

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

[LB681 LB958 LB979]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, January 31, 2018, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB681, LB979, and LB958. Senators present: Merv Riepe, Chairperson; Steve Erdman, Vice Chairperson; Sue Crawford; Sara Howard; Mark Kolterman; Lou Ann Linehan; and Matt Williams. Senators absent: None.

SENATOR RIEPE: We're going to go ahead and get started. This is the Health and Human Services Committee. I'm Merv Riepe. I'm the chairman of the Health and Human Services Committee and I reside in District 12; which is Omaha, Millard, and Ralston. We do have a quorum, so we're going to go ahead and get started. We may have some of our senators coming yet. I expect them, so...and when we do we'll work it in to get them introduced. But until that point, I'm going to start over here at my right with the young guy on the end. If you'll introduce yourself, Sir?

SENATOR KOLTERMAN: Senator Mark Kolterman, District 24: Seward, York, and Polk Counties.

SENATOR ERDMAN: Senator Steve Erdman, District 47.

KRISTEN STIFFLER: Kristen Stiffler, legal counsel.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45.

SENATOR WILLIAMS: Matt Williams, Legislative District 36.

SENATOR LINEHAN: Hi. Lou Ann Linehan, Legislative District 39.

TYLER MAHOOD: Tyler Mahood, committee clerk.

SENATOR RIEPE: And we have two wonderful pages that are sitting back here, and they're routinely here and they're extremely helpful and we appreciate it. And we may enlist them in some help to you if you need copies made as we go along. The committee will take up the bills in the order in which they were posted. Our hearing today is the public part of the legislative process, and this is your opportunity to express your position on the proposed legislation before us as we move through the agenda. The committee...committee members may come and go

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

because they will have other bills and other priorities. I know Senator Linehan has a bill that's coming up, and so she's going to have to leave momentarily. Don't take that as a personal offense to your bill, it's just the way that things go. We will also, at times, see some computers around...that we are moving into the 21st Century. Another 50 years and we'll probably get there. Some of the rules of engagement is...my request is that you turn off your phones or silence them. And if you are testifying, if you would...we have some reserved seats up front if you would move to those, that would just help us move through this process. The order of testimony will be that the...senator that is introducing the bill will make that introduction, and followed by...and there won't be a light on that senator...and that will be followed by proponents, then opponents, then anyone testifying in the neutral capacity. And there will be a light system there. And that light system is a five-minute light system: four in the green, one in the amber, and then a red light will come on. If you're in the middle of something, we'd ask you to...you don't just have to abruptly stop at that point in time, but you also may...I mean if it continues on, in fairness to everyone, I may ask you to pull it together and wrap it up. And you may have a senator that will ask you a question, that will afford you an opportunity to continue making your point. It will not be my intent to cut you off just to cut off a point, by any means. If you are going to testify, we'd ask that you sign an orange sign-in sheet, and one of the pages will get that and be able to get that to the clerk. We also ask you when you do come to the table that you spell your name, state your name, and that's all for the record. We just need to keep track of that. If you will not be testifying at the microphone, but you want to go on record as having a position on a bill hearing today, there are white sign-in sheets at each entrance where you may 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. Written materials may be distributed to committee members as exhibits only while testimony is being offered. And we ask you to hand them to the page--one of the pages--for distribution to the committee and the staff. And when you come up...when you do come up to testify, and if you don't happen to have copies this is where I was sharing that our pages are fleet of foot and they will quickly run off and make copies for you to distribute. All of that said, I'm going to open today's hearings by inviting Senator Blood, who is going to introduce LB681, and it relates to physical therapy. Senator Blood. [LB681]

SENATOR BLOOD: Thank you, Chairperson Riepe. Good afternoon to all of the Health and Human Services Committee, I'm appreciative of your time today to discuss and share LB681, a physical therapy interstate compact. My name is Carol Blood--spelled C-a-r-o-l, B-l-o-o-d--and I represent District 3, which consists of western Bellevue and southeastern Papillion, Nebraska. The purpose of the physical therapists' interstate compact is to increase consumer access to physical therapy services by reducing regulatory barriers to interstate mobility and cross-state practice. It was officially enacted on April 25, 2017. There are currently 15 states that are a part of the compact and 4 additional states, which includes Nebraska, pursuing legislation to become a part of this compact. This compact is an important part of my military families initiative this year. Military spouses, as a group, tend to be more educated than their civilian counterparts.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

When one must move every two to three years, these types of portable careers often come with new obstacles when a military spouse needs to renew a certification or state-issued license with each move. More than half of military spouses work in a career field that requires licensure or certification and more than 72 percent of those licenses must be re-issued each time there is a government-ordered move to another state. Although the military families are in the forefront of my actions, this bill obviously benefits all of our physical therapists and physical therapist assistants in Nebraska, as well as those who may want to come and find employment in our great state. Additionally, with telemedicine quickly becoming an important tool to our medical community, especially in the underserved communities of our state, physical therapists must be able to practice across the barriers created by geography. Passing this compact allows physical therapists to participate in a variety of service-delivery models to provide and coordinate care for patients here in Nebraska and in other participating states. This is a win-win for Nebraska patients as it broadens their ability to choose. Like most medical licensure compacts, there is the positive impact that patients can access physical therapy services with the assurance of greater patient protection and provider accountability as well as stimulate a 21st-century model for the delivery of care that will continue for decades. As with other compacts, a PT or PTA is required to have a license in the home state and meet other eligibility criteria, such as having no disciplinary action against the license for at least two years. Once eligibility is verified and all fees paid, the licensee receives what is known as a "Compact Privilege," and can begin legally working in another remote state. All compact privileges expire with the home state license. The physical therapist would only need to renew the home-state license and renew the Compact Privilege, but can practice through the entire licensure period without...excuse me, with the compact privilege. For licensees, this also means additional benefits; such as a reduction in paperwork, reduction in cost, and it streamlines requirements and the process. For licensing boards, it means access to the PT Compact Privilege Database, access to the on-line processing system, members state fee guidance, and the members state requirements checklists to support this effort. As Nebraska looks to adopt license reciprocity with other jurisdictions and look to make additional licensing reforms in support of our existing and future work force, what better way to keep that momentum than supporting another successful interstate compact, such as this one for physical therapists and physical therapy assistants? And should we be able to accomplish the passing of this compact, know, as well, that we support our military spouses who only wish to come and participate in our work force with the constant...without the constant impediments of licensure issues. Remember, they also serve in the stress of marital separation and relocating one's families are some of the most stressful life events that one can ever experience. Now imagine if you had to re-experience this every two to three years, often on your own without the support of your spouse due to the circumstances involved with his or her orders. This bill and several others being brought forward can help make a difference in these families. I hope you will consider voting this bill out of your committee and onto the floor for debate and possible adoption. I'm happy to answer any of your questions at this time, but would like you to know that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

we do have folks here who would like to testify in support of this legislation as well. And thank you for your time today. [LB681]

SENATOR RIEPE: Thank you very much. Are there...before I go on; Senator Howard, would you just introduce yourself? [LB681]

SENATOR HOWARD: Sure. I apologize for being late. I'm Senator Sara Howard. I represent District 9 in Mid-town Omaha. [LB681]

SENATOR RIEPE: Thank you. Now, Senator Williams. [LB681]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Senator Blood, for bringing this legislation. Two quick questions; you mentioned 15 states have adopted this? [LB681]

SENATOR BLOOD: Yes, Sir. [LB681]

SENATOR WILLIAMS: Are they states surrounding Nebraska? [LB681]

SENATOR BLOOD: Some are, and some are not; Washington, Oregon, Montana, North Dakota, Utah, Arizona, Colorado, Texas, Missouri, Kentucky, Tennessee, Mississippi, North Carolina, New Jersey, and New Hampshire. And the four that are considering it are Nebraska, Kansas, Oklahoma, and Pennsylvania. [LB681]

SENATOR WILLIAMS: I think Johnny Cash sang a song, (laughter) sounded like...what...maybe it was Johnny Cash. Would you look through that list and tell me those that you spot quickly that surround Nebraska? I think you mentioned Colorado. [LB681]

SENATOR BLOOD: Colorado. [LB681]

SENATOR WILLIAMS: Are there any of the other states that... [LB681]

SENATOR BLOOD: North Dakota. [LB681]

SENATOR WILLIAMS: ...are in the four that are pursuing this? [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR BLOOD: Kansas. [LB681]

SENATOR WILLIAMS: Okay. The other question is just a general question that you could address, and then others coming; every time we get into one of these we get into a discussion on scope of practice. [LB681]

SENATOR BLOOD: Right. [LB681]

SENATOR WILLIAMS: Could you address that particular issue, for me, please? [LB681]

SENATOR BLOOD: I can. I can say that--unlike the previous one that I brought forward--I personally, and the people that I have spoken with, do not feel like there is a scope of practice issue with this particular compact. [LB681]

SENATOR WILLIAMS: Okay, thank you. [LB681]

SENATOR RIEPE: Okay. Are there additional questions from the committee? Will you be staying around for closing? [LB681]

SENATOR BLOOD: Yes, Sir. [LB681]

SENATOR RIEPE: Thank you very much. We will now go to proponents. If you would be kind enough to state your name, spell it, and tell us who you represent, and please go forward. [LB681]

NATALIE HARMS: Good afternoon. My name is Natalie Harms, N-a-t-a-l-i-e H-a-r-m-s, and I am here to support LB681. I am a Nebraska-licensed physical therapist. I am the past president...a past president of the Nebraska Physical Therapy Association; a ten-year member of the Nebraska Physical Therapy Licensure Board; and I am here representing the Federation of State Boards of Physical Therapy as treasurer on their board of directors. I am also here because I'm a business owner in Nebraska with my partner, Joel Makovicka. We own 15 locations of physical therapy in eastern Nebraska; and we've done that in 8 years, so certainly have intentions to grow. The Licensure Compact for Physical Therapy has numerous positive benefits to physical therapy and to the public. And I might mention that, as the Federation of State Boards of Physical Therapy...my role there is public protection primarily, and the promotion of competence in physical therapists and physical therapist assistants practice. The positive benefits for the public include improved continuity of care, improved portability for military spouses, improved access to physical therapy providers--particularly on those surrounding states. And currently

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

Colorado and Missouri are the only two states that connect to Nebraska. But based upon my previous employment as a licensed physical therapist, or working with patients, I will tell you that many times patients I saw in my practice would winter in places like Arizona and Florida, for obvious reasons. And when they would call me on the phone, unbeknownst to me then, I was actually breaking the law if I spoke with them because physical therapy practice happens where the patient is, not where the practitioner is. So even though we don't have all of the continuous...contiguous states trying to enact the Therapy Compact at this point, there are numerous benefits to the public. It also allows increased choice of provider. And as Senator Blood mentions, it facilitates alternative delivery methods, such as telehealth. The compact benefits for the jurisdiction include preserving state-based licensure systems. It does not usurp authority of the state-based system. It also improves communication between states, it ensures full participation...and you have to fully participate in what's called the Exam Licensure and Disciplinary Databank. And what that is, is it's a system that the Federation of State Boards of Physical Therapy houses to comply with the National Practitioner Database (sic) expectations. And that is when something untoward or an encumbrance happens to a license, that information is reported and then it's reported out to the states that perhaps somebody is seeking licensure. I can tell you some of the states that I'm a liaison to...a particular instance between Kentucky and Tennessee where a practitioner lost their license because of a sexual assault on a patient, then moved to Tennessee. But no communication happened and that particular practitioner actually worked for a year because at that point Tennessee didn't participate in the ELDD. So they didn't get the updates, either from the government or the FSBPT. So this requires anybody within the compact to report. Most states report at this point, but there's still a handful that don't. It also allows us to share investigatory information between jurisdictions. It does require criminal background checks; not all states require that. And it also requires continuing competence. The key provisions of the Physical Therapy Compact are, number one, disciplinary actions. So as Senator Blood mentioned, you cannot have more than...you cannot have any encumbrances to your license within the last two years. So having sat on the licensure board, you actually have a better pool of practitioners because these are people that are mobile, but they have not been in trouble within their own states. Continuing competence is required. And, again, like I mentioned, criminal background checks. The Compact Commission itself it represented with a delegate from each member jurisdiction who participates. The commission only has the authority to make rules for the commission; it does not have any authority to change statutory law within the jurisdictions that participate. Why Nebraska? As Senator Blood mentioned, because we do have a major military installation; because of close proximity to neighboring states, I've worked in both ends of the states and it was common that we would go to neighboring communities, following patients that may travel, as I mentioned. And, lastly, I will tell you that a lot of my time these days is spent in Arizona. And it's interesting to me when I'm at a social event that when people find out I'm a physical therapist they'll ask me questions--they hurt their shoulder over the weekend, their golf swing--and it's cost-prohibitive to carry licenses in multiple states because you have to comply with multiple types of continuing competency as well as the fees

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

themselves. So being in an interstate compact would be a great thing for us to be able to do for the practitioners and the public and certainly the licensure board in the state of Nebraska. And I certainly thank you for your time and listening to my testimony. And I'd be happy to answer any questions that you might have. [LB681]

SENATOR RIEPE: Thank you. Thank you very much. Other questions? Senator Erdman. [LB681]

SENATOR ERDMAN: Thank you, Chairman Riepe. I was interested in your comment, when you said you worked on both ends of the state. Describe that for me, will you? [LB681]

NATALIE HARMS: I worked in Scottsbluff for several years, and we would do practice in Torrington, Wyoming. And then I've also...we have a practice...we've been asked many times to open clinics in Iowa, but it's really cost prohibitive to do so from a licensure standpoint. [LB681]

SENATOR ERDMAN: I would agree that you were on both ends of the state. (Laughter) [LB681]

NATALIE HARMS: Yes. (Laughter) [LB681]

SENATOR ERDMAN: So the question then, when you were working in Wyoming, did you have to have a license in Wyoming? [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR ERDMAN: Do they have...do they have license over there? [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR ERDMAN: Okay. I didn't know that they did. [LB681]

NATALIE HARMS: All states have license; there's two states that don't require continuing competence or education, at this point. [LB681]

SENATOR ERDMAN: Okay, thank you. [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: Okay. Senator Linehan, please. [LB681]

SENATOR LINEHAN: Thank you, Chairman Riepe. So to be a physical therapist, is there a national exam like there is for nursing? [LB681]

NATALIE HARMS: There is, and the Federation of State Boards of Physical Therapy is the owner of that exam. [LB681]

SENATOR LINEHAN: So if you're a physical therapist anywhere in the continental...or the United States you have to take that exam... [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR LINEHAN: ...we know that much about anybody that's licensed anywhere? [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR LINEHAN: Okay. Thank you very much. [LB681]

SENATOR RIEPE: Senator Williams. [LB681]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you for being here. I asked the question of Senator Blood concerning the scope of practice. Can you address that as a physical therapist, explaining in some detail, if you can, what the scope of practice differences might be from some of our surrounding states to Nebraska in the discipline of physical therapy and physical therapy assistant? [LB681]

NATALIE HARMS: Well, the one scope issue that would come up that stands out more than anything is the state of Nebraska requires a jurisprudence exam before you can practice in the state. So that would still be in place. So even though somebody might be issued a privilege to practice they would still have to take our jurisprudence exam over our laws. Some of the scope issues...the surrounding states...dry needling is probably the one that comes to mind because there's such a divergent opinion. In Washington State they have determined that dry needling, functional dry needling, is outside the scope of practice; and in Nebraska it was determined that it is within the scope of practice. So in that scenario...and I apologize it's not a surrounding state...but if someone were to practice in Washington they could not utilize that skill even though they might be educated to do so. Supervisory requirements; physical therapists to physical

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

therapist assistants, in the state of Nebraska, a...first of all, and this gets into telehealth a little bit, a physical therapist has to complete an evaluation hands-on. I don't know how many of you are familiar some of what happened in medicine in Texas, where they have the same requirement. They worked with the American Telemedicine Association to work with that. But right now in Nebraska, if I am a therapist, I have to evaluate a patient hands-on, I cannot do it through telemedicine. The additional requirement in supervision is that physical therapist assistants are not autonomous. And if there's questions or problems with the patient, the physical therapist has to be able to be available, hands-on. In addition, a supervisory visit has to occur within a 30-day window. And it is the expectation of the licensure board that if there's problems the physical therapist is available. Some states allow physical therapist assistants to work for 90 days without a supervisory visit. But if somebody with a privilege to practice is in Nebraska, they have to abide by our supervisory rules, and that would be an example of one. [LB681]

SENATOR WILLIAMS: And they would have to abide by...abide by all of the scope of practice laws in that state, too? [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR WILLIAMS: Do you see any concern about recognizing that there are some differences in scope of practice in different locations? Do you see any problems arising from that, if someone going across the river or going to Kansas or...well, I'll say Colorado because they're in the compact. And how do they understand what that scope difference might be? [LB681]

NATALIE HARMS: I am much more comfortable in Nebraska than I am in some states, because of our jurisprudence requirement. It is a test on the law, and it covers all of the main areas of our statutory scope, as well as our rules and regulations. So at least education has happened at that point. [LB681]

SENATOR WILLIAMS: So could you explain that a little bit, so I think that we all understand exactly what you mean by jurisprudence exam? So someone with...using the compact to come into Nebraska would have to take that exam... [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR WILLIAMS: ...and that exam would cover those things that you can and cannot do... [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

NATALIE HARMS: Yes. [LB681]

SENATOR WILLIAMS: ...in our state? [LB681]

NATALIE HARMS: Yes. And that's not a requirement of all states, which is unfortunate. I actually think that through the compact, and after my experience on the licensure board, it hurts me to say this, but because you are dealing with people who are mobile and don't have a history or at least a recent history of any kind of encumbrance that it's a safer pool of individuals. And the other thing that happens, is when you're on the state licensure board and a complaint comes in, I will say in the old days because I'm there, if we saw untoward practice, we could say as a licensure board, stop. Something major happened, a patient was injured, you're practicing inebriated; whatever the case was, we could as a board say stop. And because of what happened with the dental board in North Carolina, that communication now goes through the attorney general, which isn't a hard process in Nebraska, because we're not that... there's only 2000 practitioners in this state. However, in the compact, if something happens and if somebody is practicing with a privilege in Nebraska, and our state board gets a complaint, they can remove that practice to privilege...privilege to practice. Once that's done, it's an immediate response from the commission; they notify the other states that that person has a privilege to practice in, and they notify the home state. So if somebody, let's say, were practicing in Missouri, if Kansas were successful and Nebraska, if anything happens to that person in any one of those states their privilege to practice would be affected much more quickly than an investigatory process. [LB681]

SENATOR WILLIAMS: Thank you. [LB681]

NATALIE HARMS: You're welcome. [LB681]

SENATOR RIEPE: When you said "it's affected," does that mean it's equally restricted...or... [LB681]

NATALIE HARMS: It's actually removed. [LB681]

SENATOR RIEPE: In all of them? [LB681]

NATALIE HARMS: Yes. [LB681]

SENATOR RIEPE: So it's not...it's not that they go through some process of...it might be less in one and more in the other, and it's consistent? [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

NATALIE HARMS: Correct, correct. Now if the investigation happened in the home state, again, everybody has the ability to participate, as you know. For instance, if somebody is licensed in Nebraska and licensed in Iowa, and their license in Iowa...something would happen to that, the licensure boards talk--at least, they should--and they use the federation as well, so that information does flow. [LB681]

SENATOR RIEPE: Okay. Thank you very much. Let's see if there are...Senator Erdman. [LB681]

SENATOR ERDMAN: Thank you, Senator Riepe. So following up on that, if those people were practicing from a state that's in the compact, they would be notified. But what if they went to a state that wasn't in the compact? Would they also be notified? [LB681]

NATALIE HARMS: They would be if they participate in the Exam Licensure and Disciplinary Database. [LB681]

SENATOR ERDMAN: So they may not notify those other states if they're not participating? [LB681]

NATALIE HARMS: Yes, if...from the compact standpoint, they would not be notified if they weren't participating. If...at this point, let's just say today, if something happens to a practitioner in Nebraska, as soon as an encumbrance happens to that license, we do a great job of notifying the Federation of State Boards of Physical Therapy, and then that information is available to other jurisdictions. [LB681]

SENATOR ERDMAN: Thank you. [LB681]

SENATOR RIEPE: I see no other questions. Thank you very much. [LB681]

NATALIE HARMS: Thank you so much. [LB681]

SENATOR RIEPE: Additional proponents? If you would be kind enough, Sir, state your name, spell it, and who you represent and away we go. [LB681]

KIRK PECK: (Exhibit 1) Sure, thank you. My name is Kirk Peck. It is K-i-r-k, last name is P-e-c-k. And thank you, Chairperson Senator Riepe, and members of the HHS Committee and thank you for allowing me to testify in support of LB681. My name is Kirk Peck and I've been a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

licensed physical therapist in Nebraska now for 27 years. I am currently here representing the Licensure Board of Physical Therapy. I serve as a member on the board and the board has taken a position in support of LB681 to adopt the PT Licensure Compact. Currently there are...and a little of this you've heard already, but I think this will be helpful to hear this again...as you'll see a map on the back side of the testimony that I passed around, of the states that have the compact and those that are doing this. There are 15 states that have adopted the PT Licensure Compact, with New Jersey being the most recent. It was signed by Governor Chris Christie on January 15, 2018. Of the 15 states, several are geographically close, which have been mentioned, to Nebraska including Colorado, Missouri--I count Texas--Utah, and Arizona as close, because I deal with those states a lot as well. Kansas and Oklahoma have also introduced legislation, and you can see that on the map...where they're at. So please take a look at that, on the back side. And that was sourced from the compact Web site, so I gave the Web site on there as well, in case you want to see it. They will continue to update that as more states adopt the compact or look into it. Adopting LB681 will benefit residents of Nebraska as well as populations living in other states in need of physical rehabilitation for quality of life. LB681 will achieve its goal by allowing the state of Nebraska to participate in the national trend towards support of licensed physical therapists and physical therapist assistants to obtain compact privilege to practice in other states who are participating in the compact. Several entities will benefit from LB681, including the following: military spouses who are licensed to practice as PTs or PTAs but often required to relocate to new states, as member of the compact, LB681 will ease the burden of these...for these individuals to practice physical therapy in Nebraska and any other compact state. Civilian PTs and PTAs who travel to various states fulfilling temporary employment vacancies in hospitals, skilled nursing facilities, outpatient clinics, and in particular, rural settings where a significant shortage of PTs and PTAs currently exists. Licensed Therapists who travel in support of athletic teams and other organizations that cross state lines as part of business operations, sometimes those are already exempt but it may help them as well. Licensed therapists who live in close proximity to state borders where providing healthcare services in two states is a matter of convenience. For example, there's a lot of therapists who live in Omaha that like to practice in Council Bluffs in Iowa, across state lines and vice versa. So it will help if Iowa were to adopt the compact. It'll also help set the stage for future legislation supporting telehealth as a mode of delivering applicable aspects of physical therapy services. So as a professional regulatory entity in Nebraska, the PT Licensure Board has reviewed the statutory language of LB681 and determined that accountability to ensure public safety by all participating members of the compact will not be compromised. In fact, the level of accountability of licensees to practice may actually increase due to provisions in the law that will add additional monitoring of patient care habits by all compact states where an individual holds a license. This will be accomplished through a mutual sharing of licensee records, including any disciplinary actions taken against the license between states participating in the compact. And details outlining the criteria the commission will enact to ensure licensed practitioners qualify for the compact are clearly outlined in Article IV starting on line 25 of LB681. Finally, it should be noted for public record

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

that LB681 does not change scope of practice for physical therapists in Nebraska or any other compact state. The bill simply provides a mechanism for greater ease of practice portability for licensees. In summary, the Nebraska Licensure Board of Physical Therapy is in support of LB681 as a positive measure to improve access to physical therapy care in Nebraska, and to also benefit licensed Nebraska therapists who wish to provide services in other states as well. Licensure compacts are supported by the Federation of State Boards of Physical Therapy and the American Physical Therapy Association which now represents over 100,000 PTs and PTAs and students across the country. Thank you for your time, and I am open for any questions. [LB681]

SENATOR RIEPE: Thank you, Mr. Peck. Are there questions from the committee? Senator Erdman. [LB681]

SENATOR ERDMAN: Senator Riepe. Thank you, Mr. Peck, for coming. I notice on your credentials it says certified in equine and canine, what about that? (laughter) [LB681]

SENATOR WILLIAMS: I knew it was coming. [LB681]

KIRK PECK: Yes, Sir. [LB681]

SENATOR ERDMAN: How many of you are there, that are certified in equine? [LB681]

KIRK PECK: There are two or three...I know where you're going. There are two or three of us. I'm license number one, I'm actually the one that worked on that bill with the vet board for eight years to get that license enacted. So I helped draft the regulations for that. So I was the first license. There are at least two or three, I think now, I'd say, for physical therapists. [LB681]

SENATOR ERDMAN: Were you here last year when we heard that bill? [LB681]

KIRK PECK: What...say that again. [LB681]

SENATOR ERDMAN: Were you here last year when we had a hearing that bill? [LB681]

KIRK PECK: I...submitted testimony, it's actually on record. I wanted to be here and couldn't, I was out of town, but you do have testimony on my position on...LB596 is what I think you are referencing, yes. [LB681]

SENATOR ERDMAN: You should have been here, it was good. (laughter) [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIRK PECK: Trust me, I wanted to be...there, very much so. [LB681]

SENATOR ERDMAN: Thank you for your testimony. [LB681]

SENATOR RIEPE: Thank you. Senator Erdman may also have an interest. He has a bill coming up later today on to provide for licensure of vehicles as massage therapy establishments. So he may be...that may be for ponies and other things. [LB681]

KIRK PECK: If that vehicle has four legs and looks like a horse, and smells like a horse I'd be interested. (laughter) [LB681]

SENATOR RIEPE: Senator Crawford probably has a very good and serious question. [LB681]

SENATOR ERDMAN: And mine wasn't? (laughter) [LB681]

SENATOR CRAWFORD: I'm not saying it. Thank you, Chairman Riepe. And thank you, Mr. Peck. I want to just come back to the question about the sharing of licensure information. You indicate it would provide additional monitoring in those compact states. I just wondered if you could help distinguish between what that sharing of licensure information is when you're in the compact versus what we heard just recently if you're...if there is a...an encumbrance on someone's license that information would get sent to other states as well. [LB681]

KIRK PECK: Yeah, I think the benefit of the compact, the way it is viewed by our board, is that...if you're in the compact then that information, if you have a disciplinary action in another state with a compact privilege, it could come back, let's say Nebraska is a home state, and there's a discipline on a license in Colorado, it would...that information would come back to us and actually makes it easier for our board to review actual history. Particularly if there's a negative...a serious negative enough issue that we need to be concerned with. As it is now, some of these states that...we don't have these compacts, we're not privy to the information, and sometimes we can contact another state that would be not in the compact. They may or may not be able to share that information with us, depends on how...what their laws are and sharing that information. So if you have a therapist who wants to get licensed in Nebraska and they actually have, you know, an infraction on their license in another state, it's very difficult sometimes for us to review, should we...we're doing our licensure review, should we grant the license in this state? We may not want to, but we don't know what that is. So we feel like, as a board, having the compact is going to be a benefit to all those that are invested in the compact...itself as a compact state. So that's where we see this as a benefit. [LB681]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR CRAWFORD: So it provides more detail on... [LB681]

KIRK PECK: More detail and more history that we currently don't have to use to assess licensure-related activity in other states, because people are moving across country quite a bit. So it would be very helpful for the boards. [LB681]

SENATOR CRAWFORD: Thank you. [LB681]

SENATOR RIEPE: Okay. Other questions? Seeing none, Dr. Peck, thank you very much for being here. [LB681]

KIRK PECK: Thank you. [LB681]

SENATOR RIEPE: More proponents, please. [LB681]

GRACE KNOTT: (Exhibit 2) Good afternoon. And... [LB681]

SENATOR RIEPE: If you would be kind enough to state your name, and spell it. [LB681]

GRACE KNOTT: Grace Knott; G-r-a-c-e, Knott K-n-o-t-t. [LB681]

SENATOR RIEPE: Thank you. [LB681]

GRACE KNOTT: And I am here in support of LB681. I am currently the rehab...I am a physical therapist, but I'm currently the rehab administrator for a locally owned senior health and living company, Hillcrest Health Services. My responsibility include overseeing the rehab operations within our skilled nursing facilities, which currently stands at five facilities. And I'm testifying, again, as a physical therapist and an employer of physical therapists. Since Omaha is on the eastern edge of Nebraska, I have worked in Iowa several times over my long 40-year history of being a physical therapist. Each time when I had to get my Iowa license required additional time, effort, and money to obtain an Iowa license, and the effort to keep the license current usually led me to let the license lapse and then when I'd decide to work back in Iowa again, start the process over again. The ability to have a home state for my license and then also being able to work in remote state, such as Iowa--even though it's not a remote state--through the compact would cut down on the time, effort, and money to get licensed. I would be more apt to decide to work in that border state if it was easier to obtain privileges. So it could be vice versa from people living in Iowa wanting to work in Nebraska. This would benefit Nebraska as therapists licensed in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

Kansas, South Dakota, Colorado, Iowa--if they joined the compact--could more easily work in Nebraska. Additionally, being on the tail-end of my physical therapy career, I'm considering doing travel assignments to other states for several years with my husband tagging along. The ease of having a compact privilege in these states where I would be assigned would be a factor in me deciding to do this instead of going through, every time I got an assignment, getting licensed in that state. Speaking now, as an administrator, our company employs over 50 physical therapists and we are seeing a tighter labor market for physical therapists in Omaha and Lincoln. We've also employed many military spouses over the many years since our base is in Bellevue. In fact, I have, I think, two physical therapists that are currently military spouses. The ability for us to attract quality physical therapists from bordering states could be enhanced if we had a licensure compact with those border states. Also, our company is committed to professional development of our physical therapists, and with the growth of our company we're hoping to bring in expert physical therapists from across the United States to provide in-house continuing education and mentoring to our team. If the physical therapists providing the mentoring and assisting in patient care had compact privileges in Nebraska, making this possible would enrich the quality of the education and the mentoring. Most physical therapists who provide continuing education courses do not take the time, effort, money, to obtain separate licenses in each state and provide simulated demonstration and lecture. Compact licensure would still require that the physical therapist does have the...does not have disciplinary action in the previous two years before application for compact privileges. So this will protect our patients against incompetent or impaired therapists. I believe in today's world, with information readily accessible and an increasingly mobile work force, licensure compact makes a lot of sense to me. Rules and regulations would still be in place to ensure the safety of the people that physical therapists serve. We would be able to meet the ongoing and continuing needs of our older population with our ability to attract therapists from our bordering states for full-time employment or from across the United States for temporary assignment. Thank you for listening to me this afternoon. I'll be happy to answer any questions. [LB681]

SENATOR RIEPE: Thank you very much. Are there questions? Seeing none, thank you very much for being here. [LB681]

GRACE KNOTT: And I do have copies. [LB681]

SENATOR RIEPE: We are still taking proponents. If you would just be kind enough to state your name and spell it. [LB681]

VICTORIA McHUGH: (Exhibit 3) Victoria McHugh, V-i-c-t-o-r-i-a M-c-H-u-g-h. I am here representing my company, Key Complete Therapies. I want to thank you for your time, committee, for hearing our support of this bill, and to Senator Blood for introducing it for

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

consideration. I am the owner of Key Complete Therapies, a private practice--going into our eleventh year--located in Omaha. I am here, as I said, to speak in support of the compact licensure. I want you to know that I support the bill as a means to allow our licensure process to be more aligned with the realities of our industry and more efficient to protect our public. With Omaha being situated on the border with neighboring Iowa, it is very valuable to my business to have a more congruent means to credential our practitioners and serve clients on either side of the river. This would apply to all towns and cities that are across state lines from sister cities. In the current process, every practitioner must go through a full credentialing application process for each plan they...each state they plan to practice in. This is time consuming, and subjects the licensee to ensure compliance with different state's educational criteria, time lines, and separate fees. There's no congruency with renewal dates or the amount of CEUs required from the individual states. However, because these are maintained and governed by the individual state practice acts and regulations, and that would be preserved with the compact licensure. With the...the streamlined process does support our practitioners to be more dynamic in their professional practice and available to treat in multiple communities. This increases our access for clients to qualified professionals in more remote or difficult to staff areas. Although my company is based in Omaha, our practice serves clients in a 60-mile radius and allows us to reach into more rural western Iowa to bridge gaps of service in that state. Movement toward national competency can be noted across regulatory boards as well as funding sources. It's illustrated through the national physical therapy board exam and the federation, as well as through Medicare and funding sources that are requiring a national provider registry. The benefits of these are not only to streamline the process, but also managing the licensee's information, and specifically of interest would be disciplinary actions. In our current process--as you've heard--a practitioner's application is a stand-alone data point for the individual state licensure board to review. If there has been a restriction or discipline on that license in any given state, it's up to the practitioner to disclose this information or for the states to exchange that information in a timely fashion. While we hold that expectation of our professionals...of our colleagues, there's actual little safe guard to prevent this falsification of this information. If there were a national registry that used...that was able to be used in the compact licensure, these disciplinary issues would be cataloged for all participating states to have access to, eliminating the potential of the applicant withholding the sensitive facts. This would increase the safety for our public by having a central point where this information is held and increase the time efficiency on additional states' licensure processes. The time to...the time that is required to go through a full state licensure process is burdensome and causes undue delays in our availability to work in a new state as a practitioner. This winter, one of our clinicians had an unplanned medical leave and we did not have staff able to cover both sides of the river...credentialing. So when we were trying to get the credentialing process, we had to put our clients on hold to allow the licensure board to go through the application process even though they were in full good-standing with the other state. It could be expected that participation in the compact licensure would have delayed...would have eliminated this delay of serving our clients. In our fast moving and mobile healthcare

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

environment, having multiple state licenses and their individual and unique process is a limiting factor for us to efficiently serve our clients. I thank you and encourage you for your support in the proposed LB681, to increase more protection of and reduce barriers for physical therapists to serve our clients. [LB681]

SENATOR RIEPE: Thank you very much. Are there questions from the committee? Seeing none, thank you very much. [LB681]

VICTORIA McHUGH: Thank you. [LB681]

SENATOR RIEPE: We are still taking proponents. Are there any additional speaking in favor? If not, I'm going to go to opponents. Is there anyone in opposition? Seeing none, is there...are there any here and testifying in a neutral capacity? Okay, seeing none, Tyler, I'm going to ask you about any letters that we have. [LB681]

TYLER MAHOOD: (Exhibits 4-10) Yes, I have the letters. All of the following letters are in support: Dr. Richard Azizkhan and Liz Lyons at Children's Hospital and Medical Center; Bryon Line of the Nebraska Democratic Party Veterans and Military Families Caucus; Fred Craigie of the Nebraska Veterans Council; Dan Donovan of the Heartland Chapter of America--Heartland of America Chapter, Military Association of America (sic--Military Officers Association of America); David Brown, Greater Omaha Chamber of Commerce; Dean Kenkel on behalf of the Nebraska Veterans Coalition; and Nicole Fox on behalf of the Platte Institute. [LB681]

SENATOR RIEPE: Okay. Thank you very much. Senator Blood, I invite you to close if you'd like. [LB681]

SENATOR BLOOD: Thank you, Chairperson Riepe. I would like to close. I really love staying through the hearings because, no offense to Dr. Peck, but we have so many talented and educated women here in Nebraska that are so knowledgeable. And I think they did an excellent job of building---and they aren't going to write me a check or anything, don't worry (laughter). I think they did an excellent job today about building on the platform I put down for them and giving you a really good explanation about what this bill is truly about. We all know that our Governor has challenged us with the opportunity to eliminate as many barriers as we can to employment. And because we are a state that has a sparse population, whatever we can do to make it easier for people to work here in Nebraska we need to do. And then, again, remember our military families. I am on a mission...Senator Crawford has led the way, as have other senators, trying to make Nebraska a military-friendly state. We don't officially have that designation, and it's little bills like this that make a big difference in that designation. So I hope that you will consider all those things. I appreciate your time today. I think this is a great compact. I want you to know that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

I did contact leaders in other states that participate in these compacts to see what impediments they had when it came to these bills...what problems they may have incurred--occurred, and I have not heard anything negative from the other states, either. So with that I thank you for your time. And should anybody have any additional questions I shall be happy to answer. [LB681]

SENATOR RIEPE: Okay, thank you. We'll see if we have any questions from the committee. Seeing none, thank you very much. And with that I declare LB681 has received a full and fair hearing. And this concludes this hearing, and we will move on with our agenda. [LB681]

SENATOR BLOOD: Thank you for your time. [LB681]

SENATOR RIEPE: Our next bill up is LB978 (sic--LB979), and Senator Crawford will introduce that bill. [LB979]

SENATOR CRAWFORD: Good afternoon, Chairman Riepe and members of the Health and Human Services Committee. For the record my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm honored to be here today to introduce LB979 for your consideration. Over the past several years, I have worked with this committee to update Nebraska law to expand the access of Nebraska citizens to primary healthcare. For example, in 2015 the Legislature passed LB107 to allow nurse practitioners to treat patients without integrated practice agreements. As a result, nurse practitioners' ability to provide healthcare, especially in rural areas, has been enhanced. Nurse practitioners and physicians assistants are an integral part of our healthcare system. They provide care in cases and areas where a physician may otherwise be unavailable. This is especially common in rural Nebraska. One problem that has come to my attention just recently has been obstacles to nurse practitioner or physician assistants' ability to render a medical opinion in a case in which the nurse practitioner or physician assistant has been the only healthcare provider involved in treatment. Some courts have excluded these opinions and this can result in a physician testifying, even though the physician may not have been directly involved in the treatment of the patient. The purpose of this bill is to address that problem. I have been contacted by some who have concerns with the approach used, although not necessarily with the recommendation to make sure that appropriate testimony from nurse practitioners or physicians assistants is able to be provided. Some have been concerned about opening the scope statutes to make these changes, and these concerns, I acknowledge, may be valid. And there may other avenues to more...to crafting a narrower solution, and I have worked with interested parties to find that answer. So there are other testifiers behind me that can answer more technical questions and talk about the...and answer questions about the incidents when testimony was not allowed to be provided. I am happy to answer the questions that I can try to answer. It's important, I think, to ensure that professionals can provide expert testimony with the recognition there (inaudible),

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

and that's why I brought the bill. And, again, I acknowledge there are some questions about the bill, as drafted, and I would welcome ideas from others who are testifying in terms of opportunities to move forward to address the issue that underlies the reason for bringing the bill in the first place. Thank you. [LB979]

SENATOR RIEPE: Thank you, Senator Crawford, for bringing this bill to us. Are there questions from the committee members? Senator Erdman. [LB979]

SENATOR ERDMAN: Thank you, Senator Riepe. Senator Crawford, thank you for coming with this. I'm going to ask this question, maybe you don't know; can you give me an example of a situation that would describe how this would be used? In other words, a patient comes in for a certain examination, or something, and the practitioner can't make a decision on that matter, it has to get a doctor's permission to do that? [LB979]

SENATOR CRAWFORD: No, this is to allow expert testimony in a case... [LB979]

SENATOR ERDMAN: Okay. [LB979]

SENATOR CRAWFORD: ...So this would be in a workers' comp cases and also injury cases. So to ensure that if the nurse practitioner or physician assistant had been providing the care, that... [LB979]

SENATOR ERDMAN: Okay. [LB979]

SENATOR CRAWFORD: ...when there's a question in those court cases they could...they would be allowed to testify as expert witnesses. [LB979]

SENATOR ERDMAN: Okay, thank you for clearing that up. It didn't make sense when I looked at it. Thank you. [LB979]

SENATOR CRAWFORD: Um-hum. Sure, um-hum. You're welcome. [LB979]

SENATOR RIEPE: Are there other questions from the committee? Seeing none. [LB979]

SENATOR CRAWFORD: Thank you. [LB979]

SENATOR RIEPE: I'm sure that you'll be around for closing. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR CRAWFORD: Yes. [LB979]

SENATOR RIEPE: Thank you. We're ready for proponents, please. Okay, and Sir, if you would just state your name and spell it, and then go. [LB979]

GREG COFFEY: (Exhibit 1) My name is Greg Coffey. Last name is spelled C-o-f-f-e-y. I'm an attorney with Friedman Law Offices here in Lincoln, and I'm here on behalf of the Nebraska Association of Trial Attorneys. I thank Senator Crawford for introducing this legislation. I borrowed one copy, I'm going to have to give it back to you, I only had ten. So what I'm passing out here, it's from the federal Department of Health and Human Services Public Access, an author manuscript that's been peer reviewed. And it talks about the increasing role and function of physician's (sic--physician) assistants, and it also references nurse practitioners, in delivering primary healthcare throughout our country. If you look at the abstract, it talks about a shortage of primary care doctors occurring globally. And then, if you look at--kind of in the middle--there's a section on accessibility and care. And it talks about primary care patients of physician's (sic) assistants, rather than doctors, are slightly more likely to be female, rural, uninsured or publicly insured: "When compared to patients reporting primary care doctors as a usual source of care, patients of PAs were more likely to live in rural areas, lack insurance or have public insurance other than Medicare, report lower perceived access to care, and/or have decreased likelihood of having some preventive care such as comprehensive health exam or mammograms. Despite these differences in characteristics and utilization, there were no differences in patient complexity or in self-rated health between primary care patients of physicians and PAs, suggesting PAs can provide access to a usual source of care for a broad range of patients." And what I think this represents is something that, as an attorney practicing personal injury law in the state of Nebraska, it just reinforces something that I think I've observed in my own practice. And that is that a lot of my clients, increasingly, are utilizing the care of physician's (sic) assistants and nurse practitioners as their primary source of medical care. They're not familiar with the doctor under whom their PA or their nurse practitioner even practices. The only person that they really ever see is that nurse practitioner or that PA. And as a policy, because of lack of access, because of increasing shortages in primary care physicians, as a policy, we want physician's (sic) assistants and nurse practitioners to be able to treat people with primary care needs. We've endowed them with the ability to prescribe medications and engage in patient care. That butts up against a problem, though, because when you have somebody who only knows their nurse practitioner--or only knows their physician's (sic) assistant--and that physician's (sic) assistant or nurse practitioner is the only person who is really familiar with their problem, and they get involved in an accident that requires medical treatment--and that's the fault of somebody else or someone else's responsibility--and they bring a claim, our laws also demand that they have expert medical testimony to establish, among other things, that the problem that they're being seen for--that this nurse practitioner or physician's (sic) assistant is the only one who's really familiar with that the problem that they're being seen for is directly related to the accident or injury that was involved

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

in the case. And so we need to fix that kind of, you know, crossing of purposes; where we want physician's (sic) assistants and nurse practitioners to be available for further care--have people more relying on them--but then not have them have the full ability to offer testimony that we--as a state, in our judicial system--require them to have testimony from medical professionals in order to establish things like causal connection. So I understand that we're working with Senator Crawford. This is an issue that needs to be addressed. It needs to be fixed. We're trying to come up with language that will most appropriately address this situation and meet all parties' needs, and I understand that we're working on that right now. But I did want to make sure that the committee understood that this is something that needs to be fixed and it is an issue out there. And with that, I'll yield to any questions. [LB979]

SENATOR RIEPE: I'm going to have a question, but I'm going to yield to the committee first. My question is this: I struggle a little bit with the "and" in there, because I consider physician assistants and nurse practitioners as two different trained categories. Having been in a position, I always hired nurse practitioners because I liked their educational base and I didn't hire physician's (sic) assistants. So when you're throwing them together here I wouldn't want a physician assistant, necessarily, testifying on a case that was a nurse practitioner. You want to respond to that in what...however way you might? [LB979]

GREG COFFEY: Sure, thank you, Senator. I think the answer is that while in your practice you may have had a preference, some person out in Boone County might not necessarily have had the opportunity to choose between a nurse practitioner and a physician's (sic) assistant. They're taking what's available to them. And when they've been involved in, let's say, a car accident or an accident at work, there might not even really be any dispute about whether the injury that they're complaining of was caused by that. But our rules of evidence require them to produce that testimony. The best person that would be knowledgeable of the situation to be able to say, you know: Yeah, they fell at work, they sustained a back injury, we've got the X-rays that show that there was a compression fracture and therefore I can say that the fall at work caused this compression fracture which has led to them having to receive the treatment that they've received. We're requiring them to have that testimony, the rules of evidence demand it, or they can't recover. And when their options are being limited by policies that we as a state are implementing to allow physician's (sic) assistants and nurse practitioners to take over care, we need to also allow them to utilize those people to express those medical opinions on things like causation in their legal claims. Otherwise justice is denied to the people who, as this report indicates, lack access otherwise or, you know, women or people who live in rural areas or people who don't have private health insurance. [LB979]

SENATOR RIEPE: I like the common use of the word "recovery." From attorneys, it's a different perspective than it is from a medical standpoint. (Laughter) [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

GREG COFFEY: Fair enough. [LB979]

SENATOR RIEPE: Senator Williams. [LB979]

SENATOR WILLIAMS: Chairman Riepe, thank you. And thank you, Mr. Coffey, for being here. So if you have the case today, like you just referenced--the accident in Boone County or whatever--if you are the attorney in that case, what do you do? [LB979]

GREG COFFEY: Well, it presents a problem. Thanks for asking that question. Let's say, for the sake of argument, that you've been injured on the job. If your primary care physician is the person that you treat with, the workers' compensation benefits that you might be entitled to recover are not going to be substantial. I mean, work comp is not a system that's designed to, you know, put somebody on easy street or make them wealthy or anything like that. I mean, when you're off work and missing time from work on workers' compensation, you're only getting two thirds of your pay. And out of that two thirds of your pay, you have to pay the experts to provide testimony. Well, Rule 10 of the Workers' Compensation Court Rules of Procedure allow for, in specifically in order to reduce the costs to both sides in bringing a case, allow reports to be submitted in lieu of live testimony. Live testimony is going to cost significantly more than just a report signed off on by the doctor. But the way that physician is defined under Nebraska Revised Statute Section 48-151(1) does not include that nurse practitioner or that physician's (sic) assistant who has been treating this person. And so... [LB979]

SENATOR WILLIAMS: So your answer would be you would seek a second opinion or another...you would have to find a qualified...a person that fit under the law to give you that testimony. [LB979]

GREG COFFEY: Right, but they'd have to pay for it out of their own pocket in that case. Or, if in the case of a nurse practitioner, you'd have to bring them in to testify live. And that just drives up the cost for everybody and we're already talking about a, particularly in workers' compensation, not necessarily a big pool of money. I mean, a lot of my clients are worried about, you know, the cost involved in the case and, you know, I'm only getting two-thirds of my average weekly wage while I'm off work here and now you're asking me to cough up \$300 for you to get a report from my doctor. [LB979]

SENATOR WILLIAMS: I'm just trying to isolate what the problem is that we're trying to fix. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

GREG COFFEY: The problem is: if somebody were not able to have an opinion from the person who is most familiar with their care and have that offered into court just like they were a physician, you're going to drive up the cost. And it's going to make it more difficult for them to access the, you know, the opinions that they need. And in a lot of cases, it might result in just a flat-out denial of justice. That somebody who lives in Lincoln and who has access to good insurance and sees a primary care physician regularly...you know, has access to a primary care physician like I do; I could walk in there with my doctor and have my doctor testify. But if I live in Boone County and I don't have that same kind of access, you're basically hamstringing me and making it more difficult for me to obtain access to the justice system. [LB979]

SENATOR WILLIAMS: Thank you. [LB979]

GREG COFFEY: And more costly. [LB979]

SENATOR RIEPE: My question would be this: If you have a treating orthopedic physician, are you proposing that you would be able to bring a clinical nurse practitioner or a PA in to be an expert witness? I mean, I would think that would...it would be quite challenging for that to go up against a trained specialist in a particular discipline. [LB979]

GREG COFFEY: Sure. And... [LB979]

SENATOR RIEPE: Are you saying yes, that's what you'd...this would propose or... [LB979]

GREG COFFEY: Well, it would just give the nurse practitioner or the physician's (sic) assistant the ability to come in to testify to the things that they know about. Now obviously if I have a case and, you know, my client is seeing an orthopedic surgeon, I'm going to ask the orthopedic surgeon for their opinion. But there are some situations where the orthopedic surgeon says: You know, I'm not involved in that anymore, you're going to have to go back to the primary care doctor for that opinion. That could include things like ongoing need for analgesic pain medications. The orthopedic surgeon says: My role here is finished and I no longer have an opinion on what needs to be done going forward. Well, what are they supposed to do at that point in time if they can't bring their nurse practitioner or the physician's (sic) assistant, who has been treating them, in to furnish testimony on, you know, need for ongoing medical treatment or need for ongoing analgesics or something like that? Or whether they might need some physical therapy...you know, that's the way it might come in. I don't foresee this allowing or enabling or encouraging people to substitute the opinion of a nurse practitioner or a physician's (sic) assistant in lieu of a more specialized physician like an orthopedic surgeon who has been involved in a case. And certainly as a plaintiff's attorney, I have no desire to go up against...you know...to bring my nurse practitioner witness up against the defense's orthopedic surgeon. But in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

a case where the issue isn't in dispute, where they haven't hired an orthopedic physician to say: Well, we're not so sure that this is all related. And all you have to do is meet the requirement of having an expert witness come in and say that this caused that or that this treatment was reasonable and necessary as a result of that. You know, if that issue isn't in dispute, why drive up the cost for everybody or make that opinion less accessible or less credible or persuasive to a jury, frankly? [LB979]

SENATOR RIEPE: I know, personally, I'm always interested in cost but I'm also interested in expertise and best knowledge, so. [LB979]

GREG COFFEY: Yeah, and sometimes that's not available if they don't have the access to the physician. [LB979]

SENATOR RIEPE: But the standard of care is not based on the community anymore. The standard of care is basically on evidence based nationally. And so I don't know how you get it in there, but you're going to have to, one way or another...to have a defensible position you got to go beyond: Well, that's the best we could do. [LB979]

GREG COFFEY: And I appreciate that, that's why I pointed out, Senator Riepe, the paragraph that I read on accessibility, and it talks about how the complexity of the problems that physician's assistants are treating are no different than the complexity of the problems that the primary care doctors are treating, you know. So they're involved in complex patient care. You know, they're doing the work of doctors. And if that's all you have access to...and I could name a couple of medical clinics here in town that there might be just one doctor and several physician's (sic) assistants. And my clients from Lincoln--not necessarily from Boone County, but my clients from Lincoln--all they ever see is the physician's (sic) assistant. And if that's the only person who really is familiar with their treatment, you know, you're setting them up to fail--to lose--when the cross-examination of that doctor says: Doctor, you never actually saw this person, did you? Well, no, I didn't. But the law says that my physician's (sic) assistant can't come in to testify. [LB979]

SENATOR RIEPE: It might be the price they pay for leveraging their practice as well, which is what they're doing. [LB979]

GREG COFFEY: Well, but who pays the price of that? Who's the person who suffers the consequence of that leveraging? [LB979]

SENATOR RIEPE: It's not Warren Buffet. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

GREG COFFEY: No, no. It might be some guy who got hurt through no fault of his own. [LB979]

SENATOR RIEPE: Okay. Okay, thank you. Thank you. Are there other questions? Hearing none, thank you very much for being here. Again, proponents. Welcome, now that we're all warmed up (laughter). [LB979]

DON WESELY: (Exhibit 2) I am passing out, for you, a letter from the Nebraska Nurses Association. For the record, my name is Don Wesely, D-o-n W-e-s-e-l-y. I'm a lobbyist on behalf of the Nebraska Nurses Association. The letter indicates their support for this legislation. You should also have a letter from the nurse practitioners' association and the physician assistant association, who are all affected by this. I can tell you a little bit of background on the issue is that...this actually comes from the Panhandle. There were some cases out in the Panhandle where...and out in western Nebraska...where people would...wanted to have their nurse practitioner or their physician assistant who had been working with them be able to submit what their evaluation of what's happened. And one of those things that I want to get back to, is you can't have...this talks about within their scope of practice, so a nurse practitioner or a physician assistant, their scope of practice. If they have an orthopedic surgeon, that's a completely different...they can't talk to that. Their scope is much beyond that. So you're not going to get that apples and oranges kind of comparison. Plus also, they're making them submit information in their opinion, expert opinion, but then the weight of the evidence is going to be handled by the judge. So you know, it's just a part of the process. But they can't even get to submit their information; that's the problem. And it's not universal across the state. It's in more rural areas where there are more physician assistants and more nurse practitioners that they're not letting them even have a chance to submit their patient's information. It makes no sense. And it isn't consistent; some judges allow it, some don't. It's a grey matter and we ought to clear it up. And I know there's some effort to try to work out the language. It's not...it's kind of a new issue and we need to spend some time on it. But there's a legitimate problem, and I'm sure there's a legitimate solution. We're just not, maybe, there yet. But that's the background. And nurse practitioners who have been working with patients and then they're injured and they can talk about what's happening aren't even allowed to do that, and that's not right. So we support the bill. [LB979]

SENATOR RIEPE: Are there questions from the committee? I would contend this: While the ratio of nurse practitioners, or alternative...alternates to the MD, the ratio is higher probably in the rural, but the absolute number is still going to be in the urban market. [LB979]

DON WESELY: Yes, that is true. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: So...might still have a greater exposure there. Thank you. Are there other questions? Hearing none, thank you very much, Sir. [LB979]

DON WESELY: Thank you. [LB979]

SENATOR RIEPE: Additional proponents? No additional proponents, any opponents? Thank you for being here. You know the drill. [LB979]

KIM ROBAK: I do. Senator Riepe and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here today on behalf of COPIC and on behalf of the Nebraska Medical Association. COPIC, for those of you who may not know, is a hospital medical liability carrier. They represent the Nebraska Medical Association and a number of hospitals across the state in malpractice and other claims. What is different about COPIC...and they practice in Iowa, Nebraska, and Colorado...it was organized in Colorado by a physician group...and their goal is to prevent malpractice claims. So they spend the majority of their money and their time trying to prevent malpractice and to encourage people to report so that they can reduce the number of claims. With that said, I want to start out by saying we don't oppose the idea behind this bill. It makes sense that, if the nurse practitioner or physician assistant provided the care, that they should be able to testify as an expert; no problem with that at all. What we have a concern with is the language of the bill and, in particular, language of an amendment. We...in fact, I've been speaking with Mr. Wesely for more than several weeks now. We've presented language to him; he has presented language back. We have not yet reached an agreement. I understand that there may be a problem with a judge or two across the state. And I'm not sure why there is a problem because Nebraska rules of evidence specifically allow an individual to testify...qualify as an expert and 27-207 (sic--27-702) says that they can allow testimony by a trial court and qualify as "an expert by knowledge, skill, experience, training, or education" and "testify thereto in the form of opinion or otherwise." So you can qualify as an expert, based on education. So in theory, this rule of evidence should allow a nurse practitioner and a PA to testify as an expert. If that's not happening we want to make it happen. What we have, Senator Riepe, is a concern as you expressed, and that is we would not want, inadvertently, to allow a PA or a nurse practitioner to be able to testify against a physician regarding that physician's standard of care. I don't think that's what they intend. But again, words matter, and so we want to make sure that we get this language right. If this is an issue, as we were told, in the Workers' Compensation Court, and it appears to be a rule in the Workers' Compensation Court, we'd be happy to work with the trial attorneys to get that rule changed in the Workers' Compensation Court. But, with that said, we don't oppose to the concept, we would like to work on the language. And we are happy to work with Senator Crawford and the trial attorneys to make that happen. So I'd be happy to answer any questions. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: Thank you very much. Are there questions? Senator Erdman. [LB979]

SENATOR ERDMAN: Thank you, Senator Riepe. And in your comments about those experts; you didn't list, in there, somebody 50 miles from home. Should that be included? [LB979]

KIM ROBAK: (Laugh) Only in Lincoln. [LB979]

SENATOR ERDMAN: Okay. [LB979]

SENATOR RIEPE: Senator Howard, please. [LB979]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you for visiting with us. I'm curious about...so the position is that COPIC doesn't want a nurse practitioner or PA to be able to testify against a physician...against their standard of care. Tell me a little bit more about that. [LB979]

KIM ROBAK: So the idea is, Senator Howard, that a physician's standard of care is...what the physicians do in that community or in that area. So a physician's standard of care in one community might be different than a standard of care in a rural community. And the concern is that if somebody hasn't practiced as a physician and doesn't know the physician's standard of care, that it would not...you would not want to put in statute that a nurse practitioner or physician assistant could, in all cases, testify as to that standard of care. So while a physician assistant could qualify under the current rules of evidence, they could come in and they could get qualified by the judge based on experience, based on education, based on otherwise...they may be able to do that, but to put that language in statute doesn't make sense. [LB979]

SENATOR HOWARD: Okay, thank you. [LB979]

SENATOR RIEPE: I want to get a little clarification, because, while you're the attorney and I'm not, it's my understanding that a number of years ago the community standard of care... [LB979]

KIM ROBAK: Thank you. [LB979]

SENATOR RIEPE: ...went away. [LB979]

KIM ROBAK: Oh, it did? That's what I learned in law school. [LB979]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: But, most of those now hold them to a higher standard, that just because you do it in X community, doesn't make it an acceptable standard. They're more into national standards now, which is tough for some more remote locations. But that was my understanding of the health law, so. [LB979]

KIM ROBAK: I appreciate that education, Senator. [LB979]

SENATOR RIEPE: Well, I... [LB979]

KIM ROBAK: And I'm sure that I'll hear about it from people who are listening on television. [LB979]

SENATOR RIEPE: Well, or, if I'm wrong then please tell me. [LB979]

KIM ROBAK: I will do that. [LB979]

SENATOR RIEPE: Thank you. [LB979]

KIM ROBAK: Thank you. [LB979]

SENATOR RIEPE: Are there other questions? Thank you very much for being here. Are there any other opponents? Seeing none, is there anyone that wishes to testify in the neutral capacity? Okay, none in a neutral capacity. Tyler, do we have letters? [LB979]

TYLER MAHOOD: (Exhibits 3-4) Yes. I have a letter signed by Kurt Schmeckpeper of the Nebraska Academy of Physician Assistants, in support, and a letter from the Nebraska Nurse Practitioners, in support. [LB979]

SENATOR RIEPE: And that is it? Okay, Senator Crawford, we invite you to close. [LB979]

SENATOR CRAWFORD: Thank you, committee members. And I appreciate the time and attention to this matter and the willingness of all parties to work together and see if we can come up with a solution. Thank you. [LB979]

SENATOR RIEPE: Okay, are there any questions of Senator Crawford before we let her go? Okay, hearing none, thank you so very much. I declare LB979 has received a full and fair hearing and therefore this concludes this hearing. Thank you all very much for looking into that.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

We will now move on to LB958, which is Senator Erdman. Senator Erdman, if you'd just, as you know, state your name, spell it. [LB979 LB958]

SENATOR ERDMAN: Thank you, Senator Riepe. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent the 47th District in the Nebraska Legislature. Today I come before you to introduce LB958. LB958 is an idea that was presented to me a couple years ago. And as I was campaigning and talking about things that may mean things to people, Jean Thunker from Paxton had shared with me about being a physical (sic--massage) therapist and some of the things that she's restricted with. And in rural Nebraska we have fallen on hard times, so to speak, because of our agricultural economy. And those clients that she used to see in town, those agriculture people, have stopped coming and so she has a shrinking client base and she'd like to expand that by being mobile. And so I come with this today, and the reason for this is to make her...make it eligible for her to do that. She has a brick and mortar facility now that she pays rent on and utilities and insurance and all those things. And she would like to become a person who is licensed with a mobile unit. So in western Nebraska, some of those people that come to see her drive as far as 100 miles. Some have to make the trip in inclement weather and it's difficult for them, sometimes, to get there. In order for her to be successful, to make a living as a massage therapist in western Nebraska, it would be more beneficial for her if she was more mobile and to take her business to those clients where they live. And so LB958 expands the definition of massage therapy establishment to include a vehicle or mobile unit. The only purpose of LB958, as written, is so that a mobile unit would be legal for her to do that. LB958 is necessary to begin the discussion about mobile units. This week we have heard from cosmetology people who are going to do that and chiropractor people can do some of this stuff; and so we thought if that is the case, then we would try to define this in such a way that she could do the same. And so I fully understand what it is to define a mobile unit and I've seen that in the cosmetology bill. I did not include that in this bill. I figured that those rules and regulations could be written to accomplish that. We will talk about that later, one of the testifiers coming after me will share their concern about not being described adequately in the bill. I didn't see that that was important, but maybe it is. So as we move forward I'm willing to work with anybody who has suggestions on trying to amend this to make it look like it needs to look so that we can enforce it. So I would encourage you to advance LB958 so that we can help, not only rural Nebraska, but those in the urban area who would like to do this by a mobile unit. I would stand for any questions you may have. Senator Howard, I heard you had many. (Laughter) [LB958]

SENATOR HOWARD Oh, I was just giving you a hard time. [LB958]

SENATOR RIEPE: Okay, are there questions for Senator Erdman? Would you help educate me, a little bit, in terms of...because I understand that many physical therapists, and I assume massage, you know, you could do this because they unfold tables and...I mean, what is in a unit? Is it a...is there some heat applications, or... [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR ERDMAN: Senator, with all due respect, I would not like to answer that, because I can't. But Ms. Thunker will be here, and she can answer those questions. [LB958]

SENATOR RIEPE: Fair enough, okay. Are there any other questions? Thank you so much. [LB958]

SENATOR ERDMAN: Thank you. [LB958]

SENATOR RIEPE: We know you'll be staying. [LB958]

SENATOR ERDMAN: By the way, this a lot nicer hearing than the last one I testified at. (Laughter) [LB958]

SENATOR RIEPE: Oh, you're not done yet. (Laughter) Are there proponents? If you'd come forward, please. Thank you for being here. If you'd be kind enough to state your name and spell it. [LB958]

JEAN THUNKER: (Exhibit 1) My name is Jean Thunker, J-e-a-n T-h-u-n-k-e-r. [LB958]

SENATOR RIEPE: You've been here before. Welcome back. [LB958]

JEAN THUNKER: Yes, I've been here before. And I've driven five hours to get here today. [LB958]

SENATOR RIEPE: Well, thank you. [LB958]

JEAN THUNKER: And I will be going home tonight. I thank you for allowing me to speak today. I am a professional massage therapist, and my business is Still Water Massage. Which I took "still water massage" out of the Bible, which means "calming effect." I live in Paxton, Nebraska, and drive an average of 50 miles every day, going to work and home. I'm at work every day between 7:30 and 8:00 in the mornings, and most times do not get home until 7:00 or 8:00 in the evening due to the working clients after their working hours. When I do get home, I get the meal started, get the sheets started in the washing machine, plus doing the other chores. By the time I get to bed, it might be 10:00 or midnight when I get all the sheets folded and ready for work the next day, at 7:30. My clients drive one to two hours, at least, one way just to get a massage. They're losing half a day for massage. That is why I'd like to be mobile, working out of an RV toy hauler. Be able to go to their towns so the clients do not have to be away from home

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

so long. Most come from working on the farms, taking care of their families, and, most the time...and from second jobs. I have clients that cannot drive, they rely on family members, and most the time they do not come because the family members do not want to be gone so long. Being mobile will make it easier for clients to come more often knowing they can go home quicker. All the other states are going mobile; Wyoming, Kansas, Missouri, and Vermont have no regulations. All other states are...this would allow me to go to Colorado and other states to work, since I have several coming that way. I would get licensed to be able to work in different states. I'd like to be able to have a route to several towns and have it convenient for the clients and me. I can stay in an RV for a day or two in one town and then move to another location for a day or so, and be able to take care of my laundry, and the only driving I have is to locations. I have not...I have so many bills to pay and money will go in my pocket, instead of everybody else's pocket. My business is being affected by agriculture. They are saving their money to pay land taxes, not spending extra money, and I would be the first to be cut out. But, in reality, I should be the first one they come to. There are several business closing in Ogallala and in surrounding communities with this problem. Ninety percent of my clients have some type of health issues. I get several referrals from doctors with clients having health issues, such as recovering from surgery, cancer patients, migraines, and lots of clients with stress. I have clients that are veterans that come to me with issues. I do more than just a massage therapist. Several will ask if it's okay to talk, and most the time about the time they served in the service. I do a lot of listening while working. And usually when I'm finished and leave the room, I have been keeping tears back. Most of them do not want the family to know what happened in the wars. I give all my clients doing service for our country and our locals 10 percent off. I work on infant babies that have health issues, such as not being able to keep down...milk down and colic. As of now this week I've done three babies that are having tongue-ties. The Mayo Clinic recognizes massages as being beneficial, helping with all types of issues. By giving massages, we're moving lots of circulation and metabolism throughout the whole body. I do several different types of therapy, such as Swedish massage, lymphedema craniosacral therapy, neuromuscular therapy, massaging cancer patients, infant massages, foot reflexology, and foot detoxes. I do some techniques out here that are new to the areas. And doctors from Omaha and Denver were waiting for me to take continuing education classes so I can work on them. I feel massage needs to be in its own special class because we deal with so many health issues. The reason for going mobile is to help more people enjoy the health benefits of massaging by taking service to them. I thank you senators for allowing me to speak today and pray that you'll allow me to go mobile and open the doors for other massage therapists to have more freedom. Thank you. [LB958]

SENATOR RIEPE: Okay, thank you very much. Are there questions from the committees?
Senator Howard. [LB958]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you for visiting with us today and for driving such a long way. Do you know what type of inspection requirements might there be for a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

unit? Are there inspection requirements when you have, sort of, massage...like a brick and mortar? [LB958]

JEAN THUNKER: Yes, they come in...we're supposed to do our own. They have a list of us. We check everything off, send it to them. You know, I've been inspected once in six years. [LB958]

SENATOR HOWARD: Would it be the same for a mobile clinic? [LB958]

JEAN THUNKER: I don't know why not because, as of now, I've been spending my time looking at toy haulers because my table is 70 inches long. So I am now...my husband and I have now considered I need at least a 14-foot toy hauler with a camping facility in there so I can sleep. It will be a fifth-wheeler, but it's no more than what my building is now because it will have room for my table, it has a second bath--half bath. It has a door that goes up front. So the part of the living quarters is probably going to be a part of my office for clients to sit there and wait, and I can do my books. So technically, what I've got planned out is basically what I'm working out of. But guess what? All that money is going to go in my pocket. And I'm not going to spend \$500 on an electric bill this month, that I'm going to have to pay because of cold weather, and rent, and utilities. I'm trying to make a service to my people and the way it is...the economy is going downhill back there. And I've got to figure it out and I don't want to quit because I've got all these doctors asking me for help, especially with the newer techniques that I'm bringing out here that nobody gets. So what are we supposed to do? [LB958]

SENATOR HOWARD: And then you're also practicing reflexology? [LB958]

JEAN THUNKER: I do foot reflexology, yes. [LB958]

SENATOR HOWARD: Great, thank you. [LB958]

JEAN THUNKER: A new cranial one that has just now...I've been doing. I was actually supposed to be going to Denver this weekend to follow up with a refreshing course but, because of the weather, I don't know if I'm going to be able to make it. And with me to continue this class...I'm supposed to have six done on me by professionals before I can go to my next class in August. So I'm having to be on the road and spend my time...like now, today, I lost three clients because I'm not there doing massages. I had to bump everybody off today and I'm going to be working late the next few nights to get everybody in. And most of it will be after work when they get off schedule. [LB958]

SENATOR HOWARD: Well, I appreciate you coming in, very much. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: So those clients are going to blame the state Legislature, is that right? Everybody blames us anyways. [LB958]

JEAN THUNKER: (Laughing) Pretty much. [LB958]

SENATOR RIEPE: I have two questions. [LB958]

JEAN THUNKER: Yes, Sir. [LB958]

SENATOR RIEPE: Is it your plan to put Omaha on your route too? [LB958]

JEAN THUNKER: It could be. It very well could be, because I have a daughter that lives in Illinois. And she's a dentist. And she has quite a few in-laws that want me to work on her. But her house isn't equipped for a table, and that's the problem. I can go mobile and I can take a massage to your house. But majority of them, their house isn't big enough for the table in a room, to find space. So this way it allows me to go out there and I can still help with the kids but I could still do massages that they've been wanting me to work on. [LB958]

SENATOR RIEPE: The only other question that I have...I noticed in your testifying that you noted some land tax. Did Senator Erdman put you up to that? (Laughter) [LB958]

JEAN THUNKER: No, because I do have some land. And that's been the problem. I've used my money off my land to keep my business going and keep my doors open. And now I'm in trouble paying taxes and paying a well and fencing that I owe on my land. So no. [LB958]

SENATOR RIEPE: Okay, thank you, so for...thank you so much...thank you so much for traveling so far... [LB958]

JEAN THUNKER: You're welcome. [LB958]

SENATOR RIEPE: ...It's been very important and very helpful. Are there other questions from the committee members? Hearing none, thank you very much. [LB958]

JEAN THUNKER: Thank you. [LB958]

SENATOR RIEPE: Thank you. Additional proponents? Welcome, and give us your name... [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIM ADAMS JOHNSON: Hello, my name is Kim Adams Johnson. K-i-m A-d-a-m-s J-o-h-n-s-o-n. And initially the Nebraska state Board of Massage Therapy did not support LB958 as it is written. The language was vague, and there was too much latitude for potential loopholes. The vagueness of the language also made the bill impossible to enforce. The bill did not define terms, nor did it set forth licensing requirements, which would not allow the Department of Health to issue a license. If we have an amendment that we're...that the board has come up with it would provide clarity to make this bill more viable. And the board would support the amended bill...excuse me, I just got over influenza, so...the board of massage therapy was approached within the last two years to create licensing requirements for mobile massage establishments. And it is something that we were actively working on up until we were told to, kind of, suspend that. We understand that there are individuals that have a sense of urgency in creating a mobile license regulation. We feel that taking select language from LB790, which is the mobile massage...cosmetology bill, would really help satisfy both licensees and the regulatory board. LB790 is a clearly defined bill with appropriate licensure requirements. This bill defines a mobile cosmetology salon as a "self-contained enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as a mobile site for the performance of the practice of cosmetology by persons licensed or registered under the act." We feel that that would be an important language to put into our bill as well. LB790 also goes into great detail regarding floor space, sink and toilet facilities, and requires proposed salon also meet the requirements of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, and the rules and regulations adopted and promulgated under that act. It also requires that the salon be a motor home as defined in Section 71-4603, as opposed to, like, a renovated trailer or other mobile units that have been proposed to the Nebraska State Board of Massage Therapy. We feel that this bill will assist us greatly in drafting appropriate licensure requirements for the mobile massage establishments and it will not create loopholes for practice. The board also allows...asks that we be allowed to continue to work towards amending this bill and to help out with any further language. And we would ask that it encompasses the needs of all licensees and the regulatory board, and not rush through the process. The safety of our licensees and public protection are both of utmost importance to us. Thank you. [LB958]

SENATOR RIEPE: Allow me and I...because it sounded to me that, on your presentation, it sounded to me like it was more in a...as it's written it's in opposition, as the bill is written. But that you have some hope that it could be resurrected. Is that fair to say? [LB958]

KIM ADAMS JOHNSON: We...I guess in theory, we do support the bill, just not as it's written. So I guess maybe that would be opposition? But, I mean, we do support the bill. Because it's something... [LB958]

SENATOR RIEPE: You support the concept. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIM ADAMS JOHNSON: We support the concept. [LB958]

SENATOR RIEPE: But you don't necessarily support the bill. Senator Kolterman. [LB958]

SENATOR KOLTERMAN: Would it be fair to say that you're neutral on the bill? (Laughter) [LB958]

KIM ADAMS JOHNSON: Possibly. No, I understand. I understand. [LB958]

SENATOR RIEPE: We have a new Senator Erdman... [LB958]

KIM ADAMS JOHNSON: No, but I just didn't know if I should come up as an opponent. I didn't know if I should come up...Because I'm not opposed to the bill; I'm just opposed to the language in the bill. [LB958]

SENATOR RIEPE: That's okay. Oftentimes there aren't perfectly clear lines. I was just trying to get some clarification. [LB958]

KIM ADAMS JOHNSON: Yes, I'm in the grey area. [LB958]

SENATOR RIEPE: Okay, we're going to put you down as neutral. [LB958]

KIM ADAMS JOHNSON: Okay. I'll change that. So sorry...just...everything I just said, put it to the end. [LB958]

SENATOR RIEPE: That'd be neutral. And Senator Erdman's not up here to challenge that, so. (Laughter) Okay. Are there questions from the committees, other than Senator Kolterman's over here? Senator Crawford, please. [LB958]

SENATOR CRAWFORD: Thank you...thank you, Chair Riepe. And thank you for being here today and... [LB958]

KIM ADAMS JOHNSON: And testifying incorrectly. (Laughter) [LB958]

SENATOR CRAWFORD: Well, and testifying and your work on the board. I just wondered; so you were talking about copying language from LB790. And from what you understand about the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

toy hauler, sort of, plans; do you see a way in which it would be consistent with those plans? Or do you think the copying LB790 creates a much stricter requirement for what that mobile unit would be? [LB958]

KIM ADAMS JOHNSON: And I think that is why we thought that we would take select language from that bill so that we can work with our licensees that have come to us, because we want to give as much latitude as we can. We don't want to prohibit anyone from practicing. And if they do have something that would meet the floor plans and that would also fall within that definition of...you know, we don't want somebody showing up, I think the example that was used earlier is in, like, a VW bug with a massage table and, like, a little trailer behind it. You know, we don't want somebody showing up with a horse trailer with a massage table in it. You know, it would have to meet, almost like the establishment for a brick and mortar with substantial area for the massage table, with a separate entrance for the public or with an entrance for the public, and that sense of having privacy. So we're willing to work with that language. But that is something that, you know, it is very strict in that cosmetology bill. [LB958]

SENATOR CRAWFORD: And so you're willing to consider what...what restrictions would still meet licensure standards but not be as strict as in LB790? [LB958]

KIM ADAMS JOHNSON: Yeah, because LB790 has the definition with the Uniform Standard Code for Manufactured Homes and Recreational, which is very strict. But I would think something that, you know, fell almost within that would be acceptable. You know, it's just with its...as...how it's written now with just saying "vehicle," that could mean just about anything. And we feel that if it's passed with the emergency clause at this point, the Department of Health would not be able to work with that because we don't have any standards to work within. So that was our biggest concern. [LB958]

SENATOR RIEPE: Are you proposing...go ahead. [LB958]

SENATOR CRAWFORD: So the bill language...so when it...the language about a licensed facility is pretty sparse in statute. Are the...is the licensed place--duly licensed place--is that laid out in statute or is that laid out in rules and regulations? [LB958]

KIM ADAMS JOHNSON: It's actually laid out in rules and regulations, and it's actually quite extensive. [LB958]

SENATOR CRAWFORD: In rules and regulations? [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIM ADAMS JOHNSON: In rules and regulations. You know, but we just wanted further clarification as opposed to just "a vehicle." [LB958]

SENATOR CRAWFORD: And putting it in statute as opposed to the rules and regulations? [LB958]

KIM ADAMS JOHNSON: Um-hum. [LB958]

SENATOR CRAWFORD: Can you just clarify, again, why that you want that...why you think that's critical in statute as opposed to rules and regulations? [LB958]

KIM ADAMS JOHNSON: Well, maybe not in statute. I apologize; I misspoke there. But no, in regulation I think it needs to be there. But there also needs to be some more clarification within the bill itself, just, you know, as in what they did with LB790, that that was clearly defined so that, when it goes into effect with that emergency clause, we have clearly defined what we need to do because, as of right now with "vehicle," it's not clearly defined. [LB958]

SENATOR CRAWFORD: Thank you. [LB958]

SENATOR RIEPE: At a time when we're trying to move away from regulations, it seems illogical to me to be so specific as to stipulate exactly what a vehicle has to be or how long it has to be, how wide it has to be, all those. My attitude is, quite frankly, whoever's doing the business, it's a business decision. If they can make it work, God bless them, make it work. [LB958]

KIM ADAMS JOHNSON: Yeah, it's just...especially with the industry of massage therapy, there is a lot of different public perception. And just a lot of the input that I have gotten from other massage therapists it was not favorable, especially how the bill was written, that it was so vague. People really did feel that it needed more clarification, and that was a lot of the massage therapists that I spoke with. I heard some very negative things about just the perception that that could give if somebody rolls up with a car with a trailer on the back of it, that it could be perceived badly, you know, and then it's sitting in the neighborhood, so... [LB958]

SENATOR RIEPE: Senator Howard. [LB958]

SENATOR HOWARD: Thank you. Thank you, Senator Riepe. Thank you for visiting with us. What are the requirements for brick and mortar? Like; do they need a sink? Do they need a bathroom? [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIM ADAMS JOHNSON: Let's see here. There is a whole list for the self-inspection. There is definitions for the physical structure, that "all rooms must have adequate lighting and ventilation." Each establishment must have "an area that can be screened from public view for customers requesting privacy." Each room where massage therapy services are provided must have an EPA-registered disinfectant. Water...the owner must ensure that "the establishment has a supply of hot and cold running water" in a sufficient quantity "to conduct business in the establishment in a sanitary manner." There's things about safety, there's things about the restroom facilities, the safety of the equipment that's used. Storage...we have rules on storage. I think we are maybe removing some of that when we rewrite the regulations because some of it did seem kind of silly, for lack of a better term. There's things about the towels and linens, products, methods of disinfection, but the list just kind of goes on and on. [LB958]

SENATOR HOWARD: Have you given Senator Erdman your amendment that... [LB958]

KIM ADAMS JOHNSON: We discussed it this morning. [LB958]

SENATOR HOWARD: ...you would like him to... [LB958]

KIM ADAMS JOHNSON: Um-hum, just some of the language, and he did indicate this morning that he was willing to work... [LB958]

SENATOR HOWARD: Okay. [LB958]

KIM ADAMS JOHNSON: ...with writing a potential amendment. [LB958]

SENATOR HOWARD: Perfect, thank you. [LB958]

SENATOR RIEPE: Okay, Senator Williams. [LB958]

SENATOR WILLIAMS: Thank you, Senator Riepe. And thank you, Kim, for being here, again. I want to be sure I just understood this; all of those requirements are in rules and... [LB958]

KIM ADAMS JOHNSON: Regulations. [LB958]

SENATOR WILLIAMS: They're not in statute. Would you be opposed to language in the statute that was along the lines of a vehicle that was then described as those requirements that are promulgated in rules and regulation? [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

KIM ADAMS JOHNSON: And that would be something that I think we could work with. We just... [LB958]

SENATOR WILLIAMS: And who would prescribe those rules and regulations? Which...would it be your association or would it be...? [LB958]

KIM ADAMS JOHNSON: You know, at this point we're kind of open to suggestions on that. But the massage therapy board has actually been working on regulations for mobile establishments for about the last year. We had several people approach us, so that had been something we had been looking at putting into regulation and we've been discussing. It was just proving to be kind of a quandary, coming up with language, because when we first initially looked at it, we were hoping that we could somehow slide it in to how the regulations are written now. But it did not meet the definition of a brick and mortar establishment, nor did it meet the definition of going to the clients location. Because it's, technically, you're not going to the client's location, you're taking your office to the client's location. [LB958]

SENATOR WILLIAMS: Right. Thank you. [LB958]

SENATOR RIEPE: Senator Linehan. [LB958]

SENATOR LINEHAN: Thank you for being here. Thank you, Mr. Chairman. So I think what you're saying, kind of the big picture, your industry has worked a long time to bring professionalism to it and you want to make sure you protect that professionalism. [LB958]

KIM ADAMS JOHNSON: Yes, and also... [LB958]

SENATOR LINEHAN: You're not against the massage therapy mobile unit, you're just... [LB958]

KIM ADAMS JOHNSON: Oh, no. [LB958]

SENATOR LINEHAN: ...you want to make sure that... [LB958]

KIM ADAMS JOHNSON: We want to make sure that our therapists are protected, our licensees are protected, and then we also want to maintain that public protection. [LB958]

SENATOR LINEHAN: Okay, I got it. Thank you very much. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: Okay, thank you. Other questions? Seeing none, thank you very much for being here. [LB958]

KIM ADAMS JOHNSON: Thank you. [LB958]

SENATOR RIEPE: Thanks for all your preparation work. [LB958]

KIM ADAMS JOHNSON: Thank you. [LB958]

SENATOR RIEPE: I'm going to say more proponents. Okay, seeing none. Any opponents? [LB958]

BRIANA CUDLY: I actually have the self-inspection sheet that Kim was just speaking of. [LB958]

SENATOR RIEPE: Okay, we'll just hand them out. Thank you. If you'd be kind enough to state your name and spell it, then go from there. [LB958]

BRIANA CUDLY: (Exhibit 2) Good afternoon. My name is Briana Cudly, B-r-i-a-n-a C-u-d-l-y. You'll have to excuse me, I have a very stiff neck so I'm probably not going to be looking in your direction very much. I am the government relations chair for the American Massage Therapy Association of Nebraska. The AMTA Nebraska Chapter board has been discussing the pros and cons of our state regulating massage establishments and vehicles. And although we're open to the possibility of having mobile massage establishments, we're in opposition of the bill as it stands now. We're concerned with how the state would be able to regulate these potential establishments. As of right now, establishment regulations are written to oversee fixed locations. More specific language is needed in order for the Massage Therapy Board to effectively license and inspect the mobile establishment. A few examples: It's stated in the inspection report, which I just handed out, if you look, even just at Section A, 1-Physical Structure, a. "the massage therapy establishment has a clearly identifiable location." This is inherently impossible on a mobile establishment. We're also...the assurance of accountability "fixed establishments are subject to random inspections to help ensure compliance." Without a system for keeping track of the vehicle--where it is on specific days, during specific hours, similar to mobile MRI's, bloodmobiles, food trucks, over-the-road truck drivers--there's no opportunities for these types of inspections. And without assurance of accountability we also open the doors, very wide, to bad actors and illicit behaviors. Examples of other provisions we'd like to see include: a permanent outdoor signage with large, easily readable business name, establishment license number, permanent address, and phone number; provisions on treatment while the vehicle is in motion

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

and maintenance records in a conspicuous location. This is new territory for our profession. If Nebraska is going to be a leader in licensing mobile massage therapy establishments, let's do it correctly from the beginning. With the utmost consideration to the health and safety of clients and therapists alike, if we don't have time to do it right, now, when will we ever have time to do it over? Thank you for your time. And do you have any questions for me? [LB958]

SENATOR RIEPE: Okay. Senator Howard... [LB958]

BRIANA CUDLY: (Laughing) I feel very weird turning that way. [LB958]

SENATOR HOWARD: You're fine. Thank you for visiting with us. Did you tell Senator Erdman about your specific requests in changes that you wanted in the bill? [LB958]

BRIANA CUDLY: Actually, we spoke with Kim, with the board, and she spoke with Senator Erdman. I live in Fremont, and so it's a little more difficult for me to drive back and forth to Lincoln. [LB958]

SENATOR HOWARD: Absolutely. [LB958]

BRIANA CUDLY: I, too, rearranged my day, today, to be here. [LB958]

SENATOR HOWARD: And we appreciate it. So Kim essentially has all of the changes that you would like to see as well? [LB958]

BRIANA CUDLY: Yes, our president, Becky, met with Kim to discuss a lot of our concerns. [LB958]

SENATOR HOWARD: Okay. [LB958]

BRIANA CUDLY: We also went through the bill for the cosmetology and nail techs, knowing that this was being introduced for them as well, just to kind of look through and see how they went about it. As Kim kind of mentioned earlier, we do have a public perception that we deal with on a daily basis...jokes, this, that and the other thing. And we want to ensure that we're not putting everybody at risk by not going through and just filling in some details here. [LB958]

SENATOR HOWARD: Sure, no. Thank you. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR RIEPE: Okay, not seeing any other questions or hands. Thank you very much for being here. Thanks for making the trip. We appreciate it. Are there any additional opponents? Seeing none, are there...is there anyone testifying in a neutral capacity? Seeing none. Tyler, do we have any letters, serious letters? (Laughter) [LB958]

TYLER MAHOOD: (Exhibits 3-8) Yes, all of the following are in support: Deborah Martin on behalf of herself, Margaret Davidson on behalf of herself, Megan Martin on behalf of herself, Renae Zink on behalf of herself, Wayne Thunker on behalf of himself, and Nicole Fox of the Platte Institute. [LB958]

SENATOR RIEPE: Those are all in favor? Okay. Thank you very much. Senator Erdman, would you like to close, please? [LB958]

SENATOR ERDMAN: Thank you, Senator Riepe. That was an amazing deal; I heard an opposition, a support, and a neutral all in the same person. That was amazing. (Laughter) So thank you, Senator Kolterman. So as you listened to the testimony, and Senator Williams picked up on that's in rules and regulations, and I think, coming from my prior life as a county commissioner, we made a decision on Tuesday and, by Friday or the next Tuesday, it was carried out. One of the things that I see that happens here that is troublesome is we talk about things for, like, five years and then we finally do something. And so I'm open to discussion with these people about how we amend this bill, or whatever we need to do to make it happen. But it needs to happen soon. And so I'm looking forward to working with them. You know, they talked about inspection of the vehicle and maintenance records, and I'm not a regulation guy. Okay? I'm sick of the government being in my life and we need to get the government out of the way. And, as Senator Riepe said, let people make a decision on how they get with things and how they do stuff and set out the certain ramifications and have them move on. As you heard from Jean Thunker, they have inspected her property once in six years. So if she's on the road, I don't think it's a big deal because they can find her where she is once every six years. I think once every six years, they can find her mobile unit. Call her on her cell phone, she'll tell you where she is and you can come and see her. May be a chance you might be close to the inspection person's place and he can just come out and see you. So all these things that they talk about as being a roadblock, or why we shouldn't do this. And so what we hear most of the time is: Oh, we've never done that, or that's what we always do. And I always hear that, and I hate that. And so here's an example of what that means. One day a little girl was watching her mom make a ham for Easter. And she cut the end of the ham off, and she put it in the pan and put it in the oven. And the little girl says: Mom, why did you cut the end of the ham off? She said: I don't know. I learned it from grandma, go ask her. So she goes to her grandma's house and asks grandma why she cut the end of the ham off, and she says: I learned from great-grandma, go to the rest home and see her. So she did. So she asked great-grandma: Why did you cut the end of the ham off? And great-grandma says: Pan wasn't big enough. So that's what we do. We do a lot of that here, we've always done it this way

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

so we always have to keep doing it that way. Now we have removed a lot of regulations over time and we need to remove some more. So I think it would make sense, once I get this bill amended to where it fits with what they want to do, that we move this bill forward and we accomplish something for those people that need help now. Thank you. [LB958]

SENATOR RIEPE: Senator Kolterman has a response. [LB958]

SENATOR KOLTERMAN: No, I have a serious question. [LB958]

SENATOR RIEPE: You have another story? [LB958]

SENATOR KOLTERMAN: No, seriously. This is a serious question. [LB958]

SENATOR ERDMAN: I'll try to keep smiling. [LB958]

SENATOR KOLTERMAN: What's a toy hauler? [LB958]

SENATOR HOWARD: Oh, yes. [LB958]

SENATOR ERDMAN: I have no idea. [LB958]

SENATOR RIEPE: You don't know? [LB958]

SENATOR WILLIAMS: Come on, guys. [LB958]

SENATOR KOLTERMAN: I don't know what a toy hauler...is that a back end of a mobile home that you can haul motorcycles?... [LB958]

SENATOR WILLIAMS: Do you want to tell them, or do you want me to? [LB958]

SENATOR HOWARD: I think, Senator Williams, you are the only person who can tell us... [LB958]

SENATOR CRAWFORD: Who can speak, yes. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR WILLIAMS: It's an enclosed trailer. And you see them all over the interstate, like a...they call them a van... [LB958]

SENATOR HOWARD: Like a horse trailer? [LB958]

SENATOR WILLIAMS: No, it's not a horse trailer. Fully enclosed on all sides and top, 14 feet long is what she said, or they come in all sizes like that. And they come in either a pull-behind or a fifth-wheel kind. And she mentioned using a fifth-wheel; that's the kind that has the gooseneck that goes in the back of a pickup or something like that or a...you know... [LB958]

SENATOR KOLTERMAN: So you would have your food and where you'd sleep up front, then there's a partition and then there's a place behind? [LB958]

SENATOR WILLIAMS: You could do anything you wanted to inside of it. [LB958]

SENATOR KOLTERMAN: Oh, okay. [LB958]

SENATOR WILLIAMS: I mean, it's...a normal toy hauler is what you see hauling a vehicle. You know, when you see the mobile home kind of thing, then behind it it's another trailer? [LB958]

SENATOR KOLTERMAN: Okay. [LB958]

SENATOR HOWARD: And so... [LB958]

SENATOR WILLIAMS: That's a toy hauler, hauling their toys. [LB958]

SENATOR HOWARD: ...do they have running water? [LB958]

SENATOR KOLTERMAN: Can. [LB958]

SENATOR WILLIAMS: It'd have to be plumbed to do that. [LB958]

SENATOR HOWARD: Okay. [LB958]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Health and Human Services Committee
January 31, 2018

SENATOR ERDMAN: I think what Ms. Thunker was talking about is she would have a mobile unit that would have running water, bathroom and the whole facility included in it. So it'd be available to them. Basically, similar to what she has in brick and a mortar facility. [LB958]

SENATOR RIEPE: Thank you, we're all going to go home with a little bit more knowledge today. [LB958]

SENATOR ERDMAN: The lady with the stiff neck needs to find a therapist. (Laughter) [LB958]

SENATOR WILLIAMS: She's still behind you. [LB958]

SENATOR RIEPE: I would also...that legal has volunteered to step up to help maybe pull some of this together... [LB958]

SENATOR ERDMAN: Thank you, appreciate it. [LB958]

SENATOR RIEPE: ...from the committee so we can get a workable bill. [LB958]

SENATOR ERDMAN: Thank you. [LB958]

SENATOR RIEPE: Okay. Thank you very much for being here. And that will...I declare LB958 having received a full and fair hearing. And that concludes this hearing. It also concludes all of the bills we have today. [LB958]