that. But I'm still picking up that you're saying you want it state-based. Is that what you're telling me?

MARK KOLTERMAN: That's where we're at, at the present time.

SENATOR PAHLS: Okay. You're concerned about the compensation?

MARK KOLTERMAN: Well, because of the way the law is written in the medical loss ratio, the agents have taken a pretty hard hit as far as compensation is concerned.

SENATOR PAHLS: Okay.

MARK KOLTERMAN: But even at that, we aren't giving up. Some of that has to be worked through the federal courts.

SENATOR PAHLS: Right.

MARK KOLTERMAN: And there's some legislation in the House and the Senate. There's two bills to possibly change that. But the way the law is written at the present time, it has had a devastating effect on a lot of agencies.

SENATOR PAHLS: And, of course, this is very upsetting to the agents because it's money.

MARK KOLTERMAN: When you lose 40 to 50 percent of your income, that would have a devastating effect on you.

SENATOR PAHLS: Okay. So then you probably shouldn't be for the law then. I mean, if you can take 40...let's say you're making $100 and you're going to lose $40, then you actually should be against this.

MARK KOLTERMAN: Well, it's the law. What do we...? I mean...

SENATOR PAHLS: I understand that. I'm just trying...I need to get this stuff clear because I hear people when they leave--not you--but when people leave the room they say, well, we didn't get the gist of what was going on. So I'm trying to figure out what it is, and I know if it is the law, there are things that we cannot do, but maybe there are...and I'm talking not against you, you understand.

MARK KOLTERMAN: Right, I understand.

SENATOR PAHLS: I'm trying to get things cleared up here, and there may be other federal laws that will change some of your concerns. But I think we ought to lay on the table all the issues that we have. So I could say to one of the groups you're representing, money is a major issue.

MARK KOLTERMAN: It is, but it's not the only issue.

SENATOR PAHLS: Okay. What are the other issues?

MARK KOLTERMAN: We want...one of the questions that we have about the Affordable Care Act is the role that navigators play versus the role of agents. There's a big difference there. We feel that if an insurance agent has to go out and get licensed, has to keep up their continuing education, and has to provide malpractice insurance and run an agency, they ought to be fairly compensated for that; but we don't feel a navigator should be able to sell insurance products without a license. And that has not really been spelled out yet what the difference is between the role of a navigator and the role of an agent.

SENATOR PAHLS: Okay. Yes. And I have heard this argument before. And the navigator issue can be solved at the state level or at the federal level, your understanding?

MARK KOLTERMAN: I think it has to be solved at the federal level.

SENATOR PAHLS: Okay. Senator Pirsch.

SENATOR PIRSCH: Thanks for your testimony, Mr. Kolterman, here today. And I just had a question as where...things are pretty fluid right now in terms of understanding what are...you know, what is coming out of D.C. in terms of mandatory and what would be permissive under the different models that are open to the state. But in terms of making the election, so your preference would be a state-run exchange at this point as opposed to a national...the national-run.

MARK KOLTERMAN: Federal-run exchange.

SENATOR PIRSCH: So have you considered and do you have enough information at this point to consider some sort of a hybrid.

MARK KOLTERMAN: We have not.

SENATOR PIRSCH: I know that there's been some joint models that have been proposed where the federal government will provide this type of service and the states would make these type of determinations. That hasn't been something that you...

MARK KOLTERMAN: No, it has not.

SENATOR PIRSCH: Okay. Appreciate that. Just one more question then. In going forward...and I appreciate your statements with respect to the legislative and executive branches. But, you know, without...you know, obviously, at this point I don't know; I can't guarantee what any substantive outcome would be in terms of the decision before this committee. But in terms of process or procedure from this committee, what would you like to see? And I'll ask this question, too, with other stakeholders as they come forward. You know, it's better as we approach here, because, you know, January session that we have an understanding of what procedurally processwise you expect from the committee in putting ourselves in a position to make a good decision. So is there anything that you want to have us do going forward?

MARK KOLTERMAN: Well, in the last session of the Legislature you had two bills that addressed the issue of exchanges. I believe one was put together by Senator Nordquist, and I believe this committee had a bill that was in committee here. We were supportive of both aspects, both of those bills. You know, we weren't in a position to pick and choose which was the best. There were good aspects in both of them. I think we believe, you know, if this is an insurance product, it probably should be housed in the Department of Insurance if there's an exchange. They are the ones that write insurance laws. They're the ones that are there to administer insurance laws. It would

be hard to not have them involved to a great extent. But, here again, that's up to you folks to decide how that would come about.

SENATOR PIRSCH: Thus far, have you felt that you've gotten enough information though from the committee and opportunity through hearings such as this to come in and give voice to your concerns?

MARK KOLTERMAN: We...when I say we, I would say all four organizations have been to pretty much all of the hearings that you've had. I think we've testified at most of them. We've been working very closely with the Department of Insurance. They're really getting spoon-fed on an as-needed basis by the federal government. I don't know how they're doing it; their hands are tied. The essential benefits just came out in the last 30 days. They're having hearings to talk about how that will affect people. I know they're meeting with different constituencies. They have...this is a list of all the different meetings, front and back pages, over the next probably 30 to 45 days. They're taking it across the state, to Gering to Nebraska City. So, you know, I think they're doing a good job. They're trying to do what's being handed to them. Everything is coming down the pike so fast, and we're...I don't envy you; we're sitting in a position where we're supposed to make decisions about our state. Then you throw the Medicaid expansion in there. I mean, I'm not envious of your situation right now.

SENATOR PIRSCH: Okay. Thank you.

SENATOR PAHLS: Senator Langemeier.

SENATOR LANGEMEIER: Chairman Pahls. Mr. Kolterman, thanks for coming in and testifying. As we've heard on many occasions from the Department of Insurance in these briefings, it seems like the ball keeps changing, and you brought that up a little bit. Everything seems to be, as you used, spoon-fed. I like that terminology. And that continuously happens when we've seen deadlines get moved out but yet we're supposed to react. Where does your group and these four groups, where are you getting your information to feel comfortable that if you got that call from the Department of Insurance to come in and, say, give us your feedback on an exchange, how should this work for navigators and whatnot? How are you going to get information, and number one, where do you get it? Number two, how are you going to feel comfortable as a group saying, this is what we think we need in this, when you might not know...well, after it's over, you say, oh, crud, we didn't know they were going to do that to us too. How do you think you're going to prepare yourself to be an educated person at the table to talk about an exchange?

MARK KOLTERMAN: Well, I would tell you that all four of our associations have people on Capitol Hill that are researching this bill, this legislation. They're studying it extensively. They're working with Health and Human Services. We're getting a lot of our

information directly from the Department of Insurance. We've visited with our federal elected officers, talking to their offices. To be honest, they're probably just as confused as all of us. In answer to your question, we're going to do the best that we can. We know insurance. If they change the rules, we're going to study the rules and be abreast of them. Other than that, I can't tell you. I can tell you we'll probably be more prepared than a navigator if this comes down the pike real quick, simply because we've been studying it for two years.

SENATOR LANGEMEIER: Very good. Thank you.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. And thank you for taking the time to visit with us. How many companies still have a health insurance product that's sold in Nebraska, not counting long-term care insurance, just medical acute care?

MARK KOLTERMAN: Well, the three major players are Blue Cross and Blue Shield of Nebraska; Coventry--yesterday I received information that they're being acquired by Aetna; and UnitedHealthcare. Assurant does some.

SENATOR GLOOR: Golden Rule?

MARK KOLTERMAN: Golden Rule: that's a division of UnitedHealthcare.

SENATOR GLOOR: That's right. Yeah.

MARK KOLTERMAN: There aren't a lot. We have been looking...there's some...part of the Affordable Care Act is there's an opportunity for a co-op, cooperatives. There's a large cooperative being built, as we speak, in the state of Iowa that will service Iowa, Nebraska, and South Dakota. We as agents have been looking at that as another option.

SENATOR GLOOR: Well, you've led into my next question very nicely to explain how a cooperative works, if you would, versus a traditional insurance carrier that would...the ones you've mentioned.

MARK KOLTERMAN: I'm not sure exactly how it will work yet. As I said, it's brand-new. They're just starting to put out information. I would assume it would be owned by the people that participate.

SENATOR GLOOR: Set up as a not-for-profit or for a profit, either one?

MARK KOLTERMAN: Not-for-profit funded by the federal government. That's all I can

tell you other than it's a possible...it's another possible opportunity for us to market.

SENATOR GLOOR: Are the federal dollars some of the same dollars made available through the Affordable Care Act?

MARK KOLTERMAN: I believe so. There's a certain division of the budget that allows for cooperatives, and they've been awarded some dollars. The individual running it I believe was a longtime officer of Wellmark over in Iowa.

SENATOR GLOOR: Okay.

MARK KOLTERMAN: But it is another market, and we're very limited on what we can market right now.

SENATOR GLOOR: Would there be a problem with the cooperative being successful enough so that it further dilutes the market that might be available for a health insurance exchange? I'm talking about these individual and small business markets.

MARK KOLTERMAN: I believe they'd market through the exchange.

SENATOR GLOOR: Okay.

MARK KOLTERMAN: They'd be part of the exchange the way I understand it. But again that's brand-new, and we just heard bits and pieces about it over the last six or eight months.

SENATOR GLOOR: And they could hypothetically put together a benefit package that becomes the benchmark; although the time frame for that is pretty short, I believe.

MARK KOLTERMAN: Yeah. And what is the benchmark? I mean, nobody knows right now.

SENATOR GLOOR: Yeah. Does your association put out any sort of document that lists the pros and cons, pluses or minuses, of a state exchange versus a federal exchange?

MARK KOLTERMAN: No, not that I'm aware of.

SENATOR GLOOR: Okay. Thanks, Mark.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls, and thank you, Mr. Kolterman. To follow up to Senator Gloor's question that you had mentioned that all four of the

organizations that you're speaking on behalf of today were in favor of the state-based exchange. To kind of dovetail on to what Senator Gloor was just asking, do you mind kind of elaborating a little bit on why? Or is there...obviously, I'm sure that's not a knee-jerk reaction, so there's probably some thought that's went into that. Do you mind elaborating a little bit on that?

MARK KOLTERMAN: Well, we've...I would tell you that in the state of Nebraska we've had a great relationship with the Department of Insurance and the insurance companies that are here, and they've done a good job for our people in this state. Now, that doesn't mean there aren't faults. But, by and large, we have a very good insurance environment in the state of Nebraska; other than, in recent years, our companies have been dwindling, the companies that we can market to. But in the state of Nebraska I think we feel like it could be run more efficiently than if we send our money to a big black hole back in Washington, D.C., and never know what we're going to get for that dollar, so.

SENATOR McCOY: Have you had the opportunity, though, to look at what exactly that would mean in the form of dollars and cents versus a...a federal exchange versus a state exchange?

MARK KOLTERMAN: No.

SENATOR McCOY: Okay.

MARK KOLTERMAN: We left that up to you folks.

SENATOR McCOY: All right. Thank you.

SENATOR PAHLS: With your experiences with your peers in other states, there are a number of states that are, quote, at least they say they are, further ahead than the state of Nebraska. Do you ever have any discussion with your friends in other states?

MARK KOLTERMAN: Absolutely. There's...it's our understanding...well, it's our understanding that there are 25 states that are not doing anything at the present time, just taking kind of a wait-and-see attitude. They've not taken the federal monies. Some have taken them and then sent it back. And then on the other hand, there are states that are dumping millions and millions of dollars into this program. I believe the way we in the state of Nebraska have handled this is pretty good. I mean, yeah, we've got over $6 million but we haven't gone crazy about taking federal monies just to take them. I think the people you've hired have done the research. They've done a lot of investigating into what's working and what isn't working. But we, as agents, I mean we're also the public. We as agents have some very serious questions about how do you make this work financially. If it's got to be self-sufficient in a few years and you have to take every risk that comes along, do we have enough population to do that? On the

other hand, we still feel like we as Nebraskans can do it more efficiently than if you send it back to the federal government. The other thing, if you send it to the federal government, you tend to lose a lot of control over what you're doing. And again, a lot of these are my thoughts. But, you know, I talked to a client of mine on Saturday morning. He's a small land-improvement contractor in Seward, and he's got seven employees. He says, they want me to do things over the computer, send all my information over the computer; I don't own a computer; I don't have access to the Internet. And yet, everything we're hearing is, well, we'll have portals available so people can go on-line and enroll for their insurance. Again, that just diminishes the role of the professional agent. We don't think that's the way to do things. We feel like we take a lot of time educating ourselves. There's statute that tells us how much education we have to have on a biannual basis. We just think we're there for a reason. We've been there for many, many years. We think we can handle this if you give us the opportunity and you pay us fairly.

SENATOR PAHLS: But in some of these other states, so, have you had any communication with them though?

MARK KOLTERMAN: Iowa. Iowa had a bill that was presented to their legislature or their...and it didn't pass. I don't think they've done anything with the bill yet. I mean, that's a close one to us. California is spending millions, we know that. They've had exchanges in California for many years; they were not federal exchanges. But we brought some models of what they've done in the past to the Department of Insurance and they've looked at them.

SENATOR PAHLS: Did their exchanges in California...was that to the detriment of agents?

MARK KOLTERMAN: No. Agents ran them.

SENATOR PAHLS: But they used technology.

MARK KOLTERMAN: Absolutely.

SENATOR PAHLS: So you're...okay. So, I'm trying to...so what I just heard, that through the technology if agents were involved, you'd be more supportive. But if it's out here, a portal where people can go to without the need of an agent, is that...?

MARK KOLTERMAN: Well, that's there now. People can go on-line and buy their health insurance. They can go on-line and buy their car insurance.

SENATOR PAHLS: Right.

MARK KOLTERMAN: But we still believe that there's a role for the agent to play for those that can't go on-line and those that don't understand what they're buying. Not everybody wants to go to the Internet. You get out in outstate Nebraska, there's a lot of places that don't even have access to the Internet. So if they can drive to town and talk to an agent, that's our role.

SENATOR PAHLS: Yeah. Well, I see insurance companies right now on TV advertising, talk to the agent. I mean, that's all they're advertising. It's called marketing. So if they would market to that: Hey, I'm more important than just going and calling something on the computer; I have some value. You know, I see that as a role that the agents will probably...perhaps would have to take in the future more so. You know, market themselves even more.

MARK KOLTERMAN: And we're open to that.

SENATOR PAHLS: Yeah. Okay. Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you for your testimony, Mr. Kolterman. First, some basic questions. And do you sell insurance yourself?

MARK KOLTERMAN: Yes, I do.

SENATOR SCHUMACHER: You do. Okay. Over the last five, ten years, what has the cost of insurance been like? Gone up?

MARK KOLTERMAN: Are you talking about health insurance only?

SENATOR SCHUMACHER: Health insurance. Health insurance, yes.

MARK KOLTERMAN: It's gone up, yes.

SENATOR SCHUMACHER: Substantially?

MARK KOLTERMAN: The last four or five years we've probably seen somewhere between 5 and 10 percent increases on average.

SENATOR SCHUMACHER: A year?

MARK KOLTERMAN: Yes.

SENATOR SCHUMACHER: Wages haven't been going up that...

MARK KOLTERMAN: Absolutely not.

SENATOR SCHUMACHER: Okay.

MARK KOLTERMAN: We've marketed high-deductible health plans as a way to offset that cost.

SENATOR SCHUMACHER: And when you say a high-deductible health plan, that means that the first so much of the problem, health cost, is not going to be covered when you sell them a high-deductible plan?

MARK KOLTERMAN: Usually it's a $2,500 deductible that they have to absorb themselves.

SENATOR SCHUMACHER: And has there been a pattern that you could save yourself an increase in premium when the annual notice or change of premium comes up if you just take a higher deductible?

MARK KOLTERMAN: Yes.

SENATOR SCHUMACHER: And do a lot of people choose that route?

MARK KOLTERMAN: Many do.

SENATOR SCHUMACHER: So to an extent for the lower cost medical care, people are becoming more and more uninsured because they're not...it doesn't hit that deductible level?

MARK KOLTERMAN: They're insured. They just don't...they have to pay the first $2,500 of cost.

SENATOR SCHUMACHER: So for a lot of little things that cost less than $2,500, or maybe next year $5,000, they're functionally uninsured, is that kind of right?

MARK KOLTERMAN: Well...

SENATOR SCHUMACHER: They got to pay it.

MARK KOLTERMAN: Yeah, they have to pay it but they're still insured. It's a matter of semantics.

SENATOR SCHUMACHER: Right. But as far as the pocketbook is concerned, it hits that first $2,500 or $5,000. From what...has your group done any studies as to when somebody goes to a doctor or a hospital and does not have insurance and does not

have money, how does that service get provided? Who ends up paying for that?

MARK KOLTERMAN: Those that are insured. It's called cost-shifting.

SENATOR SCHUMACHER: So to an extent then, the people, when they're paying those ever-increasing premiums, some of that is because we've got fancier, more expensive medicine, and some is because they're shouldering the burden for the care of the uninsured?

MARK KOLTERMAN: The less fortunate, yes.

SENATOR SCHUMACHER: Yeah. So, in a way, that insurance payer, that premium payer, is paying kind of an assessment or a tax because of the way we insure people, is that correct?

MARK KOLTERMAN: That probably would be a good observation.

SENATOR SCHUMACHER: Okay.

MARK KOLTERMAN: But it's the same way with taxes.

SENATOR SCHUMACHER: Yeah, everything goes up.

MARK KOLTERMAN: Half the population pays taxes and the other half don't.

SENATOR SCHUMACHER: Isn't that true. Do you see...let's forget about this Affordable Health Care Act thing; do you see anything happening that would reverse that trend?

MARK KOLTERMAN: I don't know what the national election will do. I wish...you know, I don't have a crystal ball.

SENATOR SCHUMACHER: But apart from that. Well, let's just forget about politics because who knows politics. But in the economics and the reality of healthcare, do you see anything that would reverse the trend of....

MARK KOLTERMAN: Utilization?

SENATOR SCHUMACHER: Utilization. Reverse the trend of people becoming more and more higher deductible or just plain dropping insurance?

MARK KOLTERMAN: Well, I think we're finding that people that carry high-deductible health plans, they have some skin in the game when they get a $2,500 bill. Just as an

example, if they get a prescription drug, let's use that; can they go to their doctor and get a $4 generic, or do they have to pay $300 for a name brand? If they have a high-deductible health plan and they don't just have a $10 or $20 copay, it makes them attuned to what their healthcare really is and they ask a lot more questions. That's one way that you can control your costs on an individual basis.

SENATOR SCHUMACHER: So then, basically, for the first...the theory would be for the first $2,500, $5,000, people shouldn't be insured? They'll be more cautious and buy the right kind of drugs, or...?

MARK KOLTERMAN: Well, you know, medical technology is a lot more expensive today than it was 25 years ago, and yet we haven't kept up with that as far as deductibles and copays are concerned.

SENATOR SCHUMACHER: Okay. If the election goes in a way that would keep the Affordable Health Care Act around, we're tasked with at least three and probably more responsibilities. I'm curious in regard to each of those issues. With regard to the essential benefits package, does your group have any recommendations to make as to how we should shape that, any position paper or anything like that as to how that should be implemented, assuming the Legislature has anything to say?

MARK KOLTERMAN: Well, they've just rolled that out and we were at the hearings. I don't know if we've had a chance to really comment exactly as to what we'd like to see. I can tell you that our associations, when throughout the years as legislation has been proposed to this body, when there's a mandate to add certain things, it just drives up the cost of the insurance. So usually we're opposed to insurance mandates for certain procedures; not always. But in many cases we are. One of the reasons we've had, even though it's high in Nebraska, our insurance is affordable compared to other states, is because we don't have a lot of the mandates that other states have that drive up the costs. So if we can keep the mandates to a minimum and just do what the law requires, that's probably what we'd recommend. But again, we haven't had a chance to research that in a lot of detail.

SENATOR SCHUMACHER: Okay. With regard to the second issue, we might be called upon to have some input into the exchanges. You've answered some of the questions that I had. I guess we've got about four options. We've got a federal exchange that it just defaults to. We've got a state exchange that we can do some customization on. We've got a regional exchange we could partner with other states to do something and get more economics and more economies of scale. And then we've got some kind of a partnership thing with the federal government or something. I sense from your testimony your group favors the state exchange approach?

MARK KOLTERMAN: That's the way we've been...yes, at the present time we favor a

state approach.

SENATOR SCHUMACHER: Do you have any specific things that you would like to see customized into that state approach, any position papers, bullet points? You know, we hate this idea in a state exchange, we'd love these ideas, something like that.

MARK KOLTERMAN: Not necessarily, no.

SENATOR SCHUMACHER: Okay, so...

MARK KOLTERMAN: We're leaving that up to you to design, and we hope that you come back with some...ask for input then.

SENATOR SCHUMACHER: And we were hoping you would. (Laugh)

MARK KOLTERMAN: We don't have the answers to many of those questions. We're in the same boat that you're in, in many regards.

SENATOR SCHUMACHER: Okay. And then the third area that we may be called upon to have input in is whether or not we should expand the Medicaid program to cover that group that is below 133 percent of the poverty level, so that there's essentially no party without insurance and no party generating the increased costs to throw into the people who are paying for insurance, whether that's government insurance or whether that's private insurance. Any position from the agents on Medicaid expansion?

MARK KOLTERMAN: No. We have not addressed that issue at all.

SENATOR SCHUMACHER: Thank you for your testimony.

MARK KOLTERMAN: Yeah.

SENATOR PAHLS: Senator Christensen.

SENATOR CHRISTENSEN: Thank you, Chairman. You said you think we're better off with state-run, and I guess I always looked at all the federal mandates that come with even state-run things. Are we really losing anything if the feds run this? And if so, what would you say it is?

MARK KOLTERMAN: I don't know exactly how to answer that question. I don't know.

SENATOR CHRISTENSEN: Is there anything you can say that we'd be able to do with the state-run that we couldn't do on a federal-run?

MARK KOLTERMAN: Well, let me give you an example of something that's happened just recently. When this law was passed originally, they came out with a federal program for the uninsured where if you haven't had insurance in the last six months and you want to buy insurance, no matter how sick you are, you can go there and buy insurance. I think they were originally planning on a run on the bank, so to speak; all kinds of people would be signing up for that. They didn't sign up for it. Very few people knew about it. Very few people signed up for it. Nothing was happening. So they came out with an idea that, hey, let's market this through agents. Let's market this through local agents. Let's tell them what we have available. Let's let them market it and see where it goes. We marketed that program for about six months, maybe; I can't tell you the exact amount of time. But they had a dramatic increase in sales and participation. And they paid us...as an example, as an agent, they paid us a $100 one-time fee for enrolling people in that program. Well, it started to catch on a little bit, and six months into it they said, well, we don't need the agents anymore. That $100 we were paying you a one-time fee, we're going to pull that and we're not offering that anymore. There's an example of what a federal program looks like.

SENATOR CHRISTENSEN: Is there anything else?

MARK KOLTERMAN: That's why I think we're a little bit afraid of it. The same thing has happened to the federal crop insurance program. They market the federal crop insurance through local agents; they pay them a commission. They want us to go out and sell the insurance. We get the people on the books, and the next thing they know they're cutting into our livelihood to the point where you can't hardly afford to sell it. Another example of the federal government.

SENATOR CHRISTENSEN: But isn't that the problem with the healthcare in itself is the fact that every time you bring more people in, as your example of those who were previously uninsurable, had previous...the terminology threw me...but reasons that they couldn't be covered. So now they can't exempt them. But every time that comes in, it raises the cost to everything, so it's going to drive everything up, which is going to drive either the state costs or the federal costs or a combination up, and that's what's happened in other countries to where they get to rationing healthcare. See, my problem with the whole thing has always been the very people that this bill was set up to help are the first people to get rationed out. I have a son that's handicapped. He doesn't walk, doesn't talk. And I just assume he will have no insurance within ten years. He's 14 now. I assume that he will be rationed out. That's what's happened in a lot of countries. He's the exact one that everybody says we're coming to do this to protect. And he'll be the first one that will be eliminated and let die.

MARK KOLTERMAN: I hope you're wrong, but...

SENATOR CHRISTENSEN: I hope I am, but I've looked at a lot of other countries.

MARK KOLTERMAN: Yeah.

SENATOR CHRISTENSEN: Thank you.

SENATOR PAHLS: I have a couple. Earlier you talked about the population in the state of Nebraska, and you're concerned about the cost. Can you give me more information?

MARK KOLTERMAN: Well, it's my understanding, under the federal law if you are...you can receive a subsidy up to 400 percent of the poverty level. That affects a lot of Nebraskans, probably 80 percent of the Nebraskans that would be eligible for some sort of a subsidy.

SENATOR PAHLS: Eighty percent?

MARK KOLTERMAN: That's what we've been told. That's a high number and that's a lot of people to put on the rolls. So, yeah, what do we have, a million six? A million population. You know, it's what I said earlier, you have a tough decision to make. Can we make it work?

SENATOR PAHLS: So you're...because I'm trying to get to some of your concerns. So that is a concern of yours is our population and the money factor?

MARK KOLTERMAN: Well, I think that's the concern of everybody involved, I mean.

SENATOR PAHLS: Right, but I'm looking at your groups. That's what I'm trying to...okay, these are the pluses and the minuses from your group.

MARK KOLTERMAN: Our groups are here to sell insurance. And, you know, we've done a good job of that over the years. We just want you to know that whether it's a federal-run exchange or whether it's a state-based exchange, we want to be the marketing arm of that organization, because we think we can deliver it in a cost-effective way to the state of Nebraska, to all the people in the state of Nebraska. As I've said earlier in other testimonies here, you know, we have agents in all 93 counties.

SENATOR PAHLS: How many agents do you have, approximate?

MARK KOLTERMAN: Well, there's over 4,000 agents. They're members of our association. There's probably more than that. But of our association there's close to 4,000. And again there are 93 counties. And why go out and recreate a marketing arm when there's already one there? And we're all licensed. We're all paying fees to the state of Nebraska to operate the Department of Insurance.

SENATOR PAHLS: So you see yourself as a marketing arm of the Affordable Care Act then?

MARK KOLTERMAN: Yes.

SENATOR PAHLS: And you're concerned about a concept of the navigators and to some degree the concept of technology?

MARK KOLTERMAN: The role of the navigator versus the role of an agent, and the fact that not everybody has technology to just go on-line and buy insurance.

SENATOR PAHLS: Okay. Then you're concerned about...because, like you said in the past, and I know you've been in front of this committee when we've discussed mandates. As an agent you're concerned about the mandates or the essential benefits because it would cause the insurance to rise.

MARK KOLTERMAN: Exactly.

SENATOR PAHLS: And that would be not a marketing idea that you...?

MARK KOLTERMAN: Well, let me give you an example. It seems like every year you have a bill before you to talk about cochlear implants. It's been there for quite a few years. NAIFA Nebraska and NAHU have opposed those bills primarily on the basis that it's just going to drive the premiums up. Now it's not that we're against cochlear implants. And if my son needed a cochlear implant, I'd want the best for him, but we also have to think about the general public and the cost that it's going to be if we add that to an insurance policy. Or mental health parity. Now a lot of that has all been done inside the bill. But when we come and oppose those things, it's not that we're necessarily against the idea; it's that we're against the affordability of that idea. And some things should be handled on an individual basis by the individual families.

SENATOR PAHLS: So you basically leave the emotional part out...

MARK KOLTERMAN: Try to. Try to.

SENATOR PAHLS: ...and it's a business decision is basically what you're proposing.

MARK KOLTERMAN: When we oppose those types of things, that's generally why we're doing it.

SENATOR PAHLS: Right. Okay. Senator Langemeier.

SENATOR LANGEMEIER: Chairman Pahls, thank you. And thank you, Mr. Kolterman.

And for those of you that are going to testify, the first one always gets the most questions, so. You always want to be last. (Laughter)

MARK KOLTERMAN: I was wondering why. But I'm here for four, I guess, so. (Laugh)

SENATOR LANGEMEIER: Just FYI. And a lot of times we're asking you questions, and we think somebody might come up with an answer behind you. But here's my question, and I'm the fortunate one on this committee as I'm term-limited out January 8, so this won't be an issue for me unfortunately. But we had a lot of these hearings. And over my eight years of sitting on this committee, we've had bills that are somewhat in this relevance, as we've gone this last year we've had so many more. And we keep talking about an exchange kind of on this 50,000-foot level. And we hear we want a state exchange, we don't want a federal exchange. Well, we don't have a federal exchange to look at. So it's kind of like betting on two teams at a football game and you don't even know who even has players. And I'm trying to figure out how over the next couple of months, as Senator Pahls says we're going to have more hearings--you read off some hearings that are going to be held by others--how do we start to get narrowed down to building something. We're looking to build, and I'm going to use some odd examples, because it works mentally for me, but I've got to build this house and I don't know whether I'm going to build it out of Legos, log blocks, two-by-fours, I don't have a clue. I don't even know how many bathrooms it's supposed to have. How do we start to get all these different groups, your group as one of those, how do we start to narrow down if we're going to do this, how do we decide what's going to be in it. If we get past whether you like health insurance or you don't like federal health, we get all that by us--and I'm going to use you now--is how do we narrow down? Your biggest goal from what I'm hearing is that you want to sell the product.

MARK KOLTERMAN: Market the product. Correct.

SENATOR LANGEMEIER: Market the product. Don't bring in navigators that are just anybody off the street that somehow can qualify to be a navigator, or a former state senator that since I've heard so much about insurance, maybe I could be a navigator. (Laughter) I get that. So we narrow you down to that issue. You guys want to sell the product. Would that be a fair statement?

MARK KOLTERMAN: Correct.

SENATOR LANGEMEIER: After we get by all the...whether it's right or it's wrong or it's going to cost the state money, it's going to cost the feds money, forget all about that. Narrowed it down to you think you want to sell the product because you're licensed, you're trained, you think you're the most qualified individuals to do it.

MARK KOLTERMAN: Yes, that's correct.

SENATOR LANGEMEIER: Okay.

MARK KOLTERMAN: The biggest...in answer to your first part of your question is, we don't even...the architect doesn't even know what we want.

SENATOR LANGEMEIER: I'm with you.

MARK KOLTERMAN: The federal government keeps sending information down on a weekly basis, and the Department of Insurance is trying to decipher that as it comes. And yet we have to have all this in place by November?

SENATOR LANGEMEIER: Thank you.

MARK KOLTERMAN: There's something wrong with that.

SENATOR PAHLS: Anyone else? Senator Schumacher.

SENATOR SCHUMACHER: Just one follow-up question. And I guess we've ventured a little bit into insurance theory here. You talked about the ear implants, that one little bill that keeps coming back, whether or not they should be insured; and they're not insured because they would drive up premiums. Did I understand that correctly?

MARK KOLTERMAN: Correct.

SENATOR SCHUMACHER: And I suppose it would be the same thing like with autism that would, if you insured that, that would drive them up a little bit and make it less affordable. Applying that same theory, what if you eliminated cancer from being covered, wouldn't that reduce the cost of insurance?

MARK KOLTERMAN: Yeah, it probably would.

SENATOR SCHUMACHER: But the whole purpose of insurance is to cover those genetic losses in the genetic game.

MARK KOLTERMAN: Absolutely. Spread the risk and take care of the major claims.

SENATOR SCHUMACHER: So before you have a kid, I mean, do you know for sure your kid is not going to have autism or need an ear implant? I mean...

MARK KOLTERMAN: I can't answer that question.

SENATOR SCHUMACHER: I don't have any further questions. Thank you.

MARK KOLTERMAN: Okay.

SENATOR PAHLS: So I think it boils down to marketing is a very key thing in your life on this plan.

MARK KOLTERMAN: Well, the bottom line is we think it ought to be licensed agents providing the service to deliver the Affordable Care Act to the people of the state of Nebraska.

SENATOR PAHLS: Okay. Then let me ask you this. Do you think the basically three major insurance companies of the state of Nebraska, would they believe that same thing?

MARK KOLTERMAN: I believe they would.

SENATOR PAHLS: Okay. So now, any further questions? Okay. Would you just read out-loud the associations that you're representing?

MARK KOLTERMAN: The Nebraska Association of Health Underwriters, the Nebraska Association of Insurance and Financial Advisors, IIAN--the Big "I", and the PIA of Nebraska. So you've got four out of the way.

SENATOR PAHLS: Okay. Well, I'm not looking to get it out of the way. I'm looking for...so what I would say, if there's anyone from those four organizations that want to come up to the front, also, and speak to any question after Mark is finished? If you want to come up, now's the time. Thank you, Mark. Appreciate it. I notice by looking out at the audience, there are several of you are representives...I'm trying to give you your opportunity.

JOE ELLIOTT: Mr. Speaker, my name is Joe Elliott. I'm the lobbyist with the Professional Insurance Agents Association, have been for a number of years, and I come to recognize some of the problems that I see in it. I have total mixed feelings because I think this is one of the most difficult--and I've been in front of this group for many, many years--that you've ever been confronted with. And the big fear I have is the federal government coming in and taking over your state exchange, which is conceivable. They're dragging their feet on this feeding information to the Insurance Department. And I've just been fighting the state control of the insurance. I'm opposed to the federal government controlling the states, and they can do that. They've got a czar. They've got a federal insurance office back there, and I think this is a great opportunity for them to come in here and take over some state exchanges. I truly believe that. They've already done it in many, many cases, and so it doesn't solve the problem. And I think the fact that they're dragging their feet scares me. And there's

more information that they could feed to them. Bless the Insurance Department. They've done a great job on it I think. They've answered our questions. They've met with us, and...but this state control of insurance has been around for 50 years. And we've seen both parties oppose that. A guy by the name of Frank Barrett, a great, great insurance commissioner years ago, way back when I came here in 1960, and he fought it then. And he had so many valid reasons of seeing that and I think they still exist here. But we do have a problem with some of these people who aren't self-insured, certainly. And I don't know if this is the answer or not. I'm not here speaking against the other groups that are here, but I'm just trying to bring up some problems that do exist, and I think that this is something that you've got to keep in mind. And I don't envy your job, Senator Langemeier; I know you've got a tough job. I respect you people for what you have to do, but I think that considerations have to be given. I know there's tough selling positions for our agents. We don't specialize in that. Property and casualty is more of our agents' work, but we do have a lot of agents that write accident and health. And I was in the agency business for almost 17 years, and I know that one of the most difficult lines of insurance to sell is accident and health, medical insurance. People don't understand it. And you get...and call on someone or have a navigator call someone at Ogallala, they're going to have a hard time convincing that person of what they're buying. We see it even in property/casualty. And we do have agents that have a lot of outstanding education. The educational requirements in this state have been high. Thirty, forty years ago, we had to have continuing ed. Even the attorneys in this state, Senator, don't have continuing ed; but we do in insurance. And so I think that these people in these small towns are going to say, well, let's go to the local agent who writes my auto and homeowners. They go and talk to John and he tries to help them through it because he's got some exposure to life and health insurance and medical. And he will get nothing out of this because there's no commissions coming through the exchanges. And I just think that this is the federal route into the taking over the Department of Insurance problems; and to me, I have mixed feelings about it. I know my compatriots who have worked on this have their understanding, because from the accident and health standpoint they're going to be hurt. We've had agents hurt with crop insurance. Some agents have lost as much as $100,000 in commission income this past year. And I don't think they're done yet because the federal government doesn't like commissions, any way you look at it. And we see in Oregon, they've got an exchange set up, and the navigator is involved up there too; but the agents I think has set it up, they had a little credit fund within their exchange something like 2.35 percent, and they get $16 per application. Well, there isn't any agent I know of that's going to go to work for $16. He can go out and sell life insurance, or accident and health, or auto, or whatever, and do much better than that. So there's not a lot of encouragement for the agent in this program the way it's set up. And I don't see it coming down the line because the administration's belief throughout all eternity has been against commissions. We've seen it in flood insurance. We've got a disaster program that we can't manage. I mean, it's a presidential venture is what it is, so that if something comes up, they can't agree to how to do it, so they've done it the other way. But flood insurance, they've been fooling

around with flood insurance for the better part of five, eight, nine years trying to get that extended for a month or three months. And I don't know, it just concerns me, and I hate to be that critical of this but I just couldn't sit back and not say something, because I feel strongly that there's going to be problems down the road. And I think the government is going to try and expand them, without a doubt. With that, I'll conclude it.

SENATOR PAHLS: Okay. Any questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you. The prior speaker alluded to it, and you've alluded to it, too, that the federal government is dragging its feet, I think was the language, with regard to giving guidance on this. Is your group aware of any list of any specific issues that remain unanswered or where the framework has not been established so that we could review and see if we could sic somebody on the issue to try to figure out what the answer is?

JOE ELLIOTT: Well, Senator, Martin Swanson presented our group a couple of weeks ago with a mega list of questions they have pending, and it was almost embarrassing to see them. And they had them all on a PowerPoint and went through them. And ever since this has started, I asked a lot of questions, and it's just amazing how many of them are unanswered. And that's why I say...and I've read that in other states that they've been dragging their feet. And I don't know if it's intentional or not, but they certainly have every evidence of it. And I'm amazed that they haven't extended these deadlines, and that may happen. I think it's inevitable it's going to happen.

SENATOR SCHUMACHER: Could you provide the committee with that mega list?

JOE ELLIOTT: Yeah, that list was put out by the Department of Insurance, and it's all on the Internet as well; and it certainly would be helpful, I'm sure, to you people.

SENATOR SCHUMACHER: Okay. If you have that list or can give us a Web site link to that list, I think it may be helpful in what we have to do.

JOE ELLIOTT: We'll see that you get that.

SENATOR SCHUMACHER: Okay. Thank you.

SENATOR PAHLS: Thank you for your testimony.

JOE ELLIOTT: Okay.

JIM CAVANAUGH: Chairman Pahls, and members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska. We're a member of the

coalition that Mark Kolterman referred to earlier, and I'm just here to thank the Chairman for holding these very informational hearings giving us all an opportunity to exchange some ideas. We pretty much all agree on some basic principles that Mark outlined for you that revolve around, as Senator Langemeier put his finger on it, the marketing of this product. I mean, we're past the question of whether or not this is going to go forward. We're presuming that it will. If it does, how do you market the product? Currently, in the marketplace that we have, that's the job of the agents. Whether they're inside a company or they're independent of a company, that's what they do, and that's how insurance is sold. Under this scheme, if you're going to do that, you have to have licensed agents who are licensed to sell insurance. Like you have licensed physicians practicing medicine, licensed lawyers practicing law, there are reasons that we have those schemes in place in very technical areas of our economy; and you have to compensate those people. No one works for free. And currently, they're compensated in the marketplace. And what we're looking for is a licensed agent compensation scheme inside the delivery system of the Affordable Care Act. This gives the consumer some confidence in the system and the product. I mean, we're licensed, as lawyers and doctors are, so that we can be held responsible if mistakes are made. And there's recourse from the consumer point of view as there is under malpractice with lawyers and doctors in the legal and medical professions. These are important aspects of what we're talking about in terms of delivering an important product that people have to have. There are examples of how this exists in the current economy. I was reminded of this when the discussion got around to continuing education, which lawyers in Nebraska do have to participate in, but everyone in the United States is entitled to an attorney if you are charged with a crime. And if you can't afford one, the state appoints one for you and the state pays that attorney to represent you. You know, universal legal insurance coverage for people charged with crimes in the United States. You know, if you can buy your own lawyer, fine; if you can't, the state pays for your lawyer. This system has some similar attributes to that. But when the state pays for your lawyer, they pay for a licensed lawyer, you know, and that's for a reason. They don't just pick some guy off the street to go into court and represent you. And what we're saying is, when this insurance comes on-line, you need a licensed agent to advise you on what's good for you and what's good for your family. And if that's going to work, those agents have to be compensated. And that's what we're here to testify about and that's what we're interested in working with you on. We're very comfortable with the Department of Insurance and state-based regulation of insurance, which is the status quo. That's what exists now and has for 100 years. It works well. We've worked with the department on this very issue extensively and we look forward to working with them going forward. I'd be happy to answer any questions you might have.

SENATOR PAHLS: Senator Pirsch.

SENATOR PIRSCH: Thanks, Mr. Cavanaugh, for your testimony here today. Could you tell me, so is the discretion there through HHS regulations and fleshing out the ACA,

what is the purview of the state in distinguishing between and setting the standards and duties and pay scales and whatnot of the issue that you're concerned about: navigators versus professional agents.

JIM CAVANAUGH: Well, if the state takes the authority to set up the exchange, they appear to have broad authority to, you know, regulate the operation of the exchange as well. And there's been questions, and I'm sure that you've been at the discussions where it's a question of, is this going to become an integral part of the Insurance Department or is this going to be independent of the Insurance Department?--how it's set up structurally. And that's a separate discussion. But presumably, wherever it's at, if it's the state exchange it will have the authority to regulate the distribution of this product, which means that they could have the authority to require, as state statute currently does, that if you're going to sell or market insurance in the state of Nebraska, that you have a license to sell or market insurance in the state of Nebraska and all that involves.

SENATOR PIRSCH: Okay. So that's...we're given broad discretion as the state to set the parameters of how this product is sold in the exchange.

JIM CAVANAUGH: It appears that way.

SENATOR PIRSCH: Okay. And I'll just quickly ask you the same question as before, which is, as we go forward processwise, right, we can't guarantee outcomes, substantive outcomes here, but, you know, and I'm only talking this committee and the way that we approach this coming decisions, is there any comments that you'd like to make about...you know, Chairman Pahls has gotten a number of committee meetings scheduled here and inputs are invited and whatnot. Is there anything that procedurally we should be...you know, do you have any comments that we should be doing different or is this...you know, in terms of designing to get at the best method to get the best answer here. Are you happy with the procedure of the committee?

JIM CAVANAUGH: Well, I don't know if anybody is happy with the procedure on this issue, you know, but we're concerned. And the concern revolves around whether or not we're going to be ready at the first of the year to go forward, as we're required to, to set up a state exchange. And if this committee were working on something along those lines, I guess what we would encourage is that you work towards some legislative bill that will be introduced in the new session to establish a state exchange. And there are examples, as previous testifiers have mentioned, of other states who have gone that route. But discussion is great, but at some point presumably the expertise on this committee would produce a bill. And, you know, we're very, very willing and able to work with you on those components of the bill that affect the marketing of this and the role of the agent in that. And there are other groups that have other concerns that I'm sure would be as well. But between now and the next session, the production of a bill I think

would be number one.

SENATOR PIRSCH: Yeah. And just briefly...I think I lied. I said that was it, but let me just talk to you quickly about opportunity cost. Is there any, in your mind, downside? You know, there's two approaches. We could opt in to set up a state exchange. There's flexibility, right, from year to year in terms of...this isn't a permanent election, correct? You can change your...the state can change its mind and switch either from a state exchange to a national health exchange?

JIM CAVANAUGH: You know, I'm not sure that you can go, you know, from a federal exchange to a state exchange or from a state exchange to a federal exchange. I just don't know.

SENATOR PIRSCH: Okay. Thank you.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Just a couple of questions. First of all, I think the number is somewhere between 10 and 15 states have already established or at least submitted the paperwork saying there are established exchanges. Has your group looked at any of those 10 or 15 states that have either completed or nearly completed their work on this particular thing, and do you have a pick of which ones did it right?

JIM CAVANAUGH: Well, I don't know that there's any, you know, silver bullet answer out there that we've seen. Yes, we have looked at everything that we can. All four agents' organizations are affiliates of national organizations, and we have national staff who monitor all 50 states for developments. And we actively look at, say, the Illinois statute has some good definitions in it, or the Utah statute addresses agent compensation. And we'd be happy to provide the committee with those building blocks for an actual bill that, you know, the committee could produce. There is one model, I mean, Massachusetts, that is kind of up and running and has been for some time that you can look at in terms of costs, and maybe try to extrapolate from that, you know, how it will work and what it would cost here. And there are others that have moved along by fits and starts, and have made progress on certain stuff and haven't moved on other stuff. And we've looked at, you know, literally dozens of those and have kind of cherry-picked what we like, and we'd be happy to provide the committee with those portions of those bills. Or, you know, turn you on to...I mean, I would definitely look at the Illinois statute. I would look at what Iowa did last year, although they didn't pass a bill. What Utah and Massachusetts have done in terms of the agent compensation schemes. What we have found is there's nothing new under the world. Everybody is kind of scratching their heads, but everybody in the country is kind of moving in the same general direction by fits and starts. And that's, I guess, how it's going to happen. And that's why, you know, we're zeroed in on, okay, we're going to have a state

exchange here and let's make it work the best we can and let's see what other people, you know, have come up with around the nation that may play a good part in that.

SENATOR SCHUMACHER: Well, if you could give us a bowl of those cherries you picked, we'd appreciate picking over them. (Laugh)

JIM CAVANAUGH: Well, we'd certainly give you what we like. You know, we're happy to do that.

SENATOR SCHUMACHER: Okay. And then the second question is with regard to this issue of, as I kind of got a picture in my head and I might not be correct on it, is these exchanges are kind of a super-duper Web page in which you start entering in the information and it walks you through by pulling information from your tax records and your HHS records and a whole bunch of...it's a very interconnected computer that then finally chooses where you should inject into the system where you start shopping for policies. And you have the companies that are in the state that are licensed to sell those particular policies and their gold policy and their bronze policy and their iron policy, or whatever they call it; and so you've got these different grades you can pick from. Now, to the extent an insurance agent is an agent for company A, and he is also a navigator helping this poor soul who doesn't really know how to run a computer and thinks a mouse has four legs, navigate through this rather complicated Web page, how would you propose that we regulate or what rules would be in place so that agent when it gets down to the "pick this one," doesn't unduly influence them to buy from his company?

JIM CAVANAUGH: Well, you know, if we could copy the best aspects of what currently exists, I mean, if you come to me as an insurance agent, you know, I'm working for you; I'm going to try to get you the best deal that I can. So I'll run a range of options past you. This is the independent insurance agents that I represent. And we'll come to you and we'll say, you can have this one for X dollars or this one for Y dollars, you know, and sit down over the kitchen table and go over that with you. That's one of our big concerns is that what if you don't have access to Wi-Fi? What if you don't own a computer, you know? What if you're one of the people that we market to all over the state of Nebraska where, if you want insurance, we go to you or you come to us and we sit face-to-face and do the deal. A lot of people still do business that way. They're not on-line or they don't want to be on-line or they...you know, or someplace where there isn't Wi-Fi connections and it's not practical for them to get on-line. Well, how do you reach those people? And currently the way we reach them is we go and see them. And that's a big asset in preserving the agent's model that we currently have is that, you know, we have between the four groups, over 4,000 agents, and we're in every county and town and small place in the state, and we market insurance to people, you know, pretty universally. The navigator, as I understand it, is not an agent. They're not licensed to be an agent. They don't sell insurance and they cannot be compensated for the sale of insurance. They do virtually none of the things that we do. What they are, I think, is a

referral agency. For instance, I think you were at the briefing where Mr. Angoff from CMS came up, the regional HHS regulator of these matters, came up from Kansas City and he went through this elaborate page-by-page computer application thing. But, you know, that's great if you're computer literate and everything and you've got some sense of insurance, and at the end of the day, you know, maybe you can get to the pay window. But that's going to leave a lot of people out. The navigators, I think, are in a position to say, you know, you can go there and fill out the preliminary information and we'll give you a preliminary guess at what your coverage should be or what you're eligible for in terms of, you know, either this coverage or Medicaid coverage or something else. And if we think that you, you know, are in line to be a purchaser of this product, here are some licensed agents in your area that you can talk to. And as the bar association does, as the medical association does, if you call them, their lawyer referral outreach acts as a navigator. They say, well, you've got a probate problem in Columbus, here's a list of lawyers in your area that can do probate. Well, same, same. The navigator goes through these preliminary gate questions and says, well, you look like you'd be eligible for this; here's a list of licensed agents in your area that, you know, you can call and talk to them about it. And if you don't like them, then call us back and we'll navigate you someplace else. But the navigator is not selling the insurance. The navigator is not making the decision for that person and the navigator is not receiving a commission for anything. The navigator appears to be a state employee, which if you are going to deliver this product using state employees, you will have to replicate thousands of agents who currently exist out there doing the exact same work that you're talking about navigators doing. I don't think it's allowed under the Affordable Care Act. But keep in mind that what we're talking about is very labor intensive. And if you're going to do it inside government, it's going to be very, very expensive because you'll basically have to license thousands of government employees to be insurance agents, and they're not going to get commissions as government employees. You're going to pay them. So, you know, when we're talking about the delivery system here, it's not just an academic discussion from a bunch of folks who sell this insurance. It's a practical discussion of how you're going to actually deliver this product in the real world.

SENATOR SCHUMACHER: So, it's your impression that after the person sits down on this exchange Web site, and they enter their name and their demographics and they click their way through all the mazes that we saw with that thing, that in the end they shouldn't or wouldn't be able to say, click, yes, I want A insurance company; I want the gold policy; click, I'm done. They would just get a printout or somebody would tell them, you know, now we think this is maybe where you want to go, now go see somebody else. Is that how...?

JIM CAVANAUGH: Well, I mean, I don't know how far you get through that system until you get to the point of sale. I mean, I never really saw there was a point of sale, now give us your Visa or Mastercard number, in that whole presentation. It was like, here's a bunch of options you have and they were like gate questions to determine whether you

were going to fall in this category which makes you a Medicaid recipient, in which the state handles all of that, or you fall in this category where, you know, you're going to be eligible for one of these gold, silver, or bronze options; and there was no point of sale at the end of that deal that I saw.

SENATOR SCHUMACHER: Could you find out for...I mean, you mentioned a couple of states, Utah, Massachusetts, a couple others, how it actually is working in those ones? I guess Massachusetts may be the only one that's, you know, the prototype of this and is up and running.

JIM CAVANAUGH: They are kind of. And their model is not one that we'd particularly, I guess, would say that's the number-one one that you should go to. It is a model. What I can say is that they have compensation for agents selling those products in those states in statute.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. I was going to refrain from a dialogue, but you've said a couple of things that has me wanting to share my bias and maybe get a response from you. We hear the Affordable Care Act talked about a lot from the standpoint of expanding coverage and whether we can afford that, what's the cost associated with that infrastructure, etcetera, etcetera. But the other term that gets used with the Affordable Care Act is it is healthcare reform. And we don't talk about the reform aspects of it that either are built in by design or are the natural order of things when you begin to change a system that's been in place. I believe that there is going to be a contraction or a consolidation within the system, and I think that means it's going to affect the numbers and the location of agents and the numbers and the location of providers who provide services. I think all of this is going to happen because of the healthcare reform aspect of this. And it's a reality. I don't know what the Legislature can do with what's been put in front of us that is going to save all the jobs of all the agents, all the healthcare providers, all the folks who are involved in healthcare in some way, shape, or form with this scope of reform that's going on. And, in fact, I'd say the contraction is already beginning. I understand some insurers already are beginning to limit their networks of providers who are providing services out there under an expectation that that consolidation is going to be necessary from a dollars-and-cents standpoint. That's my bias. I'd be interested in your comment about that.

JIM CAVANAUGH: Well, you know, I think you could be right. I mean, there's a lot of unknowns out there; and, you know, that frankly bothers us. I think it bothers everybody dealing with this issue is that...

SENATOR GLOOR: Well, and I hate to interrupt, but especially it should bother us in rural states where we don't have a lot of providers; and given our rural nature, it's difficult to have knowledgeable agents located within all of our rural counties. So, I mean, it's a concern for me.

JIM CAVANAUGH: Right. And, you know, it's going to be different. We don't know if it's going to be better or worse. We do know it's going to be different. And, you know, we're reconciled to that. But to the extent that we can control it, we should. And that's the purview of this committee. And you're the point people on fashioning whatever we are going to put in statute. And something's got to be done. Words have to be put on paper in the next few months. And, you know, we're more than willing to work and help you provide some examples that we think would work in here, and I think other stakeholders in different areas are as well. But, you know, we've been dealt the hand and I guess we have to play it the best we can. The good thing is, you know, Nebraska has got a pretty good history of coming up with good solutions. They might not match the other 49 states' solutions but they work for us. And I think that we've got enough brains and expertise and will to come up with something that will be at least our best effort. And if it doesn't work perfectly, well, that's the way of the world and we can take an opportunity to change it, you know, down the road. But the window here is pretty, pretty narrow, and closing, in terms of what you have to do to get a bill to the Legislature in its next session.

SENATOR GLOOR: Thank you, Jim.

SENATOR PAHLS: Thank you. Oh, Senator Christensen.

SENATOR CHRISTENSEN: You talked about that window again and a bill this next session. Previously we've heard about having to have something done by November. What is the time frame now?

JIM CAVANAUGH: Well, I mean, you can get different views from different people. Presumably, you have to show some significant progress by the first of the year. That's been a flexible standard up until now. I mean, there have been benchmarks that we have met and apparently shown significant progress. The department has done yeoman's work on this. And, you know, it's really...they're the ones who are receiving the grants to go forward and are probably the best people to talk to about that. What I've seen is, when we come up to some of these deadlines, you know, sometimes they're not as chiseled in stone as they appear to be. And, you know, every state has a little different legislative session timetable. And so by saying, you know, January 1, well, that's going to work for some states; but we don't start until, you know, a week later. So how do we do that without a special session and all that? And my impression, and this is only an impression, is that when that has happened heretofore, there has been some give on the part of the feds to say, okay, well, show us what you've done, and if that's

significant enough we'll go the next step with you. That appears to be how it's working out.

SENATOR CHRISTENSEN: So your thought is we don't have to have a special session; we can do it in January.

JIM CAVANAUGH: I'm not a big fan of special sessions to tell you the truth.

SENATOR CHRISTENSEN: Well, I think none of us are, but...(laughter).

JIM CAVANAUGH: We can all agree on that. You know, I don't know, if you're ready, and the department thinks it's essential that we do it, I mean, I'd listen to those folks. They're the ones that are on the front line dealing with HHS for the state on this matter. But certainly, no later than the next regular session.

SENATOR CHRISTENSEN: Yes.

JIM CAVANAUGH: Yeah.

SENATOR CHRISTENSEN: Okay. Thank you.

SENATOR PAHLS: I have one question. Let's say that I am an insurance company. I have to spend so many dollars on the patient. You know, that's been slimmed down, I mean, not much I can do on administration.

JIM CAVANAUGH: Right. Medical loss ratio.

SENATOR PAHLS: Right. Would I be that concerned about agents?

JIM CAVANAUGH: Well, that's an interesting question because it's a question of whether the agent's fee falls on which side of that line. You know, is it part of the, you know, I think it's 85 percent,...

SENATOR PAHLS: Eighty-five.

JIM CAVANAUGH: ...or is a part of the 15 percent? And that's not crystal-clear right now.

SENATOR PAHLS: That's not clear right now.

JIM CAVANAUGH: Right.

SENATOR PAHLS: But you would prefer it to fall on which side? The 85?

JIM CAVANAUGH: Well, I think so. I mean, you know, if I'm dealing with the companies, the companies are going to guard that 15 percent like...you know, that's their take-home pay. So, you know, yeah.

SENATOR PAHLS: Okay. Thank you. Appreciate your testimony.

JIM CAVANAUGH: Thank you.

SENATOR PAHLS: Well, I think we've heard from all four of those organizations now. I think we're ready for the Nebraska Academy of Nutrition and Dietetics. Heather.

HEATHER COMSTOCK: (Exhibit 1) Good afternoon. I'm Heather Comstock, H-e-a-t-h-e-r C-o-m-s-t-o-c-k. I'm a registered dietician from Lincoln, Nebraska, and I am the current president of the Nebraska Academy of Nutrition and Dietetics. I am speaking on behalf of over 600 dieticians who live and work in Nebraska. In Nebraska, we are the largest group of nutrition professionals. We are committed to improving the health of citizens of Nebraska by helping individuals make unique, positive lifestyle changes. However, not all citizens have access to medical nutrition therapy because their services are not covered by insurance companies except for diabetes and kidney disease. As you struggle with the question of how to best meet the dual goals of balancing coverage with cost, I urge you to recognize the vital role nutrition plays in the long-term health and economic well-being of Nebraska. I urge you to recognize medical nutrition therapy provided by a registered dietician in the essential health benefit package under preventative and wellness services and chronic disease management. Keeping a person with a chronic disease out of the hospital for one day covers the cost of 15-plus visits with a registered dietician. Most medical nutrition therapy protocols recommend far fewer visits. Keep in mind that over 60 percent of all chronic diseases result from poorly managed nutrition, exercise, and lifestyle. Without reimbursement for nutrition services, individuals do not have access to services provided by a registered dietician. A "Nutrition and You: Trends 2011" survey revealed that just over one in ten Americans are very interested in services provided by dieticians. This number jumps to one in three for African-Americans, a group that has the highest risk of obesity and diabetes. This same survey notes that six in ten consumers said that they would be interested in a consultation with a dietician if it was covered by insurance. Medical nutrition therapy is a service that has been proven to be safe and medically effective as evident by a Grade B rating assigned by the U.S. Preventive Services Task Force. The key to the effectiveness of these services is that the registered dietician is the provider. The Institute of Medicine has acknowledged the registered dietician as the single identifiable group of healthcare professionals with standardized education, clinical training, continuing education, and national credentialing required to be recognized as a provider of these services. Lack of access to medical nutrition therapy services has played a role in the escalating prevalence of obesity and the associated costs of treating

that. According to the report from the Robert Wood Foundation, Nebraska ranks 24th in obesity among the 50 U.S. states. Opening up access to medical nutrition therapy services can rein in the spiraling healthcare costs. Data shows that medical nutrition therapy is linked to improving the clinical outcomes and reducing the costs related to physician time, medication use, hospital admissions for people with obesity, diabetes, heart disease, cancer, and other chronic conditions. The following examples are how dieticians in Nebraska have helped with offsetting the cost. A patient newly diagnosed with Type II diabetes was referred to a dietician for blood sugar control and weight loss. His wife, who was a nurse, also came along to the visits. In four clinic visits with the dietician, the patient decreased his A1C, a lab marker for blood sugar average, from 11.8 to 5.4. In nine months, he lost 30 pounds and his wife lost 37 pounds. He was taken off all medications for diabetes and continues to live a life with lifestyle changes. Drug nutrient interactions is included in the RD's scope of practice. A patient treated for hypertension was not responding to elevated doses of medication. After three physician visits, a nutrition consult was ordered. The dietician's review of the patient's diet and supplement intake indicated that the patient was taking several over-the-counter remedies that included licorice. Licorice can lead to elevated blood pressure. The patient stopped taking the supplement and at the next visit his blood pressure was lower. His blood pressure medications were discontinued and the patient's blood pressure continues to be at normal range. This is a cost-savings of a lifetime of not purchasing medication. Some national examples include: The University of Virginia reported that RD-led case-management approach to lifestyle care for obese persons with Type II diabetes can improve weight, weight circumference, quality in life, and the reduction of medications. These results can be seen as a minimal cost of around $350 per patient. An "Improving Control with Activity and Nutrition" study compared a modest-cost, RD-led lifestyle intervention with the usual medical care for patients with diabetes and obesity, and found that RD-led intervention reduced the cost of lost workdays by 64.3 percent and the risk of disability days to 87.2 percent. The Lewin Group documented that an 8.6 reduction in hospital utilization and a 16.9 reduction in physician visits associated with medical nutrition therapy for patients with cardiovascular disease. They also documented a 9.5 reduction in hospital utilization and a 23.5 reduction in physician visits when medical nutrition therapy was provided to those patients with diabetes. More examples can be provided from Nebraska and nationally if needed. In closing, on behalf of the registered dieticians in Nebraska, I ask you to look at the insurance coverage in a new way, one that shifts from sick care to preventative care, and one that shifts from a short-term view to a long term-view for Nebraska's health. The design of the essential benefits package needs to be seen as an investment in Nebraska's future. Including medical nutrition therapy services when medically necessary and provided by a registered dietician is an important piece of this investment. That you for the opportunity to provide testimony.

SENATOR PAHLS: I'll just start off with a question. My health insurance would cover nutrition and any help from you, would it not?

HEATHER COMSTOCK: Only if you have...they only reimburse for if you have diabetes or renal disease; otherwise, depending on your cost, you would have to pay out of pocket for that.

SENATOR PAHLS: Okay, okay. Senator Schumacher.

SENATOR SCHUMACHER: Thank you for your testimony today. So your suggestion is dietician services be included under the preventive and wellness services and chronic disease management category.

HEATHER COMSTOCK: Correct.

SENATOR SCHUMACHER: Now I might be wrong on this but my understanding is that if the state includes in its essential benefits package more than a standard-type insurance package does, then the federal government does not reimburse and it's on the state's nickel, and nobody wants anything on the state's nickel.

HEATHER COMSTOCK: Um-hum.

SENATOR SCHUMACHER: So is that your understanding too? I mean, is your...I should back up. Under most insurance packages, are your services for somebody other than with diabetes or...I think is it liver disease?

HEATHER COMSTOCK: Renal. Kidney.

SENATOR SCHUMACHER: ...kidney disease...covered?

HEATHER COMSTOCK: No.

SENATOR SCHUMACHER: So this would be one of the things that if we were to define an essential benefits package, that would be on the nickel of the taxpayers of the state rather than the federal government.

HEATHER COMSTOCK: Correct.

SENATOR SCHUMACHER: Is that your understanding too?

HEATHER COMSTOCK: Correct. And we would hope that with the costs that are up-front that you would see on the long term and on the backside that we are a preventative service, so the initial money that would have to be invested you would make up and save more money in the long run. We would just like the opportunity to be able to be in there to let our services prove that we can save money for the state of

Nebraska.

SENATOR SCHUMACHER: Okay. And in asking the system to structure itself that way, what studies, what economic analysis do you have or can inform us with so we know whether or not what you're suggesting is a good bet or not.

HEATHER COMSTOCK: Other than the ones I talked about in my testimony and then what's in the folder, we can also get you more data information. We're currently running some more reports and all that stuff to back that up. And our National Academy of Dieticians, as well, has studies that can back that up as well.

SENATOR SCHUMACHER: Now I think one of the things that are in a similar category to what you're talking about is, for example, dental services. And I suspect the dentists can make an argument that good, healthy teeth mean a side spin-off benefits in health and could be a savings just like you're arguing, and that we should, even though the state would have to pick up the fee for dental services and crowning teeth and all that, we should do it because it's the smart thing to do. What criteria do you suggest we use as a cutoff? When do we say, you know, that might be the case but at this point it's not the kind of thing the government should pick up the tab for? If you want to have the services of a dietician or you want your teeth fixed, go get a job and pay for it.

HEATHER COMSTOCK: The best way I can answer that would be to say that a lot of diseases are kind of a spiralling effect to where if you can address one of them, you'll prevent a lot of other ones further down the line. So I can't answer that to tell you exactly that, you know, you let a dietician see you for one thing but not the other, three things that you might have. To us we just, like I said, want to have the opportunity to prove that we can make, you know, the citizens of Nebraska healthier and we will save money in the process.

SENATOR SCHUMACHER: But what criteria should we use if we're designing this to say, okay, this would fall under insurance, Medicaid, Medicare, whatever, and this, you know, is just a personal preference? Where does that line draw in your mind?

HEATHER COMSTOCK: That's a good question. I would think one of my colleagues would probably answer it better than me.

SENATOR SCHUMACHER: Okay. I'll ask.

HEATHER COMSTOCK: Okay. Perfect.

SENATOR SCHUMACHER: If she comes up, I'll ask her. Thank you.

HEATHER COMSTOCK: Um-hum.

SENATOR PIRSCH: I'll just ask you the same question in terms of process between now and the point in time that we'll be having it in this committee, all right? Obviously no executive branch, as we don't have that control. But is there any pointers or any types of suggestions or comments you want to make about the way this committee approaches the decisions in terms of at the end of it to be able to look back and having said we had good process?

HEATHER COMSTOCK: Again, I would just encourage you to look at the numbers and see where we're at with, you know, the rates of disease and, you know, chronic illnesses in Nebraska. And if we could provide you guys with that kind of information, again we could show you that, you know, whatever you get us to get in there we just want to be in there. So however you deem that, it's up to the state, but we just want a chance to prove that we can do that. And one of my other colleagues can also address that better. One of them actually bills for her services even though she's not reimbursed because of the renal and the diabetes, so she could probably answer that better.

SENATOR PIRSCH: Okay. Thank you.

SENATOR PAHLS: Heather, are you involved in many wellness programs then? Is that...?

HEATHER COMSTOCK: Our organization, we...as I said before, we have over 600-and-some different dieticians. And dieticians can be in any kind of realm whether they work at a hospital, wellness, you know, in the grocery store, private practice. I personally work at a hospital, so I don't personally see patients, but I know that our services are very, very important and should be covered by insurance.

SENATOR PAHLS: Yeah. Well, to me as I see it, you're talking about wellness. You're not talking about after the fact. You want your services to be utilized before people get...

HEATHER COMSTOCK: To be seen as preventative. I mean, and obviously sometimes once they get to us we've missed the preventative part, and now we have to be reactive. But even at the hospital, you know, the patients that the clinical dieticians see, the hospital absorbs that cost of the services that the dietician provides unless they have diabetes or kidney disease. So it's not just all-encompassing wellness; it's just what's best for that person.

SENATOR PAHLS: Okay. Thank you for your testimony.

HEATHER COMSTOCK: Thank you.

ELAINE FARLEY-ZOUCHA: Hi, Senator Pahls and committee. Thank you for the

opportunity for the academy to come and give our testimony. My name is Elaine Farley-Zoucha and I'm the immediate past-president for the Nebraska Academy of Nutrition and Dietetics. As Heather said, I am in private practice so I do work with individuals that have been referred to us from a physician. And I can tell you out of the five referrals that we get from a physician, we may see one or two of those. And typically when they find out it's not covered by insurance, then they don't show up for the appointment. And these are individuals that a doctor feels...a physician has referred to us because they feel the necessity for them to see a dietician. And they may be individuals that have diabetes, that are pre-diabetic and they're trying to get them going on nutrition and physical activity to prevent further cost to the insurance companies and to the systems with increase of medications, increases of complications with diabetes, etcetera. We had a patient that was referred to us from an oncology clinic right across the street from us, an individual that was failure to thrive due to chemotherapy and radiation; and the insurance company would not cover that. And to me that is unethical. That is completely unethical to be able to deny somebody coverage that is ultimately going to benefit their health overall. Look at the dollars that are spent on a daily basis on obesity and the dollars that are spent on gastric bypass surgeries. If they would have only have gone to a dietician prior, to look at what they could have done in lifestyle changes. There are individuals out there that have tried the lifestyle changes and they have not been successful because there's other circumstances, and they may need that drastic gastric bypass. However, the majority of these chronic illnesses that come in conjunction with the obesity epidemic can be solved or the cost of those chronic illnesses can be decreased dramatically with our services. And that is what we are asking for is give us the chance to prove that, that the $120, which is what's reimbursed for us for our services per hour, is nothing compared to what it costs for a diabetic medication.

SENATOR PAHLS: Okay. Let me ask you this. I appreciate what you're telling us. As, you know, for this to become part of the benefit package, it's going to have to be proven that it's worth it, you know. It's got to move up the line I would assume. Do you guys...does your organization have a cost-benefit analysis of what you do and how much you save? I mean...

ELAINE FARLEY-ZOUCHA: We do, and some of that is in your packet.

SENATOR PAHLS: Is in the packet? Okay.

ELAINE FARLEY-ZOUCHA: Yes, under the "Medical Nutrition Therapy Works" section.

SENATOR PAHLS: Okay. Thank you. Thank you. Appreciate it.

ELAINE FARLEY-ZOUCHA: Yes.

SENATOR PAHLS: And would you spell your name?

ELAINE FARLEY-ZOUCHA: Yes. Elaine, E-l-a-i-n-e, last name is Farley-Zoucha, F-a-r-l-e-y-Z-o-u-c-h-a.

SENATOR PAHLS: Any questions for Elaine? Senator Schumacher.

SENATOR SCHUMACHER: I'll follow up a little bit on the same particular questions that I was asking before. What guidance or suggested guidance can you give the committee with regard to what things should be covered, even though it may be at the taxpayers' expense or even though it might drive up the cost of insurance premiums. We heard that the little ear implant would drive up the cost of insurance premiums; that's why we couldn't cover it. Well, this would be a whole lot bigger project to undertake than a few ear implants. And dietetics is something that, you know, is more voluntary than whether you're born with a defective ear.

ELAINE FARLEY-ZOUCHA: Correct.

SENATOR SCHUMACHER: So at what point do we say this should be covered by insurance; the community pool of contributors should pay for this issue, and the government, if necessary, should get in the middle of it? Or that it's, hey, you know, if you want to pay $120 an hour to get that service, have at it, it's there; dig into your pocket and do it; that's not of such a critical issue that we should be in the middle of it. Where's the line?

ELAINE FARLEY-ZOUCHA: I guess you'd have to start with the federal guidelines and go with Medicare. Medicare limits the amount of services that can be seen by a dietician for diabetes, for example. And it's six visits per year, and I can ask Jill on that to make sure. But they are allowed six visits per year or a certain number of hours total. And so if we want to get to the point where we think we need to limit the hours that are seen by a dietician, truly when you're looking at that, at $120 an hour compared to bypass surgery because they weren't seen by a dietician, again it's pennies in the pot. And so I really think that we need to look at what role does nutrition play in chronic diseases and how can it prevent the increased costs of those chronic diseases. Diabetes obviously has been shown study after study that nutrition and lifestyle changes, they impact dramatically on those costs of the diabetic. And you can definitely decrease your A1Cs and you can make dramatic changes and decrease those comorbidities that go along with the diabetic process with controlled blood sugars due to nutrition and diet and exercise. So, the same with, you know, heart disease. When you're looking at obesity in itself, you know, obesity in itself can lead to heart disease, diabetes, certain types of cancer. And so you need to look at that. Hypertension; you know, all of those things that rapidly impact healthcare costs and that lead to increased visits to the ER and etcetera. You need to look at that and weigh those costs. Where do I see that line? I see the line

that we should be able to see any patient that nutrition would impact. And if that is a patient that has chronic disease, if that's the oncology patient that is failing to thrive and they need the services of an RD to help guide them, you know, what is nutritionally adequate for them? What are they needing special to boost them up? What can they tolerate? Individuals with food allergies should have the access to a nutritionist and a dietician to be able to guide them on their food allergies. You know, those are all things that aren't covered currently, and we all know that those are extremely costly diseases and those are chronic diseases. And so if we can decrease those costs by giving them the tools in their toolbox to utilize, then that's the services that we need to provide.

SENATOR SCHUMACHER: You mentioned the figure, $120 an hour. If this were included in the essential benefit package but there was a limit of $25 an hour, would that be reasonable?

ELAINE FARLEY-ZOUCHA: No.

SENATOR SCHUMACHER: Okay. I don't have any further questions.

SENATOR PAHLS: Elaine, I'd like to thank you because I've been reading through this, and your information in here is pretty to the point, a lot of cost-benefit analysis which I appreciate. Has your organization been in contact with the Department of Insurance?

ELAINE FARLEY-ZOUCHA: Yes.

SENATOR PAHLS: Okay. I was just curious.

ELAINE FARLEY-ZOUCHA: They know our faces for sure. (Laugh) Absolutely, yes. We have been with the insurance exchange committee meetings. We've met with the Governor a couple of times now. So, yes, we have been involved in the whole process.

SENATOR PAHLS: Does he still smile when you come?

ELAINE FARLEY-ZOUCHA: Well, he likes me because we talk about farming, so. (Laughter)

SENATOR PAHLS: (Laugh) You know, any connection you can make.

ELAINE FARLEY-ZOUCHA: Once he found out my husband was a farmer, it was all in, so.

SENATOR PAHLS: Well, that's good, that's good.

ELAINE FARLEY-ZOUCHA: Yeah, yeah.

SENATOR PAHLS: Any more questions? Okay. Thank you. Thank you for the information. Appreciate it.

ELAINE FARLEY-ZOUCHA: Thank you for your time.

SENATOR PAHLS: Okay, I think we're on to the Nebraska Academy of Family Physicians.

BOB RAUNER: (Exhibit 2) Thank you, Senator Pahls. I am Dr. Bob Rauner, R-a-u-n-e-r, with the Nebraska Academy of Family Physicians. The simple thing, the major issue is that, yes, we do support the state exchange. I think it's an opportunity for us to create what we want in Nebraska versus what the federal government wants. I've worked on a lot of programs where the federal government really doesn't understand Nebraska. They see us as fly-over territory and really don't understand the complications of working in a rural area. I think the people's...some commenters have said the fact that the feds are not releasing a lot is that they have some sinister motive; and I actually think it's a lot simpler than that. I think the federal government really doesn't know how to make this either and they're hoping you guys will figure it out for them and then they'll cut and paste off of your plans. I think they're looking at hoping that a bunch of state plans will develop things and then they'll cut and paste and pick the best of it. And I think this is an opportunity for Nebraska to lead the federal government rather than them having us...dragging us kicking and screaming, which is kind of the typical approach. And so I think we're really missing a big opportunity by not pursuing this more aggressively and I hope we do continue to do this. I think some...it is a very complicated issue, and so that's why everybody I think looks at a lot of this and has a blank face after reading a lot of these things. I think sometimes it helps to start looking at it using a travel agent analogy. You know, if I'm going to go to Chicago I know exactly what flight I want to get there; I'll just go right directly to Southwest. In a large business, they know exactly what they want; they'll go right directly to the UnitedHealthcare or Blue Cross or whatever. A more savvy person, they're going to pick and choose. And when I go to Boston, I get on Kayak or Travelocity and I look at a couple of different flights and pick and choose. That's kind of what the exchange would be. So the people who are little more savvy, they can figure it out just based on that. It gives them a way to price compare; compare apples to apples. If it gets more complicated, a family trip to San Francisco--too overwhelming. I went to Executive Travel because I didn't want to figure it out myself. That's where you're going to have the insurance exchange guys come in. And so if, yeah, I don't have a computer; yeah, I don't understand this? Yeah, you want an agent. And even the agent is probably going to use this because the travel agents, they still use Travelocity and look at Southwest on-line as well. Now it breaks down because it's not that simple for healthcare. Healthcare is a lot more complicated than a plane flight. There's a lot of issues involved. It's something you're going to have to have for a long time. It's the life of your health and your family and kids. It's a little more complicated

than that. It also though brings some other things with it. One of the things is the ability to participate in a bigger risk pool is one of the possibilities. An example there, I'm originally from your district, Senator Schilz. My father is a small businessman there. He's tried to provide health insurance for his employees and wants to continue, but he's essentially one major disease from everybody losing their healthcare. You know, if one person gets breast cancer or somebody gets multiple sclerosis, they're in a small risk pool of just them. They'll get priced out of the market and they'll either lose health insurance or go bankrupt, and that's where a lot of the personal bankruptcies come. A health insurance exchange is one method of small business owners getting to participate in a larger risk pool. And so if you're a farmer or a young entrepreneur, a small business owner, this is one way for you to have a better access to healthcare. And I think that's something that people miss in this. This is something for a lot of small businesses, and if you get outside of Omaha and Lincoln, that's a lot of the folks that are working out there. This can help them get healthcare. And so I think that's something that I think people miss. Most of the medical societies have more of a private, market-based approach to this, and I think this is actually one way to help that. You know, to make a market work, you have to have transparency. You've got to be able to see the price; you've got to be able to compare apples to apples. An exchange can help you do that in a way that's very difficult to do right now. For me, it's easy because luckily I'm a member of the Nebraska Medical Association and we have a group plan. I can just go directly to there and have at least some help that way. A lot of your plumbers, people like that, they don't have that opportunity. Or something like the ConAgra, they've got an HR department; they can figure it out. They can self-insure. So your small business owners have a way to make that work. As far as testimony, I didn't do any printed testimony. Actually, I liked this recent Op-Ed from Senator Bill Frist. He was the former Senate majority leader for the Republican Party and also a physician. And basically his take-home message was it's time to quit fighting about it and make it happen. This was a bipartisan idea in the first place; actually it was a Republican idea. It suffered by guilt by association with the Affordable Care Act, and that I think a lot of people fought just because of that. You asked earlier what about our thoughts about the Affordable Care Act. As a medical society we can't tell you that because we're about as divided as the rest of the country. I can certainly tell you my own opinions if you want to know them. But as a medical society we're probably not going to say, yes, we like the Affordable Care Act, or if we don't, we'll say, no, we don't like Obamacare. I don't think you're going to get that from any of the large medical societies, to be honest with you. A couple of other things that came up, I think, Senator Christensen, you talked about rationing and then when you look at other health systems you find rationing. And I'd say that's probably what you're going to find no matter where you look including the United States. We all have rationing. All health systems of all countries have rationing. They always have; they always will. It's not a question of, will you have rationing? It's a question of how you do it. Will a federal bureaucrat make that decision? Will a state bureaucrat make that decision? Will a health insurance company executive make that decision? Or will it be based on where you live or how much money you have in your pocket? That's

how rationing gets decided. It's going to happen because we spend too much on healthcare and it's bankrupting the country. So the rationing is going to happen. The question is "how" and not "if," I think. And it's whether the federal government is going to do it or UnitedHealthcare or us. Other things, I would just say that, you know, I really hope that we move forward on this. It's going to be complicated. I think it is an opportunity for us to lead on this issue. And with that I'll answer any questions.

SENATOR PAHLS: Senator McCoy.

SENATOR McCOY: Thank you, Chairman Pahls. And thank you, Dr. Rauner, for coming and visiting with us. And I am familiar with this piece by former Senator Frist, and it is an interesting one, and I think it is an important point to make. My concern would be...and I'd love for you to expand on it a little bit if you would as a physician. There are a lot of things; and I know parts of it I wouldn't expect you to know, and frankly, there's a lot of us that don't know the differences between what we would have with a federal exchange versus a state exchange. And particularly I want to pick up on a point you just made about a federal bureaucrat making the decisions versus a state bureaucrat. Is it true in what you know about the process as it stands now, and there's a lot of rules and regulations that are yet to be written in Washington, but there's a lot of those decisions that we don't really know to what degree is it going to be a bureaucrat here in Nebraska that's going to make that decision not only for you physicians but for those of us as lawmakers and all of us as consumers. I'd be curious if you'd like to expand for just a moment on what you know about the state exchange, maybe drill down a little deeper, that you would prefer over the federal exchange. I, for one, am a small business owner outside here in the Legislature, and one of the things that concerns me greatly is the requirement for small business owners to provide coverage for employees. It's my understanding possibly this might change some of the rules and regulations; that penalty may not exist under a federal exchange, and there's a lot of moving parts there. So do you mind expanding a little bit more on just more than just, well, it'd be better to have a bureaucrat here than the feds. Would you care to expand a little more on why you think that would be preferable here?

BOB RAUNER: I can try but it might be impossible in that I think literally a lot of stuff just hasn't been written yet so we don't know and we won't know. And so I think it's all wrong though to use that as the excuse not to go anywhere; I mean, just because we don't know for sure what they're going to do. I think there is honestly enough flexibility because I really do think that the federal government doesn't know how to make this happen. There are 50 different states all with individual rules. I think they're looking at that and saying, boy, we don't want to run a federal exchange. I mean, if you look at what the complexity of...I mean, I don't think they really are capable of doing that unless they nationalize things, which I really hope they don't do.

SENATOR McCOY: Well I would agree with that, which is why I personally believe that

it was an ill-advised piece of legislation in the first place; and I think at the federal level they really don't have any idea how to implement what was foisted upon the country, but that's an outlier. But thank you.

RON RAUNER: Yeah.

SENATOR PAHLS: Senator Langemeier.

SENATOR LANGEMEIER: Chairman Pahls, thank you. And thank you for your testimony. I kind of like your airplane story there. But I want to add one more component to that. When you talked about you wanted to go to Chicago and you were going to go on your corporate, so you're going to go to Southwest and get your ticket to Chicago, and then you talked about going to Boston and you might use Travelocity; you talked about your family vacation to California. A key component into every one of those is you wanted to go to Chicago, you wanted to go to Boston, you wanted to go to California. In this healthcare debate we have a number of individuals that think they're invincible. Whether they're 23-year-old males that are out skydiving or riding motorcycles or whatever they think, they think they're invincible so they don't need healthcare. You have other individuals out there that say, hey, I'm not going to be denied at the hospital; if something goes wrong, they're going to take me in the ER room; I don't need healthcare. How do you take those individuals in whatever kind of exchange you make, whether you can't get access to it or you're going through a navigator, how do you foresee those people...? I understand there's a penalty out there to try and get them through it, but I haven't found where those penalties really work all that well. We still have speeders in Nebraska. It's against the law; there's a fine for it. How do you get those people through a system?

BOB RAUNER: Well, you basically look at the ones who have solved it. One criticism, our country versus others, is every other country has almost everybody covered. We're the only one who doesn't as far as First World countries. Well, you either have a government system like, you know, you have socialized medicine like the UK, you have single payer like Canada, or you have a private system like Switzerland. If you're a government system, you pay taxes and you're in. To make a private system work, it has to be some type of mandate, penalty, tax, whatever you want to call it. I mean, it's all semantics what you want to call it. You can't not...I mean, because like you say, people are invincible; 25-year-olds think they're going to live forever. They're not going to buy health insurance unless they're required to do so. There's no other way around it I don't see. So unless...I don't know, I'm going into my own personal politics and not the academy's here, but I personally like the private-based system. But one of the key components of a private system is you have to have a mandate. You can't make it work without a mandate. That's why we have a mandate to buy car insurance. I mean, we already have a mandate in Nebraska for car insurance and there's very good actuarial reasons why that's the case. I don't think you can do it without. So, I mean, yeah, it's a

kind of Gordian knot. You can't...one goes with the other. People don't want to have rescission and preexisting condition exclusions, but you can't make it actuarially work in a private health insurance model without everybody participating. I don't know...nobody else has figured out how to not do either that or go with a government system, that I know of.

SENATOR LANGEMEIER: I'd probably caution you on using the auto insurance, because that's protecting me from your poor driving; it's not protecting me from my own poor driving.

BOB RAUNER: Yeah. Well, all analogies break down eventually. And that's actually...I guess that segues into another thing. What one thing I don't like about what's happening right now is it seems to me this is almost all within the Insurance Department. Health insurance is fundamentally different than car insurance, and that's why some states actually divide those two insurances into two different systems because of that. You know, your house doesn't develop chronic diseases that are there for 30 years. If it does, you build a new house. You can't do that with your body. And so there's things that don't apply in health insurance versus car insurance or house insurance. And so you can only use the insurance model for other things. I mean, like Switzerland, for example, they have an all-private system, but their health insurance business, it's all nonprofit for very good reasons. Now if those same companies sell for-profit health insurance, they use health insurance sometimes as the loss leader to get you for the life, home, and everything else. Because, as Switzerland has realized, health is fundamentally theirs, the fundamental difference between health insurance versus the other types of insurance. And so you have to think of that if you're going to do a private-based system. And maybe that's going beyond where we want to talk about here, but that's part of the issue that unfortunately I don't think is debated enough publicly.

SENATOR LANGEMEIER: Thank you.

SENATOR PAHLS: I just have a question. The Academy of Family Physicians have not taken a stand on this; or they have?

BOB RAUNER: On the health exchange, yes.

SENATOR PAHLS: Okay.

BOB RAUNER: The Affordable Care Act, no. Most of the medical societies, because they're as divided as the rest of the country, we've had some not-so-civil debates even in our own internal meetings about the different sides, pro and con, for the Affordable Care Act. So most medical societies have basically taken a middle ground in saying, well, do you like the whole bill or not, that's an individual decision; but there are things

within the plan that we can all agree on. You know, we all can agree that we should cover children. We all agree that we shouldn't be having rescission where people are kicked out after they've been paying health insurance bills for years, and now suddenly they had one little clerical error on their application and now they're not covered for their breast cancer. You know, those are things we can get behind and agree on. There's other things we can't agree on. And so that's why the medical societies, most of them are not taking a, yes, we like the Affordable Care Act or, no, we're against Obamacare; because it's complicated.

SENATOR PAHLS: But they have decided what part of it they like and what part they do not.

BOB RAUNER: Yeah.

SENATOR PAHLS: Is that public knowledge?

BOB RAUNER: Yes. It's on their Web sites.

SENATOR PAHLS: Okay.

BOB RAUNER: They've pretty much got that on there. And a lot of it boils down to, okay, from either the patient and/or physician perspective, what's the best. There are other issues that might apply to the, you know, health insurance agents and things like that we may stay out of, for example, just because it's not pertaining to us.

SENATOR PAHLS: Right.

BOB RAUNER: We mostly focus on the healthcare and the patient, so. So you can go to the American Academy of Family Physicians' Web site or the AMA's Web site, for example, and see what their positions are.

SENATOR PAHLS: Okay. Okay. Thank you. Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. Dr. Rauner, I'm going to ask you a question primarily so we can get this on the record.

BOB RAUNER: Okay.

SENATOR GLOOR: Let's assume everything percolates along nicely and we end up, either through exchanges or Medicaid expansion, in some way, shape, or form we end up with a whole additional group of people coming into healthcare as patients. How is our provider capacity to handle all these new patients?

BOB RAUNER: It's insufficient because it's misallocated right...well, it's kind of allocated right now because that's by default. You know, it's too oriented toward urgent care in the emergency room because that's where everybody's going because they don't have health insurance. Once they get health insurance, you'll hopefully get them to go to the right place, which is in the outpatient primary care environment. And you'll find out what they have in Massachusetts where, when they did that, everybody did get health insurance, and then they tried to find a family doctor or pediatrician, and found out that the wait times went from three weeks to two months because there's not enough capacity. Our capacity is fit in a private system where the demand is, and it's in the emergency room because that's where everybody is going for their urgent care because they can't get into their doctor. So a big problem we're going to face just like Massachusetts, and that every state will find, is once people are hopefully given incentives to go to the right place, there's unfortunately a seven-year delay when you're going to try to train a physician. You've got four years in med school and a minimum three years of residency. It's going to take you awhile to adjust. And then I've presented in previous hearings what our manpower projections are in Nebraska and they're not good, where our primary care work force is aging just like the rest of the baby boomers, and there is not a compensatory peak of people going to come replace them in about five to ten years. And so that's a problem.

SENATOR GLOOR: What can your Legislature do? What, as an example, did the Massachusetts legislature do to try and address some of those provider shortcomings?

BOB RAUNER: Well, that's actually one of the criticisms: They forgot to address that one. (Laugh) You know, they have plenty of medical schools there but they're all geared for research and making superspecialists, and not primary care doctors either. And so that's actually one of the criticisms is they didn't prepare for that. And then unfortunately I think we have not done enough to prepare for that in Nebraska. I mean, there's things with loan repayment and trying to redirect the priorities of our medical schools a little bit toward what is likely to come versus what's been for the last 20 years, is it's a challenge and I think we need to look forward to as a state so that we know that five, ten years from now we'll have that work force. Because even if there's no change, it's still going to be a problem when all those baby boomer family physicians and pediatricians retire; there's going to be an access crunch in about ten years.

SENATOR GLOOR: Thank you.

BOB RAUNER: You're welcome.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: Thank you. Thank you for your testimony. The one very basic question: Is anybody in Nebraska going without healthcare now?

BOB RAUNER: Oh, yes. I can't remember, there was a number that just came out. It's over a couple hundred thousand. Was it 250,000 or something like that?

SENATOR SCHUMACHER: Not without insurance; without healthcare.

BOB RAUNER: Yeah.

SENATOR SCHUMACHER: They're sick, they got a problem, they need treatment. Is anybody saying, sorry, we can't do that; here's a card to the crematorium?

BOB RAUNER: Not quite that direct. There's shades in-between. They're not getting adequate healthcare, that's for sure. A lot of them, what they do, they end up in the emergency room when it's already too late and now we're just going to cut your leg off. I mean, that's the problem. People are getting care in the wrong place. If they'd have been in the primary care physician, got the diabetes under control or got that foot infection taken care of when it just started, it might have been a $100 fix. Now they're in the emergency room and it's an amputation, and it's a $1,000 or a $10,000 or a $100,000 fix. And, honestly, part of the reason we're spending so much on healthcare is we're spending it in the wrong bucket. We're spending it all in the hospital and not in primary care, and that's what we mistakenly do compared to most other countries. Part of the reason their healthcare is less expensive is they put the money in the right buckets.

SENATOR SCHUMACHER: When they go to the wrong bucket and there's no money to pay the bill,...

BOB RAUNER: Yeah.

SENATOR SCHUMACHER: ...prior testimony was all that really happens is that gets passed on to either the insured or the self-payers or those with government payment, and there's no free lunch.

BOB RAUNER: Yeah. In the end, it all goes to you because you either get it through taxes or your own...I mean, for example, I took my daughter to the ER about three years ago. Woke up in the early morning, sure looked like appendicitis, we brought here there. Luckily it turned out not to be. But after three hours' observation, we walked away for a $2,000 bill. I know what it costs to do all the things that were done for her. It was not $2,000. It was more like $500. The reason it was $2,000 is because we're also paying for the Medicare and Medicaid that didn't cover the costs on that uninsured person who just walked in last night. So you're already paying for those people already. It's just you're paying for it in a very inefficient manner.

SENATOR SCHUMACHER: So we're delivering those services inefficiently, and the way we allocate the cost of that is basically on the backs of those who have insurance.

BOB RAUNER: Yes.

SENATOR SCHUMACHER: And do you see a cycle there where the more we do that, the higher the insurance goes, the fewer the people that have insurance, the higher the insurance goes.

BOB RAUNER: Yeah, I think that's exactly what's been happening for the last 10, 15 years. I mean, that's why the cost is just going through the roof is because...

SENATOR SCHUMACHER: And that was with or without the ACA, that was happening on the market.

BOB RAUNER: Yeah, that's happening anyway. I think most people don't realize that we're in a world of hurt regardless. And so I initially was pro repeal and replace, until I found out that there wasn't really a replace. I mean, I think more people would be behind repeal if there was actually a legitimate replace there, and I don't think anybody really knows what to do right now. The Affordable Care Act, it's got its issues but at least it is a solution. We need a solution. And again, I can...that's another story. But there are things we could do using other countries who have an all-private system, for example. We just haven't really had that discussion in the United States yet.

SENATOR SCHUMACHER: To the extent we have any ability to design a Medicaid program to fill in the gap between nothing and 133 percent of poverty, what can we do or what would you suggest that we do in order to--and maybe there isn't a problem here even; but if there is, to deal with, well, if it's free, if I don't have to pay for it, I want three of them. And you have overutilization and you have people where they were...you know, going to the doctor for the common cold.

BOB RAUNER: Well, I mean that's honestly when you say rationing, that's essentially rationing, is cost control. How do you decide how much it costs and who's going to make that decision? Is it the individual, the state, the private insurer? Somebody has to make that decision somewhere. Right now, nobody is really making it until you lose your health insurance and they show up in the ER.

SENATOR SCHUMACHER: What's the rational way for us to say, look, okay, we'll bite on the Medicaid thing and we recognize that by having that program they're going to go to the doctor's office instead of the emergency room and that's going to be a whole lot cheaper and everything. But at the same time, gosh, it's for free, it's my entitlement, I want to go three times as often as I need to. Well, who says no?

BOB RAUNER: Well, actually I think in some way that's a little bit of a red herring that the majority of people don't want...for example, most women don't want three Pap smears a year. You know, most people don't enjoy going to the physician and getting stuff done to them. There's a few that do and I have to deal with them; but most people don't enjoy going to their physicians. I hate going to the physician's office because I hate waiting in the waiting room myself, I mean. So I don't think there's that big of fear that people are going to just use the heck out of colonoscopies, for example, you know. (Laughter) So I think there's a little bit of a misnomer there. There are people who probably take too many pills obviously, you know. There's people who probably could be using less expensive pills. I think the biggest thing is you need to come up honestly with just a systematic approach to this. And states have done different measures. I mean, Massachusetts did pretty much something like the ACA act. Vermont actually is right now doing a single-payer experiment. I think there's an opening for us to do some type of waiver to do the same thing. The Nebraska Medical Association in 2007 actually had a plan that it presented to the Legislature in 2007. At the time, everybody said, well, the feds are going to fix it in a couple of years; we'll just put this on the back burner. It's still out there actually. You can get it from the Nebraska Medical Association. I think it was a good plan and it's based on the Swiss private model. So I think we as Nebraska need to come up with our solution or we just have to go along with the federal government, one of the two. And right now I think nobody is saying, okay, if you don't like the Affordable Care Act, let's work on our own then. And I don't think we have an organized group to do that right now yet, or at least any that has the political authority right now.

SENATOR SCHUMACHER: In reading through some of the stuff that the federal government has put out for guidelines and some of it in which we define in this essential benefit package, there seems to be some wiggle room in how you define things and what might be covered and what might not be covered by the federal share of this. Has your organization done any analysis of what's smart there? I mean is it better to try to push the limit on the essential benefit package, hoping that the feds will pick it up, or run the other direction figuring that the feds will run the other direction in three years and leave us stuck with the bill?

BOB RAUNER: I think it's a balancing act. I mean, obviously as a family physician in the public, I really think we should put more into prevention, for example, I mean. So, yeah, are there things that we would put in there? Yes. Some things we, even in a medical society, do not want to touch with a ten-foot pole because we don't want to talk about birth control and abortion, because, boy, does that get to be an ugly debate sometimes. So I mean, have we gone there? No. Utah did go there with its exchange. They mandated that there would be no coverage for abortion services, for example. And so a state...by having a state plan you can do those type of things. So, you know, I would say that most of the essential benefits, I like the fact that they've gone off of a group called the U.S. Preventive Health Services Task Force. They basically looked at the evidence

and said this is what works, therefore, it should be in there. Because we do a lot of stuff in our healthcare system that doesn't work right now, and that's part of the reason why the costs are so high.

SENATOR SCHUMACHER: And there's a study from that organization that's available?

BOB RAUNER: Yeah. They have a Web site. If you...it's United States health...yeah.

SENATOR SCHUMACHER: If you could provide us with that, I'd like to see that.

BOB RAUNER: Yeah. Okay.

SENATOR SCHUMACHER: Thank you.

BOB RAUNER: All right.

SENATOR PAHLS: Seeing no more questions, appreciate your time...

BOB RAUNER: All right. Thanks.

SENATOR PAHLS: ...and your sense of humor. (Laughter) I think now we are ready for the Nebraska Pharmacists Association.

JONI COVER: (Exhibit 3) Good afternoon. I thought maybe you were going to stop at 3:00 and this would all be for nothing. Good dialogue today. Senator Pahls, members of the Banking, Commerce and Insurance Committee, my name is Joni Cover; it's J-o-n-i C-o-v-e-r, and I'm the executive vice president of the Nebraska Pharmacists Association. I very much appreciate the invitation to appear before your committee today. We've had some discussions with the Department of Insurance and the Governor's Office and various folks about the health insurance exchange. And I wish I could say since I'm at the end of the testifier list that I have the answers for you but I don't. I think from the pharmacists' perspective...and I have some comments I'll share with you, but whether it's a federal exchange or a state exchange, our requests are kind of going to be the same. We want to have any willing provider language provided so that every pharmacy can participate in every insurance plan that's offered; they can be in any network they'd like so that they can care for their patients. And that's not currently happening now in insurance plans. We want to make sure that patients have a choice of pharmacies so that they're not mandated by having to use mail order. And we see that with our own state insurance plan. There's...as state employees, you can get so many days at your local pharmacy for a copay and you can get a lot more days for a lot less copay. I would argue that that's not better healthcare, but that's what the state chose. And we'd like to see that kind of provision go away. In the Affordable Care Act, there was some discussion about or some language that talked about medication therapy

management services, pharmacists being able to better manage chronic disease for patients and getting paid for that service. And so we would like to make sure that that's included. I will tell you that on a national level our national pharmacy organizations are working to put some standards together. You've asked about what kinds of talking points and things we can provide. And as soon as we have that document ready we will share that. We've sort of been working on this since Medicare Part D was implemented in 2006, but it's really never been paid for. It's starting to now be paid for and it is a provision that will be included. So definitely that is something that we feel that paying pharmacists to manage medications for their patients could actually save money, could actually make patients better. So those are some things we'll like to see in there. And we'd also...this is going to sound strange, but we'd also like to see a very robust or easy accessible grievance process. And I will explain why in just a minute. But we think it's important that providers and patients be able to pick up the phone or get ahold of a person if they have a problem with the plan and have someone be I guess accountable for that. I represent the providers who got to implement Medicare Part D. And when I heard that we were going to have this new healthcare reform and there was going to be health insurance exchanges and health insurance for all, sort of like my reaction to Part D, it's a great benefit. Senior citizens now have drug coverage. And so, yea, everybody is going to have insurance. But it was a nightmare. It was a nightmare for us as pharmacists to have to implement. I have pharmacists today who when this started on January 1, 2006, and dispensed prescription drugs has still never been paid for them. And I cannot imagine what a nightmare it's going to be to implement a health insurance exchange. But having said that, I would much rather have the nightmare be a state-based exchange and have to deal with all of you and the folks that we know in our state that we can reach out to and have commonsense approaches versus what I'm living still today when I have pharmacist members who call and have a problem with the Medicare Part D plan and you can't get CMS to answer the phone and the plans won't be accountable. You know, I have a pharmacist who has a problem with Blue Cross Blue Shield or they have a patient with Blue Cross Blue Shield, I can pick up the phone and I know people to call; and hopefully we get it resolved. And, you know, sometimes it takes awhile but we usually can come to some agreement. We don't get that same sort of service with Medicare Part D. So I just know that whatever you want to say about the federal government, having seen and dealt firsthand with how implementation of the Medicare prescription drug program, that was difficult. It's still difficult. We're still having issues. And I just think that from the people that I represent, the pharmacists, and them having to deal with their patients, and oftentimes the problem is when the patient is standing at your pharmacy counter, and that's how you're trying to get it resolved, and they need their medications, and the plan won't answer the phone and CMS won't answer the phone, that I think we can do better as a state. And so really that's our perspective of a state health insurance exchange is that we know there's going to be a lot of discussion, a lot of costs, a lot of questions. I'm not sure how we're going to address it, but I think that we as Nebraskans can do it better than the federal government, even knowing that they're going to tell us a lot of what this is going to look

like. I just know that, again, from our perspective with Medicare Part D, it's been a nightmare, so.

SENATOR PAHLS: That's because you're dealing with the federal government.

JONI COVER: Because we're dealing with the federal government. And a lot of what happens is they will say this is the plan's responsibility and the plan will say, well, this is what the federal government told us to do. So no one takes ownership of really who made the mess. So those are my comments. I appreciate being here. I would make the commitment to you and to the Department of Insurance that whatever help we can be in putting together...I mean if you'd like us to design a prescription drug benefit for you, we'd be happy to do that. But I just...I really think that for the benefit of this population of people who are now going to be insured, in insurance, I think we can do it better. And I know that the discussion has been about having a great Web portal you can go to and learn all kinds of information, and that's what Medicare Part D was like, and it just doesn't really work very well. So people...we're going to need people to help with this process, whether it's a federal level or a state level. And I just...I would hope that we can all come together and figure out how to make it best for Nebraskans, and I think Nebraskans can do it best for Nebraskans. So with that I'll stop.

SENATOR PAHLS: So I'm to take that you are for the state-based.

JONI COVER: Yes, state exchange.

SENATOR PAHLS: All pharmacists are eligible, is that...did I hear?

JONI COVER: Yeah. Everybody gets to play. Everybody gets to play in the sandbox. If we want to be a part of a health insurance plan, we should be allowed to. If our patients want to come to us and have the medication dispensed versus going to a mail-order pharmacy, they should be allowed to.

SENATOR PAHLS: Okay. So basically the mail order is not something you see as...

JONI COVER: I'm not saying we shouldn't have mail order. I'm just saying that shouldn't be mandated.

SENATOR PAHLS: Oh, the mandate. Of course, you hear we're all against mandates.

JONI COVER: There you go.

SENATOR PAHLS: Yeah. Senator Pirsch.

SENATOR PIRSCH: And I appreciate your testimony here. With respect to as we, the

state, looks out at our choices here, do we know all we need to know to make the election? Are...has through the rule-making capacity of HHS, have they now at this point, this date, shared everything, in your opinion, that we would need to make an educated decision in election?

JONI COVER: I don't know that I can answer that. I mean, I think we all can agree that the devil's going to be in the details. I mean, you all know that when you deal with legislative issues. You know, you can think this is a great idea but when you get to the details of it, you find out, oh my goodness, that's not exactly what we meant.

SENATOR PIRSCH: Yeah.

JONI COVER: I would hope that we would have information, but I know that the federal government is still giving us information, so.

SENATOR PIRSCH: Yeah, because they preempted the area and they can send down edicts then to the state about, well, within these constraints you're allowed to pick. But that's what I'm trying to figure out, you know. And I know that there has been in recent months a number of kind of guidance and statements that are put out by HHS. And so I'm wondering though in...so do we know where our range is and what our choices are clearly, or are we still kind of sitting on the edge of our seats in some major material respects waiting for Washington to get back to us so that we know whether...

JONI COVER: Yeah. I'm not sure I can answer that for you.

SENATOR PIRSCH: Okay.

JONI COVER: You know, I guess I kind of look at it from our perspective. And I certainly can't speak for other healthcare providers. But, you know, from the pharmacists' perspective, I kind of look at do we like Medicare or Medicaid better. You know, you're dealing with a federally run program, you know. Pick your poison. Which do you like the best? And I think that pharmacists in Nebraska would tell you that Medicaid, because, yes, even though you have federal mandates, we still have some options. And if we don't like those options or we have ideas and things and we can do cost containing, I mean, the pharmacy program in Medicaid has done a lot of very innovative things to try to curb costs in prescription drugs. You don't necessarily get that with Medicare. So, you know, that's sort of the view that I take is Medicare is huge, Medicaid is huge, but Medicaid really has more oversight by us in Nebraska--with some meddling of the federal government. But, you know, if I have a problem I can go to the Health Committee or Banking Committee and say we need to fix this or we need to talk about this. And it's a little hard to do with a federal program like Medicare.

SENATOR PIRSCH: Yeah. Let me narrow it down. With respect to the essential

benefits package, right, that there are...

JONI COVER: Yeah.

SENATOR PIRSCH: ...is that clearly defined by the federal government about...

JONI COVER: Well, from our perspective, you know, it says prescription drugs.

SENATOR PIRSCH: From your perspective, yeah.

JONI COVER: You know, it says prescription drugs are an essential benefit. So under that prescription drug umbrella, you know, these are the things we want to make sure are included in that essential benefit. I don't know that we are in a position to say which drugs should be covered. I think that's kind of a plan choice. I mean, our insurers in Nebraska do a very good job of setting their formularies; not everybody likes them, but they do that to contain costs. So, you know, these are some things we'd like to see, those items that I listed, as a part of that benefit.

SENATOR PIRSCH: Okay.

JONI COVER: But I'm not going to...you know, I don't know that I have the...I shouldn't list the drugs that should be included and things like that.

SENATOR PIRSCH: Is there anything that this committee could do between now and the time that we're making a decision processwise that you would find helpful or you would recommend?

JONI COVER: I can provide you with all kinds of information about the benefits of pharmacists' involvement with patients; you know, why mail order is bad; why patient choice of pharmacy is good. If you want that I can provide that if you think that would help you with the decision. But I don't want to overwhelm you with things you don't want or aren't going to read. So (laugh) I'm...you know, I can certainly provide you any of that kind of information.

SENATOR PIRSCH: Oh, sure. So you...other than to offer your assistance in whatever way that we, the committee members, feel helpful...

JONI COVER: Right.

SENATOR PIRSCH: ...you don't have any specific guidance in that.

JONI COVER: Just other than the stuff that I'll give to you today in my testimony.

SENATOR PIRSCH: Okay. Thank you.

SENATOR PAHLS: Senator Gloor.

SENATOR GLOOR: Thank you, Chairman Pahls. Joni, you've referenced, I've referenced, concerns about any willing provider or restrictions in who's allowed to be a part of provider networks. Have you seen that happen? I mean, has that been happening...

JONI COVER: Yes.

SENATOR GLOOR: ...as a matter of course over the past five years, ten years? Five months?

JONI COVER: More since Medicare Part D has passed. You know, within Medicare Part D, there was a provision that says every patient has to have access to pharmacy services within, you know, so many miles. But they also have included mail order as a part of that. And, you know, since 2006, when Medicare Part D started, we've had pharmacies close. We've had pharmacists who were at that point of thinking they were going to retire and that just sort of said...put them over the edge, we're not dealing with this anymore. We've also had some communities who have lost their independent pharmacy owners and have sold to chain pharmacies, which, you know, I have nothing against chain pharmacies. But chain pharmacies won't open in every community. There won't be a Walgreens in some of your communities. And so if the community pharmacy closes, that's an independent, and a chain won't come in. Potentially the only access you have is mail order, which is fine except if you break your arm and you need pain meds today or, you know, if you need something that's acute and you need it right now; then you have a problem. And I think that that's why we want to have pharmacies who want to be in networks should be allowed to be in networks because it's an access issue. And if the networks just say, sorry, we have enough pharmacists and we don't really care that part of your state is very rural and you have to drive a long ways, you know, that's not our problem. We just can't have that, so.

SENATOR GLOOR: Thank you.

SENATOR PAHLS: Senator Schumacher.

SENATOR SCHUMACHER: There's I think been some discussion about when the essential benefits package sets up the pharmacy provisions and what it covers, that if it covers just one class of a certain kind of drug, it's good enough for government work and it's...everybody is fine with it. On the other hand, that may not be a smart thing to do, some say, because there are some variations within a class of drugs that may be more agreeable or more effective with a certain kind of patient. Can you bring us

up-to-speed just a little bit on that issue?

JONI COVER: Well, I don't know exactly how the plans are going to come up with that. But I'll tell you now how they do it, and they all have what they call pharmaceutical and therapeutics committees. So they have doctors and pharmacists that discuss, you know, for this disease state, these drugs are what we will consider are formulary drugs and these are the ones we'll cover. And then these are probably good, too, but they're more expensive, so they'll be in the next tier. And I don't know that that's the process but I can't imagine that process being any different for these plans. I guess that's a good question that you could ask, you know, the insurers, because that seems to be the process they have in place now, and I don't know why that would change.

SENATOR SCHUMACHER: So if...your suggestion would be to talk with them with regard to whether or not you should say, okay, our essential benefit class is this particular drug in the class for hardening of the arteries. And even though there's another drug in that class that might be more effective, this one is in our class and we're going to be very conservative in how we spend our money and we're not going to authorize any other thing, that we not do that or that we talk to them about that or what?

JONI COVER: You can...I mean, that's I think a lot of the choices that they make with the formularies are based on cost and effectiveness. And you've got some agents that are newer that may be touted as the next greatest and best thing, but it really may not work any better than something that's been around for a long time. So I think they weigh that. I think they weigh new agents with older agents with brand names versus generics. I mean that all happens now. And I guess if our health insurance exchange had a prescription benefit that said our Nebraskans are going to get only brand-name drugs, then that's how the plan would be designed.

SENATOR SCHUMACHER: Thank you.

SENATOR PAHLS: Any more questions? I think I get the point which your organization is coming from. Have you been in contact with the Department of Insurance? I mean, are you listening to them? Are they listening to you?

JONI COVER: Yeah. We've had several discussions. We have provided them with some information. So, yes, we have talked with them and, you know, when they've needed information, we've provided it, so.

SENATOR PAHLS: Okay. Okay.

JONI COVER: Thank you very much for the opportunity to appear today. And if I can be of any more assistance or provide any information, please don't hesitate to reach out to me.

SENATOR PAHLS: We'll do it. Thank you, Joni. Appreciate your testimony.

JONI COVER: Thank you.

SENATOR PAHLS: I know we have on the list Nebraska Chiropractic. Do we have an individual here?

DOUGLAS VANDER BROEK: My name is Douglas Vander Broek, V-a-n-d-e-r space B-r-o-e-k; the space is real important. I'm in my thirtieth year of practicing chiropractic in Lincoln, and I appreciate the opportunity to testify this afternoon. I'm currently serving as chair of the Board of Chiropractic in the Nebraska Department of Health and Human Services, although my testimony today is only my personal opinion. I do not represent the Board of Chiropractic here today and I don't represent any organization or association here this afternoon. For thousands of Nebraskans, chiropractic is an integral part of their healthcare and is not considered alternative, ancillary, or auxiliary. Chiropractic relieves pain and keeps people functioning at work and at home. Doctors of Chiropractic serve as portal-of-entry providers into the healthcare system because they are educated, trained, and licensed to diagnose without requiring a referral from another provider. Medicare grants physician status to Doctors of Chiropractic, Medicine, and Osteopathy. Chiropractic currently is covered by Medicare, Medicaid, workers' compensation, liability insurance, and all major private insurers. In our evolving healthcare system, many sources predict a shortage of primary care physicians in the future. Allied health professionals such as physician assistants and advance practice registered nurses can help to alleviate this shortage. Chiropractors are equipped to fulfill the need of low-cost primary care in many situations. In my almost 30 years of practice, I've had a number of times when I've been the first provider to correctly diagnose conditions that include fractures, cancers, a variety of other diseases. An accurate and timely diagnosis is essential for the proper treatment of any condition, which may include prompt referral to an appropriate specialist or facility. Healthcare costs continue to increase, and resources are limited, so reasonable limits on benefits are necessary. Regardless of the form of health insurance exchange recommended and developed for Nebraskans, patients are best served when chiropractic is included as part of an essential benefits package in which clearly defined, reasonable chiropractic benefits are not intertwined with other providers such as osteopathy, physical therapy, occupational therapy, or speech therapy. Chiropractors are providers, not a service. And once again, I appreciate the opportunity to present testimony to the committee this afternoon, and if you have any questions, I would be happy to try to answer those.

SENATOR PAHLS: Senator Schumacher.

DOUGLAS VANDER BROEK: Yes, sir.

SENATOR SCHUMACHER: Thank you for your testimony today. Is chiropractic...which of the ten essential benefit categories does it fit under?

DOUGLAS VANDER BROEK: I'm not familiar with that essential benefits package, but basically it's an essential benefit in, like I said, Medicare, Medicaid. It's included in everything. I think it could be under acute care. It could in some cases be under preventative care.

SENATOR SCHUMACHER: Is...to the extent it's similar to the dietetics testimony, and not...you know, if the state adds it into the program, it goes on the state's nickel if it's in the Medicaid section of the program. Where do we make the dividing line? Basically the same question I asked before.

DOUGLAS VANDER BROEK: I understand. The difference is that chiropractors already serve as a portal of entry into the healthcare system. In other words, a patient can come directly to us without a referral from anybody. We're trained and educated to examine, render a diagnosis, submit that directly to insurance coverage, and it's already covered. So there is a difference there with some of the other associated providers. But the...for example, to use Medicaid as an example: In Nebraska, Medicaid right now, an adult 18 and over can see a chiropractor for 12 annual visits. And then I think a one-time-a-year x-ray coverage up to $100 is covered. The problem...and this is, you know, I realize we have to go...many times we use existing patterns for what we're going to do. But the problem that I have with that is that chiropractors are reimbursed only for manipulation. For example, in Medicare, we are reimbursed only for manipulation. We're not reimbursed for the full scope of practice of things that we can do. For example, we're not reimbursed by Medicare for exams, x-rays, physical therapy, like ultrasound and all these things like this, exercise. And what happens then is you really don't utilize a provider. And in a state like Nebraska when there are many rural areas, we already have 635 licensed chiropractors in Nebraska, many of whom are serving in very rural areas, some of whom practice in small towns where that may be the only x-ray machine in town where we can determine whether a young guy has a sprained ankle or a broken ankle on the football field. So it would seem that if we could still contain costs, to contain costs by maybe a number of annual visits, but expand the codes that a chiropractor could be reimbursed, it would make more sense in utilizing those people who are already available. I don't know if that answers your question, Senator.

SENATOR SCHUMACHER: Thank you. I understand where you're coming from.

DOUGLAS VANDER BROEK: Thank you.

SENATOR SCHUMACHER: Thank you.

SENATOR PIRSCH: I'll just ask for your comments regarding the same question I've

been asking this afternoon, which is just going forward, this committee, processwise is there any suggestions or comments about how we can make sure that we're doing a good job procedurally in making...before we make this decision?

DOUGLAS VANDER BROEK: Yeah, and I really personally would not have a position on the, you know, the federal versus the state insurance exchange but just that chiropractic be included in whatever situation arises, because I think we would be remiss if we don't make good use of those trained, licensed, regulated providers that are already in place.

SENATOR PIRSCH: Thank you very much.

SENATOR PAHLS: I know you do not represent the organization, but in the discussions have you ever heard...I mean, have they...there's been some discussion on this I'm assuming.

DOUGLAS VANDER BROEK: Right.

SENATOR PAHLS: Have you been involved in any of that? I'm not asking to pinpoint you down.

DOUGLAS VANDER BROEK: I have not. I was a member of the board of the state association, the Chiropractic Association, and actually was legislative chairman of the board there for a number of years, so that's why I had contact with a number of you. But about three years ago, when I was appointed to the Board of Chiropractic, I resigned that state association position. But even still as an active member I've not heard any discussions really about which way the association should go. I think the feeling is that the profession needs to be included no matter what is the end result.

SENATOR PAHLS: Do you know, have they been included by the Department of Insurance? I may be asking questions that...

DOUGLAS VANDER BROEK: The state association has met with the Department of Insurance. In fact, I also met with the Department of Insurance yesterday with some of the state association representatives.

SENATOR PAHLS: Okay. What I'm trying to see if there's a complete circle, and it sounds like almost all the groups we've had in front of us today, there has been discussion between the Department of Insurance and the associations. And you're telling me that in the chiropractic association there has been discussion with...

DOUGLAS VANDER BROEK: Right.

SENATOR PAHLS: Okay.

DOUGLAS VANDER BROEK: My personal opinion, again, is that it would be better if Nebraska could develop its own parameters. Just as an example, with Nebraska, like I said, being a lot of rural areas, as you senators know, Nebraska is not just Lincoln and Omaha. And I have my main practice in Lincoln, but for many years I had another practice in Syracuse, which is a smaller town. And just to use, for example, the state of New Mexico and chiropractic as an example, four years ago they legislatively created another category of chiropractor, which is advanced practice chiropractic physician. That was done in cooperation with the pharmaceutical, medical, and chiropractic boards, and that legislation was initiated. And what that does is that gives that advanced, educated, and practiced chiropractor a formulary of injectables which are legal, for example, for vitamin B12 injections and things like that. And that was done mainly because so many parts of New Mexico are underserved, such as the Indian reservations and the rural areas. So that's an example where an individual state kind of, you know, thought outside the box and decided what they needed for their state rather than a state like, you know, Massachusetts, New York, or California. Although there may be things that we can utilize. For example, two years ago in our office when we went to an electronic health system, we didn't have somebody write our own system from the ground floor. We shopped for all the existing systems, we bought one, and then we customized probably 20 percent of the system. So there's a mix.

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. I appreciate it.

DOUGLAS VANDER BROEK: Thank you.

SENATOR PAHLS: I don't think we missed anybody, everybody that was invited. Okay, I want to thank you, and I'm just going to end up and say: To be continued. We have several more of these meetings and we will be hearing from the Department of Insurance. And I appreciate your time today. Thank you.