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Transcriber's Office

Appropriations Committee
March 13, 2017

[LB513]

The Committee on Appropriations met at 1:30 p.m. on Monday, March 13, 2017, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB513. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Rob Clements; Robert Hilkemann; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: None.

SENATOR STINNER: (Recorder malfunction)...Appropriations Committee hearing. My name is John Stinner and I'm from Gering and represent the 48th District. I serve as Chairman of this committee. And I'd like to start off by having members do self-introductions, starting with Senator Clements.

SENATOR CLEMENTS: I'm Rob Clements from Elmwood, District 2.

SENATOR McDONNELL: Mike McDonnell, LD5, south Omaha.

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

SENATOR STINNER: John Stinner, 48th District, all of Scotts Bluff County.

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

SENATOR VARGAS: Senator Tony Vargas, representing District 7 in downtown and south Omaha.

SENATOR STINNER: I believe Senator Kuehn and Senator Watermeier are in a meeting. They'll be joining us shortly. And Senator Wishart is missing in action. I also want to introduce our committee clerk, Jennifer Svehla. She is to my far left. And I'm flanked by my two favorite fiscal analysts, Liz Hruska and Sandy Sostad. At each entrance you'll find green testifier sheets. If you are planning on testifying today, please fill out a green sign-in sheet and hand it to the committee clerk when you come up to testify. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today, there is white sign-in sheets at each entrance, where you will leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Move to the reserve chairs when you are ready to testify. Order of testimony will be introducer, proponents, opponents, neutral, and closing. When we hear testimony

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regarding agencies, we will first hear from the representative of the agency. We will then hear testimony from anybody who wishes to speak on the agency's budget request. When you come up to testify spell your first name and last name for the record before you testify. Be concise. And it is my request to limit your testimony. I'm going to try five minutes but we may have to pull it back to three just to get everybody through. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will begin today's hearing with Agency 25, Department of Health and Human Services. Good afternoon. [AGENCY 25]

(AGENCY BUDGET HEARING)

SENATOR STINNER: So that concludes our hearings on Agency 25, Health and Human Services, and we will now open with LB512. Senator Hilkemann. LB513. [AGENCY 25 LB513]

SENATOR HILKEMANN: LB513. [LB513]

SENATOR STINNER: LB513, I'm sorry. I'm becoming dyslexic or something. [LB513]

SENATOR HILKEMANN: LB512 I only had a five-minute opening; LB513 I've got a 35-minute opening on. (Laughter) [LB513]

SENATOR STINNER: It's been a long day. [LB513]

SENATOR HILKEMANN: (Exhibit 1) Thank you, Senator Stinner and fellow members of the Appropriations Committee. I'm Senator Robert Hilkemann, that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent Legislative District 4 in west Omaha. I'm here today to introduce LB513 which would specifically direct the department to fix an ongoing issue of underpayments to Nebraska hospitals across the state. This is an issue that I believed needed additional discussion separate from the Medicaid budget that we just spent the afternoon talking about. We need this separate discussion because the department has been operating without the direction of the Legislature in deciding to continue what is essentially a Medicaid rate cut that was not aired through this committee. Starting in 2014, the Medicaid Division of Health and Human Services implemented a new payment system for calculating Medicaid payments for services delivered by PPS hospitals, or any hospital that are critical access hospitals. And you have a list of those hospitals was just passed out to you. When the system came on-line, the payments to those hospitals were inadvertently 6 percent less than the rates that were agreed upon. This was a problem that both

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the impacted hospitals and the department were almost immediately aware of and plans were made to correct this underpayment. However, we are now nearly three years into this new payment system and the department continues to drag its feet rather than implement the solution they had assured the hospitals they would put in place. This three-year delay is costing our state-federal matching dollars to the tune of more than \$6 million a year and it is an issue that needs to be addressed. There will be testimony following me to give you more information about what led to this problem and what has happened even since this bill was introduced. I would be happy to answer any questions and look forward to hearing what your thoughts are on this. [LB513]

SENATOR STINNER: Any questions? Seeing none, thank you. [LB513]

SENATOR HILKEMANN: Okay. [LB513]

SENATOR STINNER: Good evening. [LB513]

MEL McNEA: Good afternoon. How are you doing, sir? Good. My name is Mel McNea, M-e-l M-c-N-e-a, and I represent the hospital in North Platte, Nebraska, Great Plains Health--I'm the chief executive officer--and also the Nebraska Hospital Association. I want to thank you for allowing me to give testimony today. It's important that the funding be restored to our institutions. Great Plains Health, let me tell you a little bit about the organization. We cover a 24-county area in west-central Nebraska, southern South Dakota, and north-central Kansas. We have started a number of innovative programs to help reduce the costs of care. We're really blessed with the fact that our local board is an independent board and we're an independent hospital. We're not part of a system. One of the things, imperatives that they have challenged me with is to reduce the cost of care, provide access to quality care to all citizens in that regional area. Some of the programs we've started: the transitional care nurse program is a program that we put in place. We've reduced our readmissions to our institution from about 14 percent down to 10. We've actually had a group come from England to look at the program, so it's been very successful. The other program that we have instituted that is in dire need for west-central Nebraska is our wound care program. We are the only hyperbaric wound care center between Denver and Lincoln. That means we provide a holistic approach to wound healing for our patients. It is a money-maker? Absolutely not. Is it a necessity? Yes. Our growing population is physically growing, and the amount of diabetic incidence in our population is increasing. We have a 95 percent cure rate with our wound care program. We're really excited about that and it's a multidisciplinary approach. We also are faced with the need of providing home health services to that wide geographical area. I lost both my parents in the last two to three years in northern North Dakota. They didn't have access to healthcare, they didn't, that was similar to what we provide. They didn't have home health. They didn't have the respiratory support. And keeping patients in their homes and providing that quality care is really the goal and mission of our

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organization. We employ about 1,000 people. And I'd like to thank Senator Hilkemann for bringing LB513 to address the Medicaid underpayment. This started in July of 2014 with a 6 percent underpayment in Medicaid reimbursement rates, and it has been occurring since then. Underpayment is a result of the implementation of a new rate system utilized by the Department of Health and Human Services, specific to inpatient services for prospective payment systems or PPS hospitals. One of the unique things about Great Plains Health is that we have a behavioral health unit. We are only one of two behavioral health units in the western part of the state. Our behavioral health unit is a challenge to operate. It is something that is very needed in our community. Patient-related diagnoses so when patients are grouped to ask why they're being admitted, behavioral health or psychosis is the number one admission to our institution. The number three admission is drug and alcohol abuse. There is a lack of ability to provide services to people suffering from drug and alcohol in North Platte, Nebraska. We are a revolving door with our ER. We lack those services. So to cut some of the things that we do have, like the behavioral health unit, would be devastating for our community. DHHS was aware of the underpayments within a month after implementing this new system and they promised that they would address it beginning in 2016. Unfortunately, that didn't happen and we're here faced today with that compounded 6 percent with an additional look at probably another 3 percent cut that is proposed. That would be devastating to our organization. That would result in probably \$800,000 to the bottom line of our hospital. I want to just leave you with the impression that as an institution we are looking hard at healthcare. We want to reduce the costs of healthcare. But right now these costs to us would stop innovation in our hospital and programs that are needed, not only in west-central Nebraska but north-central Kansas. With that, I'd like to thank you and I'd be willing to answer any questions that you have. [LB513]

SENATOR STINNER: Any questions? [LB513]

SENATOR BOLZ: I have a question. [LB513]

SENATOR STINNER: I do have a question. I'll ask the question first. [LB513]

SENATOR BOLZ: You go. [LB513]

MEL McNEA: All right. [LB513]

SENATOR STINNER: What's the percentage of Medicaid that you...as far as revenue or...?
[LB513]

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MEL McNEA: Ours is very similar to what the gentleman from Scottsbluff, 10 percent and 15 as far as United. [LB513]

SENATOR STINNER: Okay. Who did this cost study? [LB513]

MEL McNEA: Pardon? [LB513]

SENATOR STINNER: Who did the cost study that has created this disparity of 6 percent? [LB513]

MEL McNEA: I believe it was the Department of Health and Human Services when they rolled out new guidelines as far as how to make payments to facilities. And the gentleman that testified earlier is absolutely right. We lose, for every dollar funding from Department of Health and Human Services, we also lose a dollar federal too. [LB513]

SENATOR STINNER: So HHS has employed somebody on a consulting basis to put together a cost study to reimburse hospitals. Is that what you're telling me? [LB513]

MEL McNEA: Yes, that's my understanding, sir. [LB513]

SENATOR STINNER: And they decided that you actually had a reduction in cost. [LB513]

MEL McNEA: They made a determination that the rates and adjustments, as they look at data and move forward with it, I think they made probably a good estimate of what they felt. But at the end they realized what they were doing was actually cutting us. So instead of going back and addressing it, it was just continued, that 6 percent decrease. [LB513]

SENATOR STINNER: What appeal process do you have, because obviously I've never seen a decrease in my healthcare rates as far as insurance or anything else. [LB513]

MEL McNEA: No. [LB513]

SENATOR STINNER: So I'm just calling...I mean I'm throwing the flag on the fact that somebody came out with a cost study that reduced cost... [LB513]

MEL McNEA: Uh-huh. [LB513]

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SENATOR STINNER: ...or showed a reduction in cost. That just defies gravity. [LB513]

MEL McNEA: Yeah. I think the options for us through our professional organizations, like the Nebraska Hospital Association do, that represents the hospitals in Nebraska, and also with our State Legislature, our community leaders, making them aware of the issues and problems. And in fact, we in North Platte, when we've entertained Governor Ricketts a couple visits, we've shared the information with him also. [LB513]

SENATOR STINNER: Okay. Senator Bolz. [LB513]

SENATOR BOLZ: How long have you been in the healthcare field? [LB513]

MEL McNEA: I've been in the healthcare field since 1988. I started in North Platte as an ultrasound technologist. I was going to work here a year and go back to North Dakota, but North Platte is a wonderful community. So I've been on the clinical side and the administrative side. [LB513]

SENATOR BOLZ: So this isn't the first time that you've seen a change in the way that funding is distributed or the rate methodology. This isn't the first time that you've seen a change like this be implemented in a healthcare setting. [LB513]

MEL McNEA: You're absolutely right. And in the healthcare industry, we try to adjust to each of those changes, but it's really at the cost of some programs. And in this case there's some programs I think that we would have to discontinue in North Platte. We're also working hard in a clinically integrated network with our physicians. We sit down at the table with our physicians, the hospital independent and employed physicians, and we're looking at outcomes and cost reduction. So I think it's the only clinically integrated network outside of Omaha. [LB513]

SENATOR BOLZ: Well, the question I'm trying to get at is this isn't the first time that we've had to change rate or make sure that providers were fairly paid. And so what's different about this time and what has happened in previous times to make sure that everybody gets treated fairly that isn't happening in this circumstance? [LB513]

MEL McNEA: This time what I'm concerned about, actually this weekend I was on call at the hospital so that means I spent Saturday and Sunday at the hospital. What I'm seeing more that I haven't ever witnessed before is barriers in access to care. I'll give you an example. We had a patient admitted with psychosis due to drug and alcohol abuse. His bill sitting as of today is \$100,000. I don't know if I'll get reimbursed for any of that. So drug and alcohol and the

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incidence of drug and alcohol and the ability to treat has really just multiplied in our community. The other thing I'm... [LB513]

SENATOR BOLZ: I'm sorry, I don't mean to be impolite. Just I guess I'm asking specific to this bill. So this bill says that we need to make right a payment system that didn't work and I'm trying to figure out what happened this time between providers and the Department of Health and Human Services that should have worked better? [LB513]

MEL McNEA: I don't know if I can answer that for you, Senator Bolz. Sorry. [LB513]

SENATOR BOLZ: Okay. Thank you. [LB513]

MEL McNEA: Yeah. The other thing I'm seeing that's different though, too, besides just the drug and alcohol is people going without access to. Some gentleman spoke earlier about oxygen and reimbursement for oxygen. Really, that has had a devastating effect. The respiratory companies have pretty much closed in the western part of the state because they can't afford to be open. So as an institution, we're even providing free oxygen to some of our patients and the equipment they need in order to get home. And if you've ever had a clinical issue with not being able to breathe, let me tell you, it is really something that for the patient is really difficult. And so we're pushing people out of our hospitals sometimes and we're making that special effort to make sure it's in a safe environment and it's something really in a hospital situation I've never seen before. [LB513]

SENATOR STINNER: Additional questions? Seeing none, thank you. [LB513]

MEL McNEA: Oh, thank you. [LB513]

SENATOR STINNER: Good evening. [LB513]

JEFF FRANCIS: Yep, good evening. Senators, my name is Jeff Francis, spelled J-e-f-f F-r-a-n-c-i-s. I'm the chief financial officer of Nebraska Methodist Health System in Omaha and I'm testifying on behalf of both Nebraska Methodist and the Nebraska Hospital Association. I would like to remind this committee of two important points in implementing the new Medicaid inpatient reimbursement model for the PPS hospitals that occurred in 2014. In the lead-up to implementing a new system, Department of Health and Human Services worked with the Nebraska hospitals that would be impacted and assured these hospitals of a budget-neutral change. The department and impacted hospitals also agreed that the new system would be continually updated so that we could always be using the most current version of the payment

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system. Such an approach is common with commercial insurance contracts. Since impacted hospitals last testified on this issue in January, there have been continued meetings with the department and with the Governor. We believe the department, with the Governor, have an ethical obligation to make the repeated budget neutrality assurances come true, especially when \$7 million was returned to the General Fund through LB22 as unspent Medicaid funds due. The unspent funds were not due to providing less services but due to the error in the base rate. However, because we have received no response to our request to the department to find a solution prior to this committee hearing, we are asking this committee to take the lead in solving this ongoing problem. LB513, these Nebraska hospitals ask that you include in the biennial budget specific language directing the Department of Health and Human Services, Division of Medicaid and Long-Term Care, to rebase the rates utilized for reimbursement of Medicaid inpatient services to the originally intended budget-neutral status. This will help ensure that moving forward the 6 percent underpayments will no longer occur. This is especially important given the preliminary budget request that a further 3 percent rate is put into place for Nebraska's largest hospitals which provide the overwhelming majority of services for Medicaid patients. Without this correction those Nebraskans most at risk, and in the case of Nebraska Methodist it's the newborns having their care provided in our neonatal intensive care unit, may be even more vulnerable. Medicaid does not cover the costs of taking of these patients at the hospitals. Furthermore, Nebraska is restricting additional federal money to help cover some of the cost to meet the medical needs of those most exposed. I thank you for the opportunity to speak with you today and happy to answer any questions you may have. [LB513]

SENATOR STINNER: Thank you. Senator Bolz. [LB513]

SENATOR BOLZ: Thank you. I had asked the division a question prior to the hearing about whether or not this rate issue was resulting in less...in lost federal funds or could result in less or lost federal funds. And since you referenced federal funds in your testimony, I wondered if you wanted to speak to that issue. [LB513]

JEFF FRANCIS: Yes. So for...to the extent that we...they are not putting in their dollar, we're missing out on another dollar of federal funds. So this is a return on twice the money from the state, and that's where we're having a concern with this cut that we're leaving--it's a phrase--leaving money on the table that could go to these most at-risk patients. [LB513]

SENATOR BOLZ: So you would agree with the legislative fiscal note that just demonstrates that if we put our \$6.2 (million) in, we'll get \$6.7 (million) matching. [LB513]

JEFF FRANCIS: Exactly. [LB513]

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SENATOR BOLZ: And so without the \$6.2 (million) that's being put in today, March 13, 2017, we're missing out on the federal funds that could have otherwise been drawn down. [LB513]

JEFF FRANCIS: Correct. And it's...we're only able to draw it down in the most recent quarter. So to date we have lost that ability over the last several years, especially with the return of the funds with LB22. [LB513]

SENATOR BOLZ: Thank you. [LB513]

JEFF FRANCIS: Thank you. [LB513]

SENATOR STINNER: Additional questions? I do have one. Just for the record, you are maintaining this is an ethical situation as opposed to legal, the reimbursement? [LB513]

JEFF FRANCIS: I believe so. With the assurances that we were getting since we started the discussions in August 2014, yes, they have not made that change. [LB513]

SENATOR STINNER: Appreciate that. Senator Wishart. [LB513]

SENATOR WISHART: Well, thank you for being here. Do you have sort of a written communication of the assurances that you were given about being neutral in terms of your rates? [LB513]

JEFF FRANCIS: We do. We've had several (inaudible) documented as well as presentations that DHHS has provided. I do not have those handy, but will make sure that NHA is able to provide those for the committee members. [LB513]

SENATOR WISHART: Thank you. [LB513]

JEFF FRANCIS: Uh-huh. [LB513]

SENATOR STINNER: I think I actually, for the record, I've seen an e-mail chain of correspondence back and forth between the department and the hospital. So any additional questions? Seeing none, thank you. [LB513]

JEFF FRANCIS: Thank you. [LB513]

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SENATOR STINNER: Any additional proponents? Seeing none, any opponents? Seeing none, anybody in the neutral capacity? Seeing none, would you like to close? Senator waives closing so that concludes LB513. [LB513]