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Appropriations Committee  
February 17, 2015

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[LB430]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, February 17, 2015, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on AM242 to LB430. Senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Ken Haar; Bill Kintner; John Kuehn; Jeremy Nordquist; John Stinner; and Dan Watermeier. Senators absent: None.

SENATOR MELLO: Good afternoon and welcome to the Appropriations Committee. My name is Heath Mello. I'm from south Omaha, representing the 5th Legislative District, and serve as Chair of the Appropriations Committee. I'd like to start today off by having members do self-introductions, starting first with Senator Kintner.

SENATOR KINTNER: I'm Senator Bill Kintner from Legislative District 2, which is the rural part of Sarpy County, Cass County, and a little bit of Nebraska City.

SENATOR MELLO: Sitting next to Senator Kintner's right is Senator Jeremy Nordquist, who represents the 7th Legislative District, from South Omaha.

SENATOR KUEHN: John Kuehn, District 38 in south-central Nebraska.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR MELLO: Sitting next to Senator Hilkemann is Liz Hruska, our fiscal analyst for the day.

SENATOR STINNER: I'm John Stinner. I'm from District 48, Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz. I represent District 29, south-central Lincoln.

SENATOR HAAR: I'm Ken Haar, Legislative District 21, northwest Lincoln and part of Lancaster County.

SENATOR MELLO: Sitting next to Senator Haar is Senator Dan Watermeier from the 1st Legislative District, representing all and most of southeast Nebraska. Assisting the committee today is Rachel Meier, our committee clerk, and our committee page for the day is Julia. On the cabinet to your right, you will find some yellow testifier sheets. If you're planning on testifying today, please fill out one of the yellow sheets and hand it to Julia, our page, when you come up. It helps us keep an accurate record of today's public hearing. There is also a white sheet on the cabinet if you do not wish to testify but would like to record your position on a specific bill and/or, in this case, a specific amendment. We will begin bill testimony with the introducer's opening statements, followed...following the opening statements, we'll hear from supporters of the bill, then

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those in opposition, followed by those speaking in a neutral capacity. We will then finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spelling it for the record. If you do have any handouts, please bring at least 11 copies and give them to Julia, our page. If you do not have enough copies, she will help make more for the committee. As a general matter of committee policy, I'd like to remind senators that the use of cell phones and other electronic devices is not allowed during public hearings. At this time, I would ask all of us, including senators and others in the room, to look at our cell phones and make sure they are on the silent and/or vibrate mode. With that, at this time we'll begin today's public hearing on AM242, and I'll turn it over to Senator Hilkemann. [LB430]

SENATOR HILKEMANN: Good afternoon; want to welcome everybody to the public hearing today. We are hearing AM242 to LB430, and it's being introduced by Senator Mello. And with that, I will introduce Senator Mello and he begins the testimony. [LB430]

SENATOR MELLO: Good afternoon, Vice Chairman Hilkemann, members of the Appropriations Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. AM242, an amendment to LB430, would transfer \$7 million within the Department of Health and Human Services from Program 347, public assistance, to Program 354, child welfare. This early deficit issue was brought to the Appropriations Committee by the Department of Health and Human Services and is extremely needed because DHHS staff has projected that the Division of Child Welfare will be out of funds to spend after April 15 of this year. Since AM242 simply moves aid from one program to another within the Department of Health and Human Services, the amendment is budget neutral and no new General Funds are appropriated. The Division of Child Welfare has run out of funding this year due to a combination of factors, the first being the higher rate that is to be paid for foster care services which were recommended by the Nebraska Children's Commission and the department is statutorily required to pay for. The second factor which is a little concerning to me is the general practice of making the payment for prior years' bills with the following year's appropriation. I've spoken with members of this committee on the seriousness of this issue, and it's my concern with the general practice of backfilling payments with future appropriations. This serious problem needs to be addressed one way or another as we move forward with the Ricketts administration and developing the new biennial budget process. Thank you for your time, and I'd be happy to answer any questions you may have. [LB430]

SENATOR HILKEMANN: Any questions for Senator Mello? [LB430]

SENATOR STINNER: Senator, I do. [LB430]

SENATOR HILKEMANN: Senator Stinner. [LB430]

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SENATOR STINNER: Senator Mello, you were talking about the practice of paying prior bills with current appropriations and the need to cease that practice. Do we really have a number? Seven million, is that the exact number that they need to have? And have they stopped this practice, and how do we know that? [LB430]

SENATOR MELLO: Senator Stinner, I guess that in front of the committee I think the information that we have presented in front of us through the deficit requests from the Department of Health and Human Services show a \$7 million projected shortfall. I do know in the last...the previous biennium, our Fiscal Office has run projections of their own where we identified projected shortfalls of aid within agency...the agency's Division of Child Welfare before. And so I think--to answer your question--what we have in front of us now is what the department has requested. That doesn't stop or...that doesn't stop, I guess, our own Fiscal Office from doing their own analysis moving forward of whether or not we need to address maybe a further appropriation as we move along the budget process. As I would remind the committee, as we discussed in previous Executive Sessions, normally, something like this would be addressed in the deficit request. But in part due to the Division of Child Welfare's essentially running out of funding by April 15, we are taking an unusual step with today's hearing on this amendment to transfer the money sooner instead of doing it through the traditional deficit bill process which would normally happen in late April or early May. So as we move along that process, Senator Stinner, I think Liz Hruska, the fiscal analyst, will be able to continue to do some analysis, provide that analysis to the committee, on whether or not we need to appropriate any further aid to the Division of Child Welfare. [LB430]

SENATOR HILKEMANN: Any other questions for Senator Mello? Oh, yes, Senator Bolz. [LB430]

SENATOR BOLZ: Senator, can you explain or...I don't know if anyone from the department is testifying or if it's just you, but I would like to hear deeper description of why the foster care rates were such a surprise or why this is such a big number. It seems to me that we might have known ahead of time that the foster care rates were going to increase. What happened that was so different or unexpected this year? [LB430]

SENATOR MELLO: (Exhibit 1) Senator Bolz, that's a great question. And my office was informed the department is testifying after me, and so I think to some extent you should have received a copy, the committee should have received a copy of the letter that I received that I passed out that gives a little background in regards to what the request is. I think that question is probably best left up to the department to answer, instead of me. But if the department is unable to, I will...can promise this committee we will work diligently with the department to find out more information to answer your question.

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[LB430]

SENATOR BOLZ: Very good. Thank you. [LB430]

SENATOR HILKEMANN: Additional questions for Senator Mello? Seeing none, are there other proponents for AM242? [LB430]

TONY GREEN: (Exhibit 2) Good afternoon, Senator Mello and members of the Appropriations Committee. My name is Tony Green. I am the acting director of the Division of Children and Family Services in the Department of Health and Human Services. I'm here today to brief you on the financial status of Program 354, which is our child welfare aid, and the request of the expedited funding of \$7 million for state fiscal year '14-15 related to child welfare services. As you've heard, there have been a variety of issues that have placed a strain on the state General Fund budget in Program 354. The department identified the bundled payment issue that's related to the Title IV-E foster care maintenance in April 2013 and notified our federal partner, Administration for Children and Families. Subsequently, the department was placed into a IV-E deferral, in July 2013, which was retroactive back to October 2012. Despite this bundled payment issue, the department was able to successfully negotiate the Title IV-E waiver which was awarded to us on September 30, 2013. The department operated under the IV-E deferral from October 2012 through September 30, 2014. This pertained to federal fiscal years 2013 and 2014. This resulted in 100 percent of Title IV-E foster claims being charged to state General Funds during this time period. The department collaborated with the 22 agency-supported foster care providers and the NFC to obtain actual source documentation and the amounts paid to foster parents for federal fiscal year 2013 and '14, and recovered \$4.4 million in federal funds. However, only one quarter of those recovered funds occurred in state fiscal year '14-15. Therefore, the department will only be able to utilize \$589,000, with the remainder being returned to the state General Fund for prior fiscal years. Most recently, the department was able to negotiate the lifting of the deferral, which will allow us to claim allowable IV-E foster care maintenance costs beginning October 1, 2014. In addition, and another strain, the passage of LB561, which was enacted in 2013, the Office of Juvenile Services began transferring youth to probation rather than the department effective October 1, 2013. While we were able to transfer a majority of this population to the Office of Probation, the timing of the transfer provided additional pressure to Program 354's state General Fund. There is still a small portion of this population that remains in the care and custody of the department for which there is no appropriation for. In order to be in compliance with LB530, which also was enacted in 2013, the department implemented new foster care rates effective July 1, 2014. Because of the previously identified bundled payment issue, the department now provides each provider two payments for each youth. One is the out-of-home maintenance payment that is the cost of raising a child in Nebraska, and an agency-supported foster care payment for provider's administrative cost related to providing foster care. This includes the cost associated with the recruitment and

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retention of foster care homes. The department collaborated with the Foster Care (Reimbursement) Rate Committee of the Nebraska Children's Commission in establishing these new rates. Additional costs have been incurred by the department as it relates to travel cost for agency-supported foster care and family support providers which has cost an additional \$2.1 million year to date. It is currently estimated that the department will run out of appropriated state General Funds in Program 354 during April of 2015. AM242 to LB430 would appropriate \$7 million of the June 30, 2014, unexpended General Fund appropriation balance that was reappropriated to Program 354 (sic--347), the public assistance aid, to Program 354, child welfare aid. Expedited treatment is requested since the department's supplemental request for 2014-15 will not likely be considered and approved until May 2015, given a traditional legislative calendar. The appropriation of \$7 million will allow the department to continue to operate and provide child welfare services. And I'd be happy to answer any questions you may have. [LB430]

SENATOR HILKEMANN: Senator Haar. [LB430]

SENATOR HAAR: Yes, thank you. Since I have not really been involved with Health and Human Services Committee, as such, could you tell me just briefly what the bundled payment issue is? [LB430]

TONY GREEN: The bundled payment issue? [LB430]

SENATOR HAAR: Yeah. [LB430]

TONY GREEN: Sure. So prior to unbundling the payments, there was one lump-sum payment that was given to the 22 agencies that do foster care,... [LB430]

SENATOR HAAR: Okay. [LB430]

TONY GREEN: ...agency-supported foster care. It was then at their discretion how much of that money they kept for their administrative purposes and then how much of the money they passed on to the actual foster parents. In working with the feds, we determined that we had to unbundle that in order to continue down the path of claiming IV-E funds. And so, working with the Children's Commission, we began to unbundle that with a specified amount now... [LB430]

SENATOR HAAR: Okay. [LB430]

TONY GREEN: ...that must be passed through to the foster parents and an amount that is to cover their administrative costs. [LB430]

SENATOR HAAR: And is that the federal government requires that, the unbundling,

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then or the...you as an agency did that? [LB430]

TONY GREEN: In order for us to draw down Title IV-E, it is required by the federal government. [LB430]

SENATOR HAAR: You have to do that, gotcha. Thank you. [LB430]

TONY GREEN: Correct. Thanks. [LB430]

SENATOR HILKEMANN: Yes, Senator Bolz. [LB430]

SENATOR BOLZ: Thank you for this information. That's...it's helpful. I just want to make sure I'm clear. Am I to understand your testimony that \$2.1 million of your \$7 million request is for foster care payment-related issues and \$4.9 is related to the deferred IV-E payment? Is that correct? [LB430]

TONY GREEN: Those are examples of how we got into the total \$7 million shortfall that we would be in as far as needing this expedited process. The \$2.1 (million) that you're referencing is really related to the travel cost that came along with the foster care and the family support rates for the providers to travel out to the foster homes to do their recruitment and retention and to also then provide their family support work to families across the state. We've seen an increase this year in that \$2.1 (million) specifically, the travel and time. [LB430]

SENATOR BOLZ: Let me maybe ask the same question a little bit differently, if that's okay. [LB430]

TONY GREEN: Okay. [LB430]

SENATOR BOLZ: Can you break down for me what the pieces of the \$7 million request are? How did we get to \$7 million? [LB430]

TONY GREEN: Well, you have a larger total amount that's been presented, as far as the deficit request, in the Governor's budget of about \$15.7 (million). This \$7 million, which is just a reappropriation from our public assistance fund to our child welfare fund, which is a part of that \$15.7 million, was our way to come in and request that in this expedited manner, so that we could have the funds necessary to continue on in anticipation that that budget would be approved and the additional funds would be appropriated to us in its normal calendar cycle. [LB430]

SENATOR BOLZ: I see now. Thank you. [LB430]

TONY GREEN: Okay. [LB430]

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SENATOR BOLZ: And just one last question: Why couldn't you have predicted the time and travel costs? Weren't those things already wrapped into the reimbursement rate? Why was that a surprise? [LB430]

TONY GREEN: This has been an ongoing negotiation with our providers in trying to, with all of the services that they're providing across the state, to get to a rate and a reimbursement system that's fair and equitable for them. And so part of the negotiation of the new rates that we implemented for foster care, as well as our new family support, included a time and travel function, because providers were telling us they just could not provide the services any longer when some of them in certain parts of the state are traveling in excess of two hours to get to a family to provide that service. And to have no reimbursement for that was problematic for them. [LB430]

SENATOR BOLZ: Very good. Thank you. [LB430]

TONY GREEN: Thanks. [LB430]

SENATOR HILKEMANN: Senator Stinner, you had a question. [LB430]

SENATOR STINNER: Thank you. I...help me a little bit to understand your budgeting process. As you go into a year, you have the last year to reflect upon what historically has happened, either in rates, number of folks in the foster care system, etcetera. So when you sit down and you look at funding sources, do you have a pretty good idea of what the federal government pays percentagewise or are you saying that you didn't get reimbursed to the level that you thought from the federal government? And of course, then we appropriate money from the state side, right? [LB430]

TONY GREEN: Correct. [LB430]

SENATOR STINNER: So as I put that budget together and I look at, I'm going to, for an example, say that I'm going to pay the providers 2 to 3 percent more for cost increases. I'm going to have 100 more people in the foster care, so that's going to add to my cost. So I start to put this budget together on a projected basis with federal reimbursement. Now tell me what went wrong in that process. I'm just kind of an add-and-subtract type of guy, just a small-time country banker. I've got to connect dots. [LB430]

TONY GREEN: Sure. So I think, you know, what's been problematic is that this has been a moving target for us for a couple of years now in...you know, as it relates to the federal funding. We have kind of been in a position of not knowing what we were going to be able to capture or recapture from the feds as it relates to the deferral that we were put in which occurred as a result of that bundled payment issue. And many of you have heard the...back to the privatization of child welfare when we did that statewide caused

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us to get into that. So it was a little hard to project how much we were going to be receiving back because there was a process where we were able to work with the feds to provide them as much documentation as we could to recoup as much as we could from them, but it was unknown what that would be. The other thing that I think is different here in projecting that is that some of these changes came about in the middle of the biennium, and so we didn't implement the new foster care rates until halfway through. And so as we began those...the bundled payment issues happened in April 2013 when those started to come to light. And so when we were doing...when fiscal notes were prepared for the foster care rates, it was still under the bundled rate system, as I understand it. [LB430]

SENATOR STINNER: But as soon as that started to show up, wouldn't the amber light and the red lights go on...off and say, wait a minute, I'm going to be short? And isn't there a procedure that would...that you would follow to alert the committee, to alert the Legislature, hey, we've got a problem here? [LB430]

TONY GREEN: There is. [LB430]

SENATOR STINNER: I sit on a lot of boards, and I hate getting surprises. [LB430]

TONY GREEN: Correct. [LB430]

SENATOR STINNER: This, in my estimation, is a surprise. So there has to be a better procedure to get in front of these things than to sit here today in an emergency session. Would you agree with that or am I overstating that? [LB430]

TONY GREEN: I absolutely agree with you and look forward to working with the new administration so that there are not surprises. [LB430]

SENATOR STINNER: I just have one more question and this one relates to Program 354, child welfare. And you may be able to answer just as well. There is a disallowance. This is a disallowance for \$14,589,973. That one I don't have my mind around or my arms around. Could you enlighten me on what that is? [LB430]

TONY GREEN: And I can certainly have my fiscal officer maybe go into that detail, if you would like, or... [LB430]

SENATOR STINNER: Okay. I'd just like...that's a big number. It's got my attention. [LB430]

TONY GREEN: Okay. [LB430]

SENATOR STINNER: I'd like to have a little more color, a little more understanding

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about what that's about, so. [LB430]

SENATOR HILKEMANN: Okay. We have additional...okay, you're going to have her answer that now for you? [LB430]

TONY GREEN: Yes. [LB430]

SENATOR HILKEMANN: Are there additional questions for Mr. Green? Is this...does this deficit, does this go across the entire state? In other words, are we involving in the eastern district, which is under the privatization? Is that part of it, as well? Or it's just over the whole... [LB430]

TONY GREEN: Of the entire deficit that we'd... [LB430]

SENATOR HILKEMANN: Right. [LB430]

TONY GREEN: ...you'd be looking at in the larger... [LB430]

SENATOR HILKEMANN: Right, right, right. [LB430]

TONY GREEN: Yes, it's the entire state. [LB430]

SENATOR HILKEMANN: Okay. Okay. You would... [LB430]

MINDI ALLEY: Yes. [LB430]

SENATOR HILKEMANN: You may answer the question for Senator Stinner. [LB430]

MINDI ALLEY: Hello. Good afternoon. My name is Mindi Alley. I'm the Children and Family Services financial officer. And to answer your question, Senator, the reason for the disallowance--which was originally \$21.9 million, which the department was able to successfully negotiate down to \$11.7 million, excluding interest--was because of the IV-E bundled payment issue. So what Nebraska had always done historically was claim the bundled rate that was paid to the agency-supported foster care providers as allowable Title IV-E maintenance. Only the payment for the room and board is actually allowable under Title IV-E for foster care maintenance. The department was historically claiming the bundled payment, which also included the administrative rate. So because we're only claiming what is truly allowable and have not moved yet to being able to claim down IV-E administratively for the 22 agencies in NFC, the agency is losing out on federal dollars. If you go back and look historically at what the department claimed, it's inaccurate because all of those claims were essentially deferred. [LB430]

SENATOR HILKEMANN: Okay. [LB430]

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SENATOR STINNER: Can I... [LB430]

SENATOR HILKEMANN: For the...just before we take that question, for the record, would you state your name and spell it for the... [LB430]

MINDI ALLEY: Sure. Mindi, M-i-n-d-i. Last name: Alley, A-l-l-e-y. [LB430]

SENATOR HILKEMANN: Okay. Senator Stinner. [LB430]

SENATOR STINNER: Just for my purpose only, do you have a compliance person that reads all these regs to ensure that we're accounting for things and allocating costs and testing our models so that we don't have a disallowance again? [LB430]

MINDI ALLEY: I wouldn't say that we have a compliance person, per se, but I've spent the majority of my time with the department in cleaning up these IV-E past claiming issues, so. [LB430]

SENATOR STINNER: Okay, so you're the expert that says, you're going to be in full compliance, your cost models are in compliance? [LB430]

MINDI ALLEY: Yes. I work very closely with the department's financial services area related to IV-E claiming. [LB430]

SENATOR STINNER: Okay. [LB430]

SENATOR HILKEMANN: Do we have additional questions for Mindi? Mr. Green, for the record--I was writing a note here--did you spell your name for the record, also, at the beginning? [LB430]

TONY GREEN: I believe I did. [LB430]

SENATOR HILKEMANN: Okay. [LB430]

TONY GREEN: But if not, it's... [LB430]

SENATOR HILKEMANN: Very good. Well, I asked Liz here and I missed it. [LB430]

TONY GREEN: I could do it again, just in case. [LB430]

SENATOR HILKEMANN: No, that's fine. I missed it. I'll have to tweak up my ears a little bit. Any other...okay, any other questions? All right, seeing none, are there other proponents for this measure? Seeing none coming forward, are there any opponents to

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the measure? Seeing no one coming forth, is there anyone who is neutral on the issue that would like to speak? Okay, seeing none, Senator Mello...Senator Mello waives closing, so that will close the public hearing on AM242 for LB430. Thank you very much for coming. [LB430]