

Health and Human Services Committee February 28, 2019

HOWARD: [RECORDER MALFUNCTION] Human Services Committee. I'm Senator Sarah Howard, and I serve as chair of this committee. Today we'll be continuing our series of briefings with department heads and other interested groups. And today we'll be starting with a briefing from the Division of Developmental Disabilities. Welcome Courtney, Courtney Miller. Good afternoon.

COURTNEY MILLER: OK.

HOWARD: Whenever you're ready.

COURTNEY MILLER: Go ahead? OK. Good afternoon, Senator Howard and members of the Health and Human Services Committee. My name is Courtney Miller, and I am the director of the Division of Developmental Disabilities with the Nebraska Department of Health and Human Services. I appreciate the opportunity to come before you today and provide an overview regarding our division. A lot of good work has been happening since I appeared before the committee in 2018. When I joined the division in September of 2015, I established three overarching priorities that continue to drive our work today. The first is a focus on customer service, the second is develop meaningful relationship with stakeholders, and three is to protect our state and federal

funding to serve as many individuals as we can. I want to note that many of our accomplishments came about through hearing from stakeholders and team members on what was working well and not working so well. So you have a PowerPoint presentation walk-through, on slide 2, about the division. We administer publicly funded developmental disability services to over 5,200 individuals in community-based settings. These services are provided as an alternative to individuals eligible for institutional placement in an intermediate care facility to the developmentally disabled. This is currently accomplished through several federal, federal and state authorities. Services Coordination [SIC], also referred to as Medicaid state plan targeted case management-- there are approximately 265 of our DD state team members delivering these services across the state. We have two federally approved Medicaid Home and Community-Based Services waivers, and we administer the Nebraska Developmental Disabilities Court-Ordered Custody Act. The division provides enrollment and oversight for compliance of DD community-based service providers. We also provide institutional care to 106 individuals at the Beatrice State Development [SIC] Center, which is licensed as intermediate care facilities. The crisis stable, stabilization and community reintegration unit was established in May of 2017 with, within one of the licensed

facilities at BSDC and immediately demonstrated a positive impact on those served. On the next slide we talk about the Medicaid home- and community-based DD waiver programs. These waivers allow states to submit an application for a request to waive existing federal rules and provide additional services for a defined subset of Medicaid beneficiaries. The division received federal approval in 2017 for the renewal applications of the DD adult day services waiver and the DD comprehensive services waiver. This was the result of a focused effort to address the many areas of compliance concerns identified in 2015 by our federal partners, the Centers for Medicare and Medicaid Services. The waivers were approved with two corrective action plan items which I will address shortly in the next slides. The DD waiver service array is available through person-centered planning and includes day service options which focus on community inclusion and increasing skills needed to participate in the work force, residential "habilitation" service options which occur in the participant's own home, their family home, a host home, or a group home. This service helps develop independent living skills and access to the community. We provide Respite, which is relief for a usual nonpaid caregiver that lives with the participant. Assistive devices are covered items to increase independence, such as an iPad for

communication. We provide environmental modification, which can include home or vehicle modifications. And we provide Personal Emergency Response System. This provides a device to call for help in an emergency. There is a waitlist for services. Although there has been significant movement on reducing the waitlist, there is not enough funds available to serve all eligible applicants. This is recognized in statute with six prioritization categories for funding offers through the Medicaid DD waivers. For our corrective action plans, the first corrective action plan is addressing the concern with Nebraska's subcontracting arrangement for extended family home services. In the course of our DD waiver application renewals, CMS raised the concern of the use of pass-through or subcontracted payments to extended family home providers. CMS indicated these do not comply with federal regulation and is requiring the designation of provider agencies as organized healthcare delivery system providers, or the OHCDS model, absent an acceptable alternative approval by CMS. A significant impact to using this model is payment for administrative tasks that would be would be reimbursed at a lower federal match of 50/50. The state determined, based on feedback from providers and other stakeholders, as well as research into how services are being delivered in Nebraska and other states, that the OHCDS model

would not be the best option for Nebraska. Through our research we discovered another model, the shared living model. The state determined this model would best meet the needs of participants receiving services and limit any service disruption. We were successful in negotiating with CMS to establish this model for Nebraska. The shared living model of service delivery allows an agency provider to subcontract with a shared living, independent contractor, also referred to as a shared living provider, to provide the direct support portion of the service. The agency provider retains oversight and responsibility for the service delivery. The second corrective action plan is completion of rate reform. There are two issues Nebraska must address. CMS expect states to rebase home- and community-based service rates every five years in order to make sure that rates adequately reflect the cost of delivering services. This was last done for Nebraska DD waivers in 2011 and implemented in 2014. The rate study was accomplished and closely monitored by CMS through phase 1 of the rate rebase and objective assessment process redesign project. We continue to be committed to ensuring individuals receiving services, families, providers, advocates, and the general public have the opportunity to advise and influence reforms. This is being done with two work groups that will continue through both phases of the project. The first is

the provider advisory group, which consists of ten providers nominated by Nebraska trade associations and the executive director for the Nebraska Association of Service Providers. We also established a stakeholder work group. This work group encourages statewide participation from the spectrum of stakeholder groups. There are no participant limits and they are facilitated through live webinars that are recorded and made available on DD Web site dedicated to this project. So phase 2 of the objective assessment process redesign kicked off in July of 2018. This phase will address the second issue, which is the need to change our reimbursement structure for services. We have an extraordinarily high use of exception funding to individuals budget amounts. This means our resource allocation model may not adequately reflect the needs of the majority of individuals and services, so the exception has become the rule. We will be using findings from the rate study and other predictors of need to reform the rate structure to alter payment methodologies to better match payment to risk. The team is currently engaged in clinical hypothetical studies with two work groups that include both external and-- internal and external partners. The data resulting from the studies is important to determine which assessments and screening tools to use in the model. Phase 2 is expected to be completed in spring of 2020. So I'd like to talk

about our quality management strategy. A deficiency the division has been highly criticized for is not providing adequate oversight and monitoring of our programs and services. We have embarked on a multiyear-phased approach to enhance service quality throughout our system. We have been building a quality infrastructure to support many quality management initiatives to reflect both national best practices and the priorities of the division, to, to continuously improve the quality of services. There are currently 32 assurances for Nebraska's Medicaid DD waivers. These are federal requirements, and CMS requires states to give assurances in the waiver applications that we will ensure compliance. This is monitored through reporting requirements to CMS. If Nebraska is unable to demonstrate compliance with the assurances, federal funding would be at stake. In 2016, funding was provided through legislative appropriation for positions to assist the division in building a team that have the duties and responsibilities to ensure program accuracy at varying levels that was not being completed; this was a start. The division is developing and implementing policies, procedures, oversight, and monitoring of service quality and post-payment reviews that have been determined inadequate by our federal partners. In January 2018, a joint report titled Ensuring Beneficiary Health and Safety in Group

Homes Through State Implementation of Comprehensive Compliant Oversight was released by three agencies within the federal Department of Health and Human Services. Those agencies were the Administration on Community Living, the Office for Civil Rights, and the Office of the Inspector General. CMS subsequently released a bulletin advising states they intend to further-- issue further guidance highlighting promising practices and effectuating the suggestions contained in the joint report, along with proposed performance metrics for evaluating the health and welfare of individuals receiving Home and Community-based Waiver services. This guidance is expected to become mandates, and these federal entities are continuing their reviews in other states. These quality initiatives extend beyond group home settings to all service settings, and the division is taking steps to implement the model practices identified in the joint report. So our next steps for the quality management strategy-- Governor Ricketts recently released his Executive Budget proposal for the next biennium fiscal years. The recommendation includes transferring funds from the BSDC budget to the DD administration budget to continue with the next critical phase of Nebraska's quality management strategy. The transfer will accomplish two things. It will add up to 19 positions to the division. The increased positions will allow

the division to keep service coordination caseloads at an acceptable level and provide focused resources for those we serve with high behavioral and medical needs. It will also provide funds to contract with a quality improvement organization, like Entity, to begin implementation of the model practices that were identified in the joint report. The contract's scope of work would include enhancing our incident report management system, death and mortality reviews, and providing training and technical assistance to the state and service providers to assist in building our community-based provider capacity. This allows us to use 75 percent federal financial participation that is available for the performance of these activities. This investment will allow the division to improve our system of reporting and position us to strengthen our ability to recognize trends and assess risks to help Nebraskans receiving services live better lives. The ability to dive deeper into identified areas of concern, based on data, is critical to addressing systemic issues. Again, a lot of good work has been happening within the division. My team deserves kudos for their many accomplishments this past year. We do, however, recognize we have more work to do. Thank you for the opportunity to provide you with information on the Division of

Developmental Disabilities. I'd be happy to answer any questions that you may have.

HOWARD: Thank you. Before we get started, how many people are on the waitlist right now?

COURTNEY MILLER: So the waitlist numbers today-- we had previously been reporting the number of Medicaid-eligible adults and children. We've actually-- and we had a separate registry for children that were not Medicaid-eligible. They become eligible with the waiver slot because we apply institutional rules which disregards the parental income. So we combine those together and so today, those eligible to accept an offer today is 2,138 that are waiting.

HOWARD: I'm sorry, 2,000?

COURTNEY MILLER: Two thousand, one hundred and thirty-eight.

HOWARD: And how many are on the waitlist?

COURTNEY MILLER: That-- those are the number on the waitlist.

HOWARD: So everybody on the waitlist is eligible to accept an offer--

COURTNEY MILLER: Yes.

HOWARD: --right now. OK.

COURTNEY MILLER: Um-hum.

HOWARD: Has anybody been offered and then decided not to take an offer?

COURTNEY MILLER: Yes. So previously the rule or the administration of what was called the registry of unmet need was a combination of those that were eligible at the time and those that had future eligibility. And so when an offer was made, then we went through the process of looking at Medicaid eligibility and level of care. And some, when they indicated that they did not want to receive services at that time, it was based on a date of need. And that was something that they could then stay where they were on the waitlist. CMS had indicated to us, when we renewed our waivers, that it has to be by date of application and, if you decline an offer, that you have to reapply and go to the bottom of the waitlist. And so there are individuals that are currently in that 2,138 that have received previous offers. And then, when we go to make an offer to them today, we will indicate very clearly it's not that we won't take no for an answer but we want to make sure they're making an informed decision of what the, what it means if they decline that offer.

HOWARD: Perfect, thank you.

COURTNEY MILLER: Um-hum.

HOWARD: Are there questions from the committee? Senator Walz.

WALZ: Thanks for coming today, Courtney-- Mrs. Miller-- Ms. Miller. You said something about a better match payment to risk. What does that mean?

COURTNEY MILLER: So it means that today our-- the objective assessment process-- the tool that's used is the ICAP, which is the Inventory for Client Agency Planning. It's a, it's a national tool, but many states use a variety of tools together to develop that budget amount. And for, for some time Nebraska has only used that ICAP tool. That ICAP tool was not developed to determine individual budget amounts; it was determined to develop service plans for individuals. And so that, in and of itself, is not sufficient. And so we're finding that, that ICAP score that transitions or translates into a tier is not necessarily the best reflection and covers all the individual's needs. And what we're seeing is, is what, what those, what that tool doesn't cover is those that are better, higher with behavioral or medical needs. And so that's why the exception funding then comes in to meet those needs. But when a majority

or too many of your individuals are receiving exception funding, then you need to take a look at your tool. So we're looking at risk screens that were developed when the Department of Justice was here with the Beatrice State Development Center and looking at other tools that other states use to better define what that budget amount should be and what that acuity level is.

WALZ: So it's based more on a person's physical needs than it is services, that--

COURTNEY MILLER: You know, I'm not an expert on the ICAP. I'd have to, I'd have to get more information to you based on that. But what-- but my understanding is, and just having experience reviewing funding levels with families, is that the ICAP, in and of itself, doesn't cover all the needs of what should be in, considered in a, in a funding amount.

WALZ: OK. Can I ask one more question?

HOWARD: Go ahead, yes.

WALZ: So-- and this is just an off-the-cuff kind of question, but I know that you have so much involvement. And if you could change one thing that would make a difference for the programs that we have for people with developmental disabilities, is

there something that kind of comes off the top of your head that you would change?

COURTNEY MILLER: You know, it's difficult to say one thing because there are so many things that you want to do for this population. I've learned a lot in the last three years, and I would say a significant challenge that we're having is those with high behavioral health needs. I think that the dual diagnosis in that population, and finding that, that adequate service array for them to make sure that their needs are being met. And find partnerships, and we can't-- it's difficult because the practitioners-- there's a shortage throughout the nation for behavioral health-- and looking at what can we do. But I think that we can look at other states' models and see what's working for them, and see how we can change some of those services to better support them in the community. The crisis stabilization unit was a great step to demonstrate that there was a need to treat them and to provide them with more adequate oversight and with the dual diagnosis. But we need to establish that in the community, as well.

WALZ: Good, thank you.

COURTNEY MILLER: Um-hum.

HOWARD: Other questions? How many people are at the BSDC right now?

COURTNEY MILLER: We have--let's see, I know I said it, but I've got a cheat sheet here. We have-- 106 is our total census. We have 98 long-term residents and we have 8 individuals in the crisis stabilization unit.

HOWARD: So the crisis stabilization unit is something that I'm not familiar with; that's sort of new to me.

COURTNEY MILLER: Um-hum.

HOWARD: Can you tell me a little bit more about that?

COURTNEY MILLER: So what we looked at-- when we looked at our population and looked at our community-based services, and when-- in my engagement with providers, you know, it was, it was clear that some of them were struggling in the community. And when you look at an individual, and perhaps they need some medication management or some stabilization with medications-- titrating medications and making those changes-- in a community placement, sometimes it can be dangerous for the individual and for the staff, and they need that, that 24 hour supervision.

HOWARD: Um-hum.

COURTNEY MILLER: And we knew that the folks at BSDC, our team down there, had the level of expertise to do that. And so we opened the crisis stabilization unit to be a short-term placement to help them stabilize and then reintegrate them back into the community. And we found immediately that it was successful and that it did make a difference. And we've served 16 individuals since May of 2017. And many of them are thriving in the community as a result of having them at the Beatrice State Development Center, and then partnering with providers when they're reintegrated back into the community. And many of those individuals we actually received from the regional centers, from Corrections, and they had not had habilitation treatment to the, to the specific, to the DD diagnosis. And so this enabled the experts at BSDC to help them reintegrate, to, to move towards a lesser restrictive environment in the community.

HOWARD: So what sort of collaborations are you doing with other, other agency groups? Are you working with that Division of Behavioral Health? Are you working with Corrections?

COURTNEY MILLER: Absolutely. We haven't had conversations with the Department of Corrections; when I say corrections, I meant the jails. And so we are looking at how do we, how do we partner

with law enforcement and look at how do we prevent the law enforcement contacts. And that's, that's something that, through the quality management system or strategy, that we can look at law enforcement and get that data to see where are our areas of vulnerability. Is it specific towns or areas of the state? Is it acuity levels with the individuals? What do we need for a strategy? And that will help us do that.

HOWARD: And then what's the length that-- for our corrective action plans, when do you think that we'll be done working on those?

COURTNEY MILLER: It's difficult to say because we're, we are at the mercy of CMS, per se. We are getting ready to submit our waiver amendments that will address our current corrective action plans. We were ready to submit, and then CMS released the next version of their technical assistance guidance for the waivers. And so they made some changes in their software. And so we have to add that additional information before we can hit the button to submit into their software. So that set us back a little bit, but we're hoping that we can have all that information reformatted and put in a different way by the end of this month. CMS then has a 90-day clock to turn that around with approval. However, there are opportunities for CMS to stop that

clock. If they request a formal request for information, the clock stops until the state responds to that. And in my conversations with other states, when you're introducing a rate methodology, you're almost guaranteed that that clock will stop. CMS uses a contractor to review all of the rate information. So then you get CMS's comments, then you get the contractor comments. And so we anticipate the earliest that, that our waivers will be approved is around summer. I've gone from specific months to seasons, just based on CMS's time lines.

HOWARD: Thank you.

COURTNEY MILLER: Um-hum.

HOWARD: Are there any other questions from the committee? Seeing none, thank you--

COURTNEY MILLER: OK.

HOWARD: --for your time today. We really do appreciate it.

COURTNEY MILLER: Thank you.

HOWARD: And our hearings will start at 1:30, so we've got about a three-minute window for a break.

[BREAK]

HOWARD: Welcome to the Health and Human Services Committee. My name is Senator Sara Howard, and I represent the 9th Legislative District in Omaha, and I serve as Chair of the Health and Human Services Committee. I'd like to invite the members of the committee to introduce themselves, starting on my right.

MURMAN: Hi. I'm Senator Dave Murman, District 38: Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and southwest Buffalo County.

WALZ: Lynne Walz, District 15: Dodge County.

WILLIAMS: Matt Williams from Gothenburg, Legislative District 36: Dawson, Custer, and the north portion of Buffalo Counties.

CAVANAUGH: Machaela Cavanaugh, District 6: west-central Omaha, Douglas County.

HOWARD: All right. And we are joined by our legal counsel, Jennifer Carter, and our committee clerk, Sherry Shaffer, and our committee pages, Maddy-- is Erika coming later?

MADELINE BROWN: Yeah, um-hum.

HOWARD: Yes, she is-- and Erika when she gets here. A few notes about our policies and procedures-- please turn off or silence your cell phones. This afternoon we will be hearing three bills,

and we'll be taking them in the order listed on the agenda outside the room. At each of the tables near the doors to the hearing room you will find green testifier sheets. If you are planning to testify today, please fill one out and hand it to Sherry when you come up to testify. If you are not testifying at the microphone, but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. Also, I would note, if you are not testifying but have written testimony to submit, the Legislature's policy is that all letters for the record must be received by the committee by 5:00 p.m., the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record, as exhibits. We would ask that, if you do have handouts, that you please bring ten copies and give them to the page. We do use a light system in this committee. Each testifier will have five minutes to testify. When you begin the light will be green. When the light turns yellow, that means you have one minute left. When the light, when the light turns red, it's time to end your testimony and we'll ask you to wrap up your final thoughts. If you do need an accommodation for time, we are, are happy to, happy to do so. When you come up to testify, please begin by stating your name clearly into the microphone, and then

please spell both your first and last name. The hearing with each bill will begin with the introducer's opening statement. After the opening we'll hear from supporters, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements, if they wish to do so. We do have a strict no-prop policy in this committee. And with that, we will begin today's hearings with LB323, Senator Crawford's bill to change eligibility provisions, under the Medical Assistance Act, for certain disabled persons. Welcome, Senator Crawford.

CRAWFORD: Thank you. Good afternoon, Chairwoman Howard, members of the Health and Human Services Committee. 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. And I'm honored to be here today to introduce LB323 for your consideration. Over the interim, my staff and I conducted research and worked with Senator Linehan on LR448, an interim study to review Nebraska's Medicaid insurance for workers with disabilities program. We will refer to this program from here on out as Medicaid "buy-in" for short, and because it's a program that allows individuals with disabilities who are working and earning income that exceeds traditional Medicaid limit to purchase or buy in to Medicaid insurance coverage. For most of

this population, continued Medicaid coverage is essential because it covers services and supports not covered by other health plans. Individuals with disabilities who are able to work often are able to do so thanks to the coverage of critical goods and services like medical equipment or support staff. These allow them to remain, maintain their quality of life. The advocates here today can speak more to the reasons why it's important to be able to buy in to Medicaid coverage rather than other options that may not meet their needs. I'll start with a little history of the program. The Balanced Budget Act of 1997 created this optional Medicaid buy-in group for workers with disabilities, which states could choose to include in their state plans. The Nebraska Legislature passed our statute, creating the program with this eligibility group, under the Balanced Budget Act in the spring of 1999. Later that year, Congress passed the Ticket to Work Act [SIC] of 1999 that created updated optional eligibility categories for the program and allowed states greater flexibility in their ability to provide coverage for working individuals with disabilities. Nebraska's program was implemented under the older Balanced Budget Act, per the Legislature's intent when the first statute was passed. Our program has not been updated since then and, consequently, the state has lost out on the opportunity to

improve its program through making use of the greater flexibility provided in the Ticket to Work basic eligibility options. Advocates from the disability rights community have urged the Legislature for years to reexamine this program, which is notorious for its arduous and restrictive two-part income eligibility test, to see where improvements can be made.

Nebraska is one of only a handful of states that has not updated our eligibility group from the Balanced Budget Act basic eligibility group to the Ticket to Work and Work Incentives Improvement Act eligibility groups. As a result, Nebraskans with disabilities who want to work often risk losing their Medicaid coverage, which covers essential services and supports for many to maintain their quality of life. Faced with a decision between earning income and retaining critical benefits, many capable employees are forced to work less hours or pay-- or for less pay than they're capable of, or do not work at all. LB323 would encourage Nebraskans who are able to work to do so and move towards greater self-sufficiency. As of 2018, 74 individuals were enrolled in the Medicaid buy-in program here in Nebraska, with a five-year average participation rate at about 80. It's difficult to estimate how many individuals are losing out on these benefits as a result of the current eligibility standards because we don't know exactly how many Medicaid participants are

able to work but wouldn't risk losing eligibility. We do know, from our work with the advocacy organizations, that many individuals report working less hours than they would like, refusing promotions and pay raises, or not working even though are capable and would prefer employment, for fear of losing their Medicaid coverage. LB323 would tackle several major problems with the existing eligibility determinations. The first major barrier is Test A of the current two-part eligibility test that features income determinations based on a "trial work period," a requirement that's tied to the Balanced Budget Act eligibility standards. Advocates and the department alike have stated that this is administratively burdensome and difficult to navigate. The use of the trial work period makes eligibility determinations challenging because there's no failsafe way for DHHS to see if someone is currently in a trial work period. LB323 eliminates this requirement by shifting the Ticket to Work-- to the Ticket to Work eligibility group denoted as the Roman numeral XV in Section 8 of the bill on page 3, line eleven. Changing to the-- excuse me-- changing to the Ticket to Work eligibility group further allows the state to determine how income can be counted. The second Roman numeral, XVI on the same line, adds a medically improved eligibility group, also authorized under the Ticket to Work Act. This group covers

people with disabilities who are responding to medication, treatment, or support services and thus may lose their Social Security disability determination due to medical improvement. Currently, if an individual is deemed medically improved by Social Security, they are no, they are no longer eligible for Medicaid. While these individuals are maintaining an improved quality of life, losing access to the medications or supports that helped them improve in the first place can cause their condition to deteriorate and return to coverage as medically needy, likely at a higher expense. Our neighbor, Kansas, has a program similar to how ours would be structured under LB323. On average only about 1 percent of Kansas' total enrollment falls under this medically improved category. However, this is a change that would make a huge difference for that small number of people while creating, hopefully, a cost savings. Additionally, LB323 does away with resource limits. The current resource limits of \$4,000 for an individual or \$6,000 for a couple are outdated, inconsistent with Nebraska's big four economic assistance programs, none of which have resource limits in their eligibility standards. A study of states' Medicaid buy-in programs found that raising or eliminating asset limits contribute to increasing higher wage earners participating in the buy-in programs, increasing premium revenue. Finally, LB323

shifts the premium threshold from the current 2 percent to 10 percent of income up to 7.5 percent of income, as required by the Ticket to Work standards. Data from other states indicates that Medicaid buy-in programs for workers with disabilities have a positive impact on state budgets and reduce Medicaid costs. When Kansas implemented their program under the Ticket to Work eligibility standards, Medicaid expenditures, expenditures for that population dropped 41 percent, and participants' contributions to state revenues increased. Medicaid buy-in participants in Washington had higher earnings, paid more in taxes, and relied less on food stamps. Though this program is meant to encourage employment, current convoluted and outdated eligibility standards discourages disabled individuals from growing in their independence. This update to our Medicaid buy-in program will allow disabled individuals the necessary medical coverage to encourage, enable them to maintain their quality of life and health, maintain or increase employment, and foster independent, financial independence through savings such as retirement accounts. Upon receiving the fiscal note, we held a meeting with the fiscal analyst and the department to determine what can be done to reduce it. As a result of that conversation, we have drafted AM506. This amendment addresses the two key components of the bill which contributed to the estimated

General Fund impact by bringing many more people into the program. First, the striking of the full sentence on page 2, line 23, prevents the department from having to disregard all unearned income, which is currently used in eligibility criteria. Our advocates had originally advocated for keeping that part in, for fear that some individuals currently in the program would lose eligibility if the department did not disregard any of the unearned income. We shared these concerns with the department, and they have assured us that, under the new Ticket to Work authority, this change-- we can do away with Test A altogether, the component involving the trial work period that is cumbersome. Thus, in this case, we'll go directly to what is now Test B of the eligibility test, which currently counts all earned and unearned income. Effectively, the current two-part income tests will really be replaced with what is now Test B and no one should lose all the eligibility by striking that sentence. The other proposed change in the amendment removes the sentence that would have done away with resource limits. While we would have liked to have eliminated resource limits from consideration, we were told this was the major contributor to the projected General Fund expense. In recognition that this bill is less likely to succeed with a large fiscal note, we make these changes and hope that this bill

will be an incremental step in the right direction. As amended, the bill will still change the federal authority to the Ticket to Work authority and the former Test A, containing the trial work period, can be eliminated. This will help individuals who are currently falling through the cracks due to administrative difficulty in verifying a trial work period. Additionally, the department has indicated its support for this change in that the current test date requires specialized staffing. With Test A removed, more department staff could be trained to enroll and educate applicants on the program. This pared-down version of the bill will-- should eliminate a General Fund impact and still help more individuals stay on the program who want to work. With that, I'll turn it over to my knowledgeable proponents to explain more thoroughly why this update in our Medicaid buy-in program is needed. Thank you.

HOWARD: Thank you. Are there questions? Senator Hansen.

B. HANSEN: So I noticed in the fiscal note, with the change, the Ticket to Work Act should--and some of the changes you've made-- should drastically--

CRAWFORD: --drastically.

B. HANSEN: --substantially reduce the--

CRAWFORD: Right, right, yes.

B. HANSEN: --fiscal note. But we don't know for sure exactly how much.

CRAWFORD: But we don't know exactly what it-- you don't know exactly what it looks like until the amendment is passed and the new fiscal note is drafted.

B. HANSEN: OK, cool. Thanks.

CRAWFORD: Thank you.

HOWARD: Other questions? Just so I'm clear, the Medicaid buy-in program is a program where individuals pay premiums?

CRAWFORD: Correct.

HOWARD: OK. And then that helps offset some of the cost?

CRAWFORD: Correct.

HOWARD: OK, perfect. Thank you. Anything else? Will you be staying to close?

CRAWFORD: Yes.

HOWARD: All right. Thanks so much.

CRAWFORD: Thank you.

HOWARD: We'll now invite our first proponent testifier up for LB323. Good afternoon.

EDISON McDONALD: Hello. My name is Edison McDonald. I'm the-- E-d-i-s-o-n M-c-D-o-n-a-l-d-- and I'm the executive director for the Arc of Nebraska. We're a nonprofit with 1,500 members covering the state, advocating to ensure that people are able to live the most integrated lives possible. We focus on community inclusion because it ensures that we are the most cost-effective, focused on the best possible treatment, and it brings the most back to us as a society. We support the original LB323 because it will help individuals with disabilities who use Medicaid to keep their job, take a raise, or go to work without losing their Medicaid benefits. It allows individuals to earn up to 2.5 times the federal poverty rate without losing Medicaid, and assess a small premium for those at the top tier of their earnings. LB323 is important because in Nebraska, the employment rate for people without disabilities is-- in Nebraska is 86.4 percent. The percentage of people with disabilities working full-time, full-year in Nebraska, 37 percent. The percent of people with, without disabilities working full-time, full-year in Nebraska is 68.6 percent. The percent of people with

disabilities living below the poverty line is 21.5 percent. The percentage of people without disabilities living below the poverty line is 8.1 percent. This bill will adjust the formula for workers with disabilities, thus working to ensure that they are able to work without risking, without, without the risk of losing lifesaving benefits. The current law places them into a category where, at best, many of them can work part-time jobs, making a low-level income. Worse, the current law discourages people from working altogether because they risk losing their benefits altogether. The navigation of this complex system leaves many confused and unintentionally crossing lines that will be devastating to their well-being. We would like to expand their opportunities so that they can work without being tripped up in red tape. I've traveled the state, hearing stories of individuals all over who have this exact same issue. It's frustrating to hear these stories of people who would rather sit, who would rather work than sit in day programs. Yet they're unable to because they get medication and support that enables them to be in condition to work. The law, as it stands, encourages a continued cycle of poverty. This issue is particularly difficult, given that many positions that people with disabilities are offered are seasonal or short-term in nature. Currently the trial work period that was originally

designed for people who were going into work and allow them a trial without losing these benefits, unfortunately this trial work period has become more of a barrier. It's good for only one use, and it's built for folks who can go permanently back to work. However, if they're only allowed-- if they're only able to go to work for a short period of time, that tends to cause some difficulty. Prime examples of these sorts of positions include positions in parks, retail, call centers, and real estate. Today I also speak as a former employer who hired people with disabilities. They were some of the hardest working, most dedicated individuals I've had the pleasure to manage. With one in particular, we ran into this issue on several occasions. The first time I wanted to promote her, I was shocked to hear her say: I don't know if I can take that raise, if I can take that promotion. What employee who is hardworking, has excellent attendance, and stellar performance would say that they don't want a promotion with a higher salary? Yet this is a story I've heard from many others in Norfolk, Kearney, Lincoln, Hastings, and Omaha. I'd really advocate that you work to find a solution for this. And I will add to my comments, although we are supportive of the base bill, we, we are very concerned with the amendment. We haven't had time to fully review the implications. I think, at best, the amendment will significantly detract from

many of the benefits that this bill aims to offer and, I think at worst, could end up actually leaving people in a worse situation. And that's it. Thank you. Any questions?

HOWARD: Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier for LB323? Seeing none-- oops.

ERIN PHILLIPS: Where do I check this stuff in, please?

HOWARD: Oh, Maddy.

ERIN PHILLIPS: [INAUDIBLE]. Thank you.

HOWARD: Good afternoon.

ERIN PHILLIPS: Good afternoon. Dear Senator Howard and the members of the committee, my name is Erin Phillips, E-r-i-n P-h-i-l-l-i-p-s. I am one of the disability [INAUDIBLE], disability policy specialists for People First of Nebraska. People First is an organization that is made up of self-advocates. Our mission is to empower, train, and advocate so all the, so all of the people with disabilities, disabilities are able to speak up for themselves. I have cerebral palsy. I request an accommodation under the Americans with Disabilities Act. Please give me time so I can speak slowly and my speech can be understood. People

First of Nebraska supports LB323, the Medicaid buy-in bill.

[INAUDIBLE] this bill is important because I also work as a bakery for the clerk of, bakery clerk for Super Saver. I believe that people with disabilities are strong and faithful workers and are willing to work shifts that are suitable for their needs. I've been at Super Saver for about nine years. I started in 2010, and I'm still going strong. It's true I had my up and downs, but I love the place I work. I don't think people with disabilities should be cooped up in day programs. Without work, my life would be boring and I would be depressed. I would be in my day programs-- I would be in day programs the whole day and not have freedom. I mostly do what they tell me and nothing more. I don't even choose when to have lunch. I also wanted to crochet. They made me stop to play cards, color or go on outings. They also make us work in the thrift store or the fast food joint. It is not my choice. I know that when we work in the community, we learn firsthand experiences on life and independence. I love my freedom when I choose, freedom choosing when to eat lunch, when and where I go to coffee shops or the banks, or even walks. LB323 would allow people with disabilities to work and keep their Medicaid. Without Medicaid and healthcare, we will not, many of us will not be able to work.

Please don't force us to choose between work and healthcare.
People First supports LB323.

HOWARD: Thank you. Let's see if there are any--

ERIN PHILLIPS: Does anybody have questions?

HOWARD: Does anybody have any questions? So what do you do at Super Saver?

ERIN PHILLIPS: I package; I'm a bakery clerk.

HOWARD: You're a bakery clerk?

ERIN PHILLIPS: Yeah. So I package.

HOWARD: OK. And you're always welcome to bring us baked goods
[LAUGHTER].

ERIN PHILLIPS: No, I don't have any-- I wish.

HOWARD: Any other questions? Thank you so much for your testimony today.

ERIN PHILLIPS: Welcome.

HOWARD: Our next proponent testifier for LB323. Good afternoon again.

MARK BULGER: Yeah, good afternoon. Hi. My name's Mark Bulger, M-a-r-k B-u-l-g-e-r, and good afternoon, Senator Howard and other committee members for the Health and Human Services. I'll try to be brief. As a disabled person, I think there's only thing one, one thing worse than being a disabled person that's not able to work because of his disability or her disability. It's a disabled person that's not able to work because the medicine and things that need to support him are so significant that it prevents them from being able to work. Most people, I believe, want to work. Sometimes their disabilities prevent that from happening. Other times, with the right opportunity, they're able to work. I know Edison talked about sometimes disabled people do seasonal work and different things, but I just want to remind the state of Nebraska that unemployment is low right now and, hopefully, it's going to get, keep getting lower. And there is a pool of people that happen to have disabilities that want to work. And the reason that they cannot work is because they need Medicaid to sustain life. So I encourage you to support this. I'm not completely familiar with all the, the amendments that would, you know, and the, the things that it will say that it will cost, the cost or the bill, but anything that we can do to encourage people to work and help them to be integrated in

society, I think, is, is good for all of Nebraska. So that, that's all I have; thank you.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today.

MARK BULGER: Thank you.

HOWARD: Our next proponent. Good afternoon.

DOUG DUNNING: Good afternoon. I'm Dr. Doug Dunning, D-o-u-g D-u-n-n-i-n-g. Senator Howard-- Senator, committee, I'm here today to speak in support of LB323. I serve on the board of directors of the Ollie Webb Center, Inc., in Omaha. We are an umbrella organization that oversees the Arc of Omaha and Career Solutions, Inc. Our programs serve individuals in terms of education, personal development, and employment. You know, I think we all gain a great sense of pride and achievement and purpose from the work that we do, and the same holds true for individuals with intellectual or developmental disabilities. When I check out at my local grocery store, there's an individual there with a disability and he always smiles and says: Thanks for shopping with us today, come back soon. And in that small greeting, you can sense the pride and the purpose and the sense of achievement. And that makes me happier than any

number of fuel points on my receipt. And the other benefit there is that the general public is exposed to this individual with an intellectual or developmental disability in a setting that they're comfortable in. And this could perhaps give them a greater sense of ease and comfort and understanding, being around individuals with disabilities, that may not occur otherwise. So that's an added benefit of enhancing the presence of disabled individuals in our workplaces. So it'd be a shame to see those benefits limited because of the fear of loss of Medicaid. For those reasons, I would ask your support for LB323. Thank you.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today.

DOUG DUNNING: Thank you.

HOWARD: Our next proponent testifier. Seeing none, we do have some letters for the record: Mary Bahney from the National Association of Social Workers, the Nebraska Chapter; Kristin Mayleben-Flott from the Nebraska Council on Developmental Disabilities; Carole Forsman, representing herself; Mark Bulger, representing himself; Angela Gleason, representing herself. We now open the floor for any opposition testifiers. Good afternoon.

THOMAS "ROCKY" THOMPSON: Good afternoon, Madam Chair and members of the Health and Human Services Committee. My name is Thomas "Rocky" Thompson, T-h-o-m-a-s R-o-c-k-y T-h-o-m-p-s-o-n, and I serve as deputy director of policy and communications in the Division of Medicaid and Long-Term Care at the Department of Health and Human Services. I'm here to testify in opposition to LB323, based on its fiscal note. I do want to thank Senator Crawford for meeting with the department on this bill and working with us. The department remains committed to policies and programs which lead to greater integration of individuals with disabilities into the communities in which they live. We agree with promoting independence whenever we can and when the budget, laws, and regulations allow. This bill removes from statute the eligibility category known as Medicaid-- medical insurance for workers with disabilities, or MIWD. In its place, LB323 requires the addition of new eligibility categories, commonly referred to as the basic coverage group and medical improvement group. In the current fiscal situation, this legislation, as currently written, is unaffordable as the bill expands the Medicaid program in several ways. This bill eliminates the resource limits completely, which are currently set at \$4,000 for an individual or \$6,000 for a couple. This bill also proposes to disregard all unearned income from the

eligibility determination. Currently unearned income is a component eligibility test for MIWD, as Senator Crawford said. LB323 also proposes premiums with a cap of 7.5 percent of family income, as required by the Ticket To Work program. Some of the additional costs will be offset by charging premiums, albeit at a lower percentage than currently allowed. According to a March 2018 respectability report, there are 1,100 and 12,418 [SIC] working-age Nebraskans with disabilities with a labor participation rate of 47 percent. Of these, the department estimates that about 13,000 individuals would be eligible for this new program, costing the state over \$45 million in aid costs in the program's first year alone. This high cost is due in part to less restrictive eligibility requirements for this proposed program. Aside from the fiscal impact, there would be a number of challenges with implementing this bill, as written. With such a potentially large group of newly eligible individuals, the division would need to-- additional full-time staff to process premium payments and determine eligibility. In addition, updates to the state plan, Home and Community-Based Waivers, managed care capitation rates, and other administrative functions will have to occur. Due to its fiscal impact, we oppose LB323. Again, I would like to thank Senator Crawford for meeting with the department on this bill where we shared these

concerns. I understand that she has prepared an amendment, addressing the issues driving up the high costs of the fiscal note. Thank you for the opportunity to testify. I'm happy to answer any questions you might have.

HOWARD: Have you seen the amendment?

THOMAS "ROCKY" THOMPSON: I have not seen the amendment yet. There was some language that was shared with the department yesterday, but it wasn't the formal amendment.

HOWARD: OK, thank you. Other questions? Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you for being here today. I want to just delve into this a little bit. As I listened to your testimony, there, there's two things. There's certainly the cost of the fiscal note, but you also talked about the challenges with implementation. Assuming the amendment-- this is a big assumption-- assuming the amendment takes care of the, of the question about the fiscal note and we remove that objection, would that facilitate a change in your position on the challenges of implementation?

THOMAS "ROCKY" THOMPSON: Well, Senator--

WILLIAMS: Those same things address some of those issues.

THOMAS "ROCKY" THOMPSON: Well, Senator, I think that there would be a less number of individuals who would qualify for the changed program. As Senator Crawford said, there is currently an administrative burden attached to the two-port-- part-- test, namely the--

WILLIAMS: Right.

THOMAS "ROCKY" THOMPSON: --trial work period. I don't know how that will offset the administrative burden. So I think we just need to evaluate the amendment and find out what the fiscal note would be. There'd be some things we would still have to do. We would still have to change your capitation rates, for example.

WILLIAMS: And I appreciate your willingness to do that. Thank you.

THOMAS "ROCKY" THOMPSON: Thank you, Senator.

HOWARD: Other questions? I'm a little confused about the two-part test. So, so right now we have Test A and Test B. And Test A is, is what?

THOMAS "ROCKY" THOMPSON: From my understanding, Madam Chair, Test A is the trial work period.

HOWARD: OK.

THOMAS "ROCKY" THOMPSON: And part of that has to have our staff contact Social Security to determine if an individual is in a trial work period. And there's not a great way to get that information, for I understand staff have to call Social Security offices to find that out.

HOWARD: And so this bill would remove that, that hurdle for your staff.

THOMAS "ROCKY" THOMPSON: As Senator Crawford explained, the trial work period, the two-part test is required by the Balanced Budget Act, and that's the authority that the current statute is in. If we change it to Ticket to Work, it will remove the two-part test and that trial work period.

HOWARD: And so then you would just be doing Test B for this program?

THOMAS "ROCKY" THOMPSON: I would have to get confirmation if it's just Test B. It's a different type of program but it's a simplified program.

HOWARD: Perfect, thank you.

THOMAS "ROCKY" THOMPSON: Thank you, Senator.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

THOMAS "ROCKY" THOMPSON: Thank you, Madam Chair. Thank you, members.

HOWARD: Our next opposition testifier? Seeing none, is there anyone wishing to testify in a neutral capacity? Good afternoon.

SHAUNA DAHLGREN: Good afternoon. Good afternoon, Senator Howard and members of the Health and Human Services Committee. My name is Shauna Dahlgren; it's S-h-a-u-n-a D-a-h-l-g-r-e-n, and I'm here representing Easter Seals Nebraska and my disability advocate colleagues, I guess. I'm testifying neutral today to the LB323 in light of the amendment that we received yesterday, because we're not sure the implications of what that amendment will have. But that being said, it is my understanding that current amendments could allow for resolution of some specific concerns regarding Nebraska's Medicaid buy-in program, again, known as Medicaid insurance for workers with disabilities, or MIWD. What I do support is any attempt to resolve issues with both financial and medical eligibility determinations for Nebraska's MIWD program. In light of the amendment, it would be important to consider the implications of the specific language on page 2, line 18, defining disabled persons, and page 2, lines

22 and 23, referencing "considered to be receiving federal Supplemental Security Income." I'm curious if this language allows for needed improvements or if it would continue to prevent eligibility in both financial and medical disability-related determinations. At Easter Seals Nebraska, it is part of our daily work to understand program guidelines, policies, and procedures, and help Social Security disability beneficiaries understand how their cash benefit, healthcare such as Medicare and Medicaid, and other public benefits are impacted by work. As an employment network with the Social Security Ticket To Work program, it is our responsibility to provide supports and services that help facilitate work off of Social Security benefits. And I, myself, have spent approximately 20 years providing such services and worked with people attempting to utilize Nebraska's MID-- MIWD program since its inception. As mentioned before, 20-plus years has taught us that current policy is not, not effective. Current statute and policy are contradictory and complicated, making it practically impossible for many to work and actually be determined eligible for the program. It's difficult for case managers to understand the contradictory language, which makes it difficult to implement and apply the rules consistently. Of specific concern is Test A of the two-part income test and ongoing medical determinations.

Current MIWD policy and procedure relies almost solely on eligibility for Social Security disability benefits and determinations made by the Social Security Administration. This creates complications and frustrations for all involved parties. Considering the likely and maybe inevitable changes to Social Security determinations through work incentive simplification, the MIWD program will not only be ineffective, but obsolete. For instance, Social Security's trial work period may be eliminated, and this would make Test A impossible. With so many federal initiatives encouraging employment of people with disabilities, including Social Security's Ticket to Work program, it is not practical for DHHS to rely on Social Security determinations for ongoing medical eligibility. In order to be effective, it is imperative that DHHS policy and application of rules mirror the intent of the proposed statutory changes, and it is our hope that LB323 is truly a step in the right direction. Thank you.

HOWARD: Are there questions? Seeing none, thank you for your testimony today.

SHAUNA DAHLGREN: OK.

HOWARD: Our next neutral testifier.

BRAD MEURRENS: Of course, you know I'm not sufficient with just one piece of a handout; I have to have two. Good afternoon, Senator Howard and members of the committee. For the record, my name is Brad, B-r-a-d Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability Rights Nebraska. I'm here today, neutral on LB323. First, we want to thank Senator Crawford and her office for introducing LB323 and listening to our concerns about the current Medicaid insurance for workers with disabilities, MIWD, program in Nebraska. We deeply appreciate her work on this issue, the time she has spent working with us and the department, and her overall dedication to improving the lives of people with disabilities here in Nebraska. We are not sure about the impacts of the proposed amendment, as we have not had an ample time to study the amendment and its implications. Subsequent discussions with the department, policymakers, stakeholders, and individuals with disabilities utilizing Medicaid will need to be held to fully assess the ramifications of the proposed amendment. Progress in this instance means more people with disabilities utilizing the MIWD program. Please do not misunderstand our position as opposing LB323, as introduced or amended. We are just being cautious about our endorsement. Why this program is important is simple. Nebraskans with disabilities who are utilizing Medicaid

face a wholly unique problem. If they go to work and have an income, they risk becoming ineligible for Medicaid's income limit due to their earnings. Who else risks losing their health insurance just by getting a job? I would venture to say, not too many people in this room. The fiscal note does raise some additional questions. First, the number of people who would be entering the program simply means that people with disabilities are getting jobs and, consequently, paying income taxes, sales taxes, and increasing their purchasing power. Second, the respectability report does not delineate between those people with disabilities who do and who don't utilize Medicaid. Consequently, we are unsure how the fiscal note reaches the conclusion that 23.9 percent of the working-age disability community in Nebraska would be eligible for this program. Did the author perform any benefits planning on this population? Additionally, how did the note arrive at the conclusion that applications will rise by 50 percent? And if 96 percent of applicants are, in fact, deemed eligible, how come we only have 74 people on the program and only 3 people paying premiums? Finally, as Senator Crawford had noted earlier in her, in her introduction, data from Kansas demonstrates two significant benefits from a robust and effective Medicaid buy-in program. Wages and earnings go up and Medicaid costs go down. And with

that, I'd be happy to answer any questions I could answer with you today.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today.

BRAD MEURRENS: Thank you.

HOWARD: Our next neutral testifier. Seeing none, Senator Crawford, you are welcome to close.

CRAWFORD: Well, thank you to the committee, and thank you to all the testifiers who came in to testify. We will walk through the amendment with the department and advocates to make sure. We do not want to make the situation worse in any way. It was our intent to streamline the program and make it easier for people to qualify, and that's-- and we want to make sure that that's exactly what the amendment does, so--

HOWARD: Are there any other questions for Senator Crawford? Oh, Senator Murman.

MURMAN: I should have probably asked Brad when he was just here-- he just left-- but it sounds like, in general, when the disabled person goes to work, they make enough to lose all their benefits, which are probably more than what they make working.

CRAWFORD: That's what, that's what this is trying to address, trying to allow more people to work more hours and still keep their benefits.

MURMAN: Um-hum-- definitely a problem; thanks a lot.

HOWARD: All right. Thank you, Senator Crawford.

CRAWFORD: OK, thank you.

HOWARD: This will close the hearing for LB323, and we will open the hearing on Senator-- LB540, Senator Walz's bill to eliminate the termination date of a developmental disability service. Welcome, Senator Walz.

WALZ: Thank you, Madam Chairwoman Howard. Good afternoon, Chairwoman Howard and members of the Health and Human Services Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15. I'm here today to introduce LB540. LB540 removes a sunset provision, under the state's Home and Community-Based Services Waiver in the Developmental Disabilities system, allowing for services to youth transitioning from the education system to maintain skills and receive day services necessary to pursue economic self-sufficiency. The Medicaid Home and Community-Based Services Waiver program is authorized in 1915(c) of the Social Security

Act. The program permits a state to furnish an array of home- and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalism. The state has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement services that are available to participants through the Medicaid State Plan and other federal, state, and local public programs, as well as the supports that families and communities provide. I believe what I just said, as far as this program allowing these individuals to live in community and, in the community and avoid institutionalism, ties in very well with my next bill, and I would ask that you keep that statement in mind as we discuss Olmstead. This program is another tool of the state that helps prevent unnecessary institutionalism of individuals, a key component of the 1999 Olmstead ruling by the Supreme Court. The time when a child moves on from high school and into their adult life is already one of the hardest times in a parent's life. They have spent years preparing them for this advancement. This period of time is even more stressful for a parent whose child has a developmental disability. There's so much more to worry about when this happens, but generally parents want them to be able to experience their independence and to be able to make it on their

own. I understand this is not always possible because we are dealing with a vulnerable population, but this program helps facilitate this transition as much as possible. As you might already know, I worked in the developmental disabilities field for many years as a direct care staff, sharing a home with three ladies who had developmental disabilities. I also worked as a supervisor, managing residential facilities, and, eventually, an executive director, overseeing both residential and day services. Throughout this time I had the pleasure to witness tremendous growth in the lives of the people we served. Some of these positive changes included increased independence in daily living, health maintenance, community engagement, employment, volunteer activities, prevocational training, building positive social skills, and just a greater awareness of their own personal choices. Many of these skills and opportunities would not be possible without the formalized training and the staff provided by day habilitation services. I honestly can't imagine how different the lives of so many people would have been without the opportunity to maximize their independence through day habilitation services. The impact of not having the transition services would have been devastating for so many individuals and their families. I would encourage this committee to advance this bill on to General File. This is a great program

and I believe in the work and the, in the work and in the services providers do. I believe that, as a body, we need to stop focusing so much on why we can't do something and start considering what we can do. With that, I would be happy to try and answer any questions.

HOWARD: Thank you. Are there questions? Seeing none, you'll be staying to close?

WALZ: Sure.

HOWARD: Perfect. All right. We'll now invite our first opponent testifier for LB540 to come up. Good afternoon.

ALAN ZAVODNY: Thank you, Senator Howard. Madam Chair, members of the Health and Human Services Committee, for the record, my name is Alan Zavodny, A-l-a-n Z-a-v as in Victor-o-d as in David-n-y, and I'm the chief executive officer of NorthStar Services, a provider of supports for people with intellectual disabilities in the 22 counties of northeast Nebraska. I'm also honored and privileged to be serving my third term as mayor of David City, Nebraska, and the fine 2,906 citizens that reside there. Thank you for the opportunity to provide testimony today in support of LB540. Thank you to Senator Walz for bringing it. This issue was born circa 1996. It originated in Governor Nelson's blueprint. I

was here in the State Capitol on that day. The inception of this idea was originally a component of a very politically savvy move of the Nelson administration. Facing a contentious session, fraught with issues concerning developmental disabilities-- my age is getting to me and everything's starting to get blurry, so excuse me just a second. The Governor got ahead of the points of contention and offered solutions that were somewhere between what was being asked for and where we were and weren't. A cornerstone of the offer from the Governor was an entitlement, if you will. He laid out that students transitioning from school programs would be granted placement in adult day services. This was an important policy decision because the very real fear was that students would quickly lose any progress that had been achieved in the school program. It was a safeguard to avert lost skills and productivity. I feel that in the 23 or so years of this policy, that it, it, it, that it has had the intended results. Families have significantly less reason to be concerned with what happens to that loved one that experiences an intellectual disability. It has had the desired effect. Please understand that we are aware of the concerns of the Developmental Disabilities division. We certainly do not want them to have a conflict with CMS over this policy. We would humbly submit that both the needs of the division and those

students transitioning to adult supports can be met. It is our understanding that the division has had adequate capacity every year for this public policy to occur and continue. We are simply asking that the sunset that has been proposed not become a permanent shift in public policy. We would appreciate your support of LB540 and any consideration that you can give to the continued practice of students counting on access to supports. We're confident in the division's ability to adequately manage their prioritization system and satisfy the directives from CMS. Again, thank you for your consideration and the opportunity to provide testimony today.

HOWARD: Thank you. Are there questions? Senator Williams.

WILLIAMS: Thank you, Senator. Howard. And thank you, Mr. Zavodny, for being here today and your continued work with this program. And you've been with this and working with this for, for many years.

ALAN ZAVODNY: Thirty-eight.

WILLIAMS: Can you help me understand why there was a sunset put on this originally?

ALAN ZAVODNY: Well, I, I think it started to become a concern of the division that CMS, there was a four-tier prioritization

program. And they-- CMS had indicated to the department that they felt it was not appropriate to prioritize students transitioning over Level 1 or emergency needs and those kinds of things. So I think it was an issue with the prioritization. This was kind of as-- Senator Riepe carried it forward and he had been the one, a couple of years ago, that put the sunset on for a two-year, and then tried to make it go away. So that's-- that brought us to where we are today.

WILLIAMS: Ok, thank you.

HOWARD: Any other questions? Seeing none, thank you for your testimony today. Our next proponent testifier. Good afternoon.

LIZ WOLLMANN: Good afternoon. Chairwoman Howard, members of the Health and Human Services Committee, my name is Liz Wollmann, L-i-z W-o-l-l-m-a-n-n, the director of developmental disability services with KVC Nebraska. Less than 50 years ago, Nebraskans with developmental disabilities and their families had essentially one choice, which was institutionalization. Luckily, we've made great strides since then to ensure Nebraskans with developmental disabilities have the ability to live and participate as a community member in a community setting, and live a meaningful life. Moving out of our parent's house, holding a job, having a circle of friends-- these are all

milestones we want for ourselves and our children. Nebraskans with developmental disabilities and their families are no different. They have the same hopes, dreams, and desires for themselves and their family members. At KVC Nebraska, we provide supports for Nebraskans with developmental disabilities who want or need to live in a home-based setting other than that of their parents or family. These individuals need more intensive supports and assistance than living independently. Called extended family homes, we work with providers to welcome youth, and young adults, and adults with developmental disabilities into their homes in nearly half of the state's legislative districts, from Bellevue to Columbus. In my professional experience working with our clients and their families, I've seen the difference these bridge programs can make in the lives of individuals with developmental disabilities and strongly support LB540 to ensure that clients and their families continue to build on the positive momentum that they've gained in school, whether it's job readiness, social or educational skills. Nebraskans' current program-- Nebraska's current program ensures a smooth, smooth transition from the educational system directly to vocational programming through the Department of Developmental Disabilities. These services provide meaningful activities and enrich and enhance many lives. Additionally,

vocational services provide opportunities for employment, whether supported or independent, encouraging self-sufficiency, independence, and building self-esteem for individuals with disabilities. Without the guarantee for this continued bridge for families, serve-- or for families-- for services, families will go without necessary supports for their loved ones. The effects of this could include, and have included, removing hardworking and dedicated parents and caregivers from the Nebraska work force as they must now stay home and care for their young adult child with developmental disabilities. Our current bridge program is effective and ensures that our Nebraska neighbors with developmental disabilities continue to build upon the skills they've learned, and maintains the investment we've made in these young adults through the educational system. For these reasons, I respectfully request that the committee advance LB540 to General File. And I'll answer any questions.

HOWARD: Thank you. Are there questions?

LIZ WOLLMANN: Thank you.

HOWARD: Thank you for your testimony today. Our next proponent testifier.

EDISON McDONALD: Hello. My name is Edison McDonald; I'm back. I'm the executive director for the Arc of Nebraska. We support LB540 to eliminate the sunset on the transition funding. There are three times that tend to present the most difficulties and when we get the most calls for an individual with a disability. The first is, you know, birth, to when they're initially diagnosed. Finding those initial resources and tools that are available is a significant struggle. The second is when a long-term guardian, like a parent, passes away and finding some new support network, like a sibling or friends or other family, is necessary. And the third is when a young person is transitioning to independence. We came before you last year in opposition to this move, saying that, unfortunately, the new priority structure had left people in transition in a more vulnerable state. In the time since, we have seen an increasing difficulty finding proper supports. This was made particularly clear when we discovered that Vocational Rehabilitation had to stop offering support for transition from the federal funds in the spring. This left many families with students who were about to graduate in shock, with no direction toward substantive resources. We fully expect to see this lack of proper federal funding again. If we eliminate our state support, we will lose all the hard work that we have invested in these students during

their time in school, prevent additions to the work force, limit young people with disabilities from living in Nebraska, and this will be another way that we are saying to these young people that we don't want you here. In the meantime, there is a lot of work being done by nonprofits and advocacy groups, working hard to find some ways to eliminate these barriers. We participated in the interim in a group effort to get a privately-funded study together with a large variety of disability stakeholders. A transition guide is being compiled to let people know about what resources are available for people in transition. We also work to support the work of a new nonprofit, new nonprofit called Nebraska Transition College. They'll be working on helping to fill, fill some more pieces of this gap. The Arc and other organizations are firmly committed to continuing finding more solutions but, for now, there is not an easy answer. To go and cut funds at this time would be a huge loss for many families. I hate saying "I don't know" to a frustrated parent who is trying to care for their child, like I had to last night when I got a call. But without the funds offered here, I'm afraid that I'll be saying that a lot more. I hope that you will support this legislation to ensure that we develop and implement transitional plans, based on students' strengths, preferences, and interests, to facilitate that movement from school to adult life, including

postsecondary and vocational education, employment, independent living, and community participation. Thank you. Any questions?

HOWARD: Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier. Good afternoon.

TRACI GILMER: Good afternoon. My name is Traci, T-r-a-c-i Gilmer G-i-l-m-e-r, and I am coming from a parent perspective with LB540. I have a disabled son who is 35 years of age, and I'm speaking mainly from those that have maybe a little bit more mental difficulties than physical difficulties. And my son, as he went through transition, that was such an important part of his education and managing his life. We know that transition requires your brain to kind of quickly, you know, make some changes and process things very quickly. And of course, those with those mental difficulties, that's very hard for them. And so we need to provide a transition program for those that need some time to process the changes that are happening in their lives because they're moving from a high school program, where they are, you know, supported very hard with good teachers and parents and, you know, the programs themselves. And then we turn them loose. We know that-- I've been an educator for 36 years and I know that, as a teacher, transitions are the hardest for every kid, not just a person with a mental disability. And, and

so I think that, you know, if you talk to any teacher, they would tell you that same thing. I know that even students that don't have a mental disability, you know, they may have a hard time making transitions to colleges, and so they're offered, you know, maybe to go to a junior college or a smaller college before they go to that bigger university. And so this is kind of their, the disabled persons' junior college, I guess I would say, you know, in a sense, because that allows them to decide and make some decisions and get used to the changes that are happening in their environment. And I know that with my son, if we had not had a transition period and he'd had to gone from the high school straight to, you know, a day service or whatever, that would have been too quick for him, and we would have had some behaviors that nobody wants to try to address. And so I think to alleviate some of those for some of those people that have a difficulty processing things very quickly. I also have a nephew who has a son that is mentally handicapped, as well, and he is going through transition services just right now and he has a much higher mental capacity than my son did. And he is being able to try out some new things, you know, some different job opportunities so that when he does get out of that transition program, they'll know exactly where he needs to be placed. I mean it's not, it's going to be successful right away

and not a failure. And we want to set these young people up for success and not a failure. So I guess I would just like you to consider some of those things as you think about bill LB540, because I think it's very important to have that. Any questions?

HOWARD: Thank you. Are there questions? Thank you so much for your time.

WILLIAMS: I do, I do have a quick question.

HOWARD: Oh. Oh sure. Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you, Ms. Gilmer, for being here. Can you describe what you have experienced as these transition services? Just what are those kinds of services?

TRACI GILMER: Well, with my son, they were, you know he was allowed to try different things. And they, the program itself allowed them to see what kinds of strengths and weaknesses my son had. And he is not only mentally handicapped, but he is-- does not verbalize very well at all. And so for somebody like him, they needed that extra time to be able to try some new things for him, just to fit into, so when he moved out of that program that we knew right away where to place him.

WILLIAMS: OK, thank you.

TRACI GILMER: Um-hum.

HOWARD: Any other questions?

TRACI GILMER: Any other questions?

HOWARD: Seeing none, thank you for your testimony today.

TRACI GILMER: Thank you.

HOWARD: Our next proponent testifier.

LOVEDA MITCHELL: I'm sorry; there's only nine copies. I'll get you number ten in a minute. Senator Howard, members of the committee, my name is Loveda, L-o-v-e-d-a Mitchell, M-i-t-c-h-e-l-l. I'm a member of the Arc but, most of all, I'm a parent, which is really why I'm here today. And I'm testifying in favor of LB540. I'm the parent of a 40-year-old son with a developmental disability, who greatly benefited from receiving day services immediately upon exiting school at 22. When he was first diagnosed, his father and I were told, in the vernacular of the time, that Spencer had severe mental retardation. Thanks to the Lincoln school system and the immediate adult support services after exiting school, he is an independent young man who needs few supports today. The law was changed several years

ago, eliminating the statutory requirement that provided day services for the qualified individuals exiting school. The result was individuals exited school to sit at home, losing skills the knowledge that had been slowly-- and I mean slowly for most of them-- gained in school. Many were-- are languishing for years on a lengthy waiting list, and you heard earlier how long the waiting list is. The time and millions of dollars spent during the school years are then wasted. Nothing occurs in an isolation. While individuals wait for day services, the families struggle to cope. They try, but are often able-- unable, I should say-- to hire affordable and knowledgeable help. In a two-parent family, one parent frequently has to quit work. In a single-parent family, that parent has to quit work. The stress on the family is indescribable as they struggle to cope, while watching their child lose skills. Now you contrast that scene with my son's situation. Spencer exited school and promptly had a job coach. That continuation allowed him to keep and build on his job skills. The coach slowly faded and was no longer needed after two years. Spencer has now had the same job as a checker for Target for nearly 20 years, and he meets the same criteria that any checker for Target meets. The only added support he has is a stool that he can sit on, because his legs are weak. And thanks to the law that was in place when he exited school, he

was able to bridge that gap from school to adult life without losing skills. Thank you.

HOWARD: Thank you. Are there questions? Seeing none,--

LOVEDA MITCHELL: This is the way it should work.

HOWARD: --thank you for your testimony today. Our next proponent testifier. Good afternoon.

DENISE GEHRINGER: Good afternoon. Good afternoon, Senator Howard, members of the Health and Human Services Committee. My name is Denise Gehringer, D-e-n-i-s-e G-e-h-r-i-n-g-e-r. I'm the mother of a 23-year-old son with Down syndrome. I also advocate for all people with intellectual disabilities through my volunteer work with several nonprofits and disability organizations. I'm a professional working in the disability field, and I'm also the founder and director of a community athletic program for individuals with diverse needs. I'm also ambassador for two national disability organizations, and I'm here in support of LB540. I've spoken with many of you and regularly come to testify at hearings relating to disability issues. I usually try to illustrate my points through my personal stories about my son's experience with disability services. My testimony is always received with great kindness

and with sympathy. However I'm not here for anyone's sympathy; I'm here to try to offer you important information so you can make informed decisions, decisions that have an impact on the lives of real people, their families, and everyone that supports them. I want to share with you what it looks like for a 21-year-old when they exit the school system, and I'm likely going to echo a number of things that have already been said. When a 21-year-old exits the school system, they leave with skills they have been practicing for the two years in their transition program. They leave with practice soft skills, very critical skills needed to get jobs and stay employed. They leave with job skills they have practiced and perfected. They leave with the hope of being a productive citizen and living life as an adult in their community. If they go straight from that transition program to supportive employment, they can be very successful. If they have to wait months, even years, to get the support they need to get employed and stay employed with the support of job development or job coaching, they often lose the employable skills they had gained in their transition program, become hopeless, and develop mental health issues like depression and anxiety. Once it becomes their turn for services, there are very few options if they have not returned, retained those employment skills. There's no opportunity for job development through pre-

employment training. This has, this option has been eliminated by CMS. Without the employable skills needed to go straight into the work force, the current options are habilitative workshop or community inclusion, otherwise and more commonly known by all of us parents as the adult daycare tour of the city; that's what we call it these days. These options are not meaningful or purposeful and not work of a taxpaying citizen. The options are not hopeful; the options are dead end. This is why the period of life that is referred to-- that's why this period of life is referred to, in the disability realm, as falling off the cliff. When a 20-year-old child falls off the cliff, parents and caregivers often have to quit their jobs to provide the supports that the void in services creates. Parents then have increased emotional stress themselves that affect their ability to sustain the wherewithal needed to be caregivers and guardians, as well as the loss of income to support their families. As you can see, there is a ripple effect. Most of our citizens with diverse needs desire to live an independent life and contribute to their communities. And it is very possible, if the correct supports and services are available to them. Learning to operate independent of their parents and caregivers, having meaningful work, and earning a paycheck is extremely important as they will likely outlive their parents. With the passage of LB540, all

this is very possible. It's the responsible, humane, and decent thing for the state of Nebraska to do. I'm asking you to please vote to move LB540 to General File. It is the responsible thing to do to support Nebraska citizens that experience disabilities and their families. I thank you; I thank Senator Walz for her efforts. And I'm happy to answer any questions you might have.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier?

PHIL GRAY: Good afternoon. My name's Phil Gray, P-h-i-l G-r-a-y. Unfortunately, I don't have written testimony because my printer quit before I came down here.

HOWARD: Phil, would you mind if Erika took your green sheet from you?

PHIL GRAY: Yes, I have that here.

HOWARD: Thank you-- so sorry about your printer.

PHIL GRAY: Yeah, me, too-- it'll fix. I'm a parent. I have a 43-year-old special needs son, and I found it interesting, the earlier testimony about the impact of the Nelson administration on transition. I was involved in that effort and, because of that effort, my son did not graduate from school into a black

hole or one of us is going to have to stay home. My wife's a nurse. I work for the Social Security Administration. We were not going to continue that process if, if he left school without a place to go. And I guess we're extremely lucky, based on when he was born, because the Nelson administration attacked the waiting list and attacked transition. And he was able to find a spot upon leaving school. I'm also the parent and founder, one of the leaders of a, of a parents' group. We call ourselves Persons for Appropriate Special Services. We started with 3 people and we now have 170 people on our direct mailing list and reach over 200 people because other parents organizations sends our e-mails out. We sponsored over a half a dozen meetings. We've had 50 to 100 people at each of those meetings. The goal of the group is kind of like this. We want to inform parents about the reality of what the, what the rules are. We want to make it normal that parents are involved in the decisions that are made about their children. It's one thing to write a report and get feedback about how the program's working; it's another thing to live it. We live where the rubber meets the road, and you need to talk to us about how it's working. If, if we hadn't had the transition for my son, I don't know where we would have gone. Sorry. My son had viral encephalitis from a mosquito bite when he was 6 weeks old-- changed everybody's life and started

us on this 43-year journey that continues. It-- not having a transition program, I can't imagine anything that would be more debilitating to kids now getting out of school. I think we're wasting our money if we're, if we don't try, help these kids transition. The waiting list was eliminated under the Nelson administration. It went from 2,300 people to about 700 and, of those 700, they were on that list because it was a ten-year wait and they put their kids on early because they were told it was going to be ten years to get off the list. At that time when Nelson made that change, the only way you got off the waiting list was for somebody to die or to leave the state; there was no other way to get on the list. That list now is-- it's persistent. It's-- I don't know the number now. It's over a thousand. It's been over a thousand for as long as I know. I know the state has made efforts to reduce the list. Their reduction in the list has been equaled by about the number of people adding to the list, coming out of school every year. The wait for services is not months; it's years. So if you invest money in a child now who gets out of school, and you leave him at home for five years while he waits for services off the list, you'd just as well not invested any money to start with. So this bill is extremely significant. In fact, our group started when this, when the initial bill was passed to remove the entitlement

for kids getting out of school. Even though most of our parents are parents of older children, we haven't figured out how to contact the younger parents very well yet. And we could reach the older parents by talking to them with their providers. And they've been responsive, quite frankly. And I guess I would like to just add that I would like to appreciate and thank Courtney Miller, who I don't think's here.

_____ : She is.

PHIL GRAY: Ah, well. Ah. I would like to thank Courtney Miller for being, for being willing to reach out, to come and talk to parents at our times, where we live, in the evenings in Omaha. We don't have many-- we have some people out of state, but most of them are in Omaha. And the only other person that's, that has been to all of our meetings, except the three of us that started the group, was Ms. Miller, and we appreciate her effort to reach out and to listen to parents. Thank you.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today.

PHIL GRAY: Thank you.

HOWARD: Our next proponent testifier.

MIKE WASMER: Afternoon.

HOWARD: Good afternoon.

MIKE WASMER: Senator Howard, members of committee, my name is Mike Wasmer, M-i-k-e W-a-s-m-e-r, and I'm national director of state government affairs for Autism Speaks, and I'm based in Kansas City. I'm also the father of a young adult with autism who recently transitioned from high school to a postsecondary educational program. Autism Speaks is dedicated to promoting solutions across the spectrum and throughout the lifespan for the needs of individuals with autism and their families. We do this through advocacy and support, increasing understanding and acceptance of people with autism, and advancing research into causes and better interventions for autism and related conditions. Autism Speaks supports nonpartisan policies that meet the needs of the autism community. The defining features of autism include persistent deficits in social communication and interaction and restricted patterns of behavior. However, the expression and severity of these core features vary greatly between affected individuals. As such, required supports and services also vary greatly from person to person. My daughter is very fortunate. With intensive early intervention, including applied behavior analysis, she's now enrolled in a degree-

seeking program in college. And thank you, by the way, to members of this Legislature who were here in 2013, and when Nebraska required coverage for ABA in most fully insured plans. After graduating from high school my daughter did not require specific supports to live independently. However, many students with autism and other developmental disabilities transitioning from high school rely heavily upon home and community based services in order to maximize their independence. As has been mentioned, transition is challenging for everyone, but that can be particularly difficult for young adults with disabilities as they leave high school and lose the services afforded them under the Individuals with Disabilities Education Act. It's critical that funding be available for home- and community-based services which allow this population to participate, to the fullest extent possible, in their communities. Autism Speaks strongly supports LB540, which would remove the sunset on restoration of funding for day services for transition-aged individuals with autism and other developmental disabilities. Thank you.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier. Good afternoon.

SHERRI HARNISCH: Hello. My name is Sherri, S-h-e-r-r-i Harnisch, H-a-r-n-i-s-c-h. I urge you to support LB540, an important piece of legislation introduced by Senator Walz, that would protect, protect funding for much needed transition services. As the parent of a young child with Down syndrome, I am a member of several disability organizations. Most importantly, I sit in front of you today as a mom. Trailblazers who have come before us have worked tirelessly for decades to ensure promising tomorrows for our loved ones with disabilities. I feel it is our duty to preserve as many fruits of their labors as possible. One example is this priority funding for transition services which, as you know, is on the chopping block. Transition funding is already one of the most unstable areas in our state, and we cannot rely solely on federal funds which, historically, fall short. If LB540 does not pass and these local funds are cut, young people with disabilities will be left in dire need. We fell unconditionally in love with our daughter the moment she was born and, despite our initial fears regarding her diagnosis, we promised her we would always, unapologetically, advocate for her rights, and we would do anything that's possible to set her up for success. This is why I'm here today, fighting for her right to receive services that are promised to her under federal law. While navigating the world of special needs can be

overwhelming at times, please rest assured it is not my child's disability that has me overwhelmed. It is the very thought of finding our way through Nebraska's complicated and confusing system of winding roads. This system of transition and adult services is daunting, to say the least. We began investing in Macy's future early on in the form of school-based services and private therapies to ensure that she has as bright and productive a future as possible. Our daughter Macy is in third grade and, because of proper supports, she is thriving alongside her typical developing peers in the general education classroom. She is not afraid to speak her mind and she has done so here in Lincoln, as well as many times before members of Congress in our nation's capital. Macy is an active, is active in our local community. She loves her weekly ballet, tap, acrobatics classes, and she has been cast a role for two years in American Midwest Ballet's performance of The Nutcracker where she performed in front of thousands at Omaha's Orpheum Theater. She plays soccer and she participates in weekly education classes at our church. I know that these types of enrichment opportunities are going to help ensure a promising future for her, but only, and for the reason I sit here today, as long as we can count on the continuation of proper funding for transition services. It is only with these necessary supports that she will continue to

develop skills, and build connections, and achieve and maintain employment. Macy, just like the next person, deserves to work and earn a fair wage, but she can't do it alone. She will need these programs that teach her independent living skills, vocational training, functional, functional academics, and social activities, immediately upon exiting high school. I recognize this process of getting Macy to and through the system will be challenging and, again, not because of her cognitive disability, but because of the lack of support from complicated and an involved process of transitioning from her student, from becoming a student to becoming a productive, contributing, working, taxpaying adult. In recent years I've come to know many young adults with cognitive impairments and developmental disabilities, whose potential to become productive working adults living meaningful lives in their communities is still to be recognized-- excuse me-- realized. Our state has made tremendous investment in these individuals through the education system, which provides them the tools to be successfully included and integrated into society. But unless the transition process is better managed and more adequately funded, the benefit of that investment will be unrealized. As a mom, what I fear most is that this momentum will be halted and that the ball will be dropped at Macy's very critical age of transition. Many

of these young adults that I have met have been included with typical peers throughout their schooling, and their typical classmates are their role models. They want the same lives that their friends have. And keeping students like Macy, living in their home communities and working with supports, will result in better outcomes for individuals, their families, their communities, and the society as a whole. To our daughter and thousands of her friends with disabilities, these transition services mean a future with less dependency on the government and more dependency on themselves. Today I ask you to, please, support the swift passage of LB540, which would eliminate the sunset on traditional funding. Thank you.

HOWARD: Thank you. Are there questions? Senator Hansen.

B. HANSEN: Thanks for coming today--

SHERRI HARNISCH: Thank you.

B. HANSEN: --at this time. Just got a quick question on something you mentioned, and you can clarify it a little bit. In one of your paragraphs you say, "Our state has made a tremendous investment in these individuals through the education system-- but unless the transition process is better managed,"-- what you mean by that?

SHERRI HARNISCH: Just more resources, more funding to have more people helping parents like us navigate the system. And there's a lot of opportunities that are available that could be available, and helping us understand what those are, where those are, and what's appropriate for our child in our situation. I just understand that there's a lack of people in those positions.

B. HANSEN: OK. Just curious as to some, something we we're missing or just like-- sometimes this-- you get an honest opinion from people who, you know, have been in the trenches and who have been involved in other things like you have, so just kind of curious to see what your opinion is.

SHERRI HARNISCH: And I'm still a young parent, so there's a lot of unknowns; this is just what I've heard.

B. HANSEN: Thank you; appreciate it.

SHERRI HARNISCH: Thank you.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

SHERRI HARNISCH: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

TERRY KRUSE: Senator Howard, senators, my name is Terry Kruse, T-e-r-r-y K-r-u-s-e. I am the father of Brady Kruse, B-r-a-d-y. Brady was one of the 47 moved out of BSDC in 20-- in 2009, and placed in hospitals around the area when the medical license was pulled out of BSDC. I hope you all realize the courage that this young mother just-- that it took for her to come up here and talk to you today. In the 12 months after Brady was placed, we lost 12 out of the 47; Brady was number 12. I hope you can understand the testimony that you've heard here this morning from parents, the difficulty that, that we go through trying to take care of these kids. I spent some time yesterday with Courtney Miller, and the bottom line is money. In 2010, a coalition of senators were able to pull together and develop six homes, residential homes. There was one in the state in Nebraska prior to that-- one-- in Omaha. Also, the waiting list-- there are 2,700 individuals on that waiting list. I, I just, for the life of me, cannot understand how a state can allow this type of thing to happen. It's unbelievable to me, and it can be overcome. In 1989, that list was down to 200. What does it take? It takes a coalition of senators to get together and go after the money. Be persistent; go after it; find it. We need to reprioritize our whole situation with these individuals in this state. They are the ones that need help the most. Let, let's

rethink this whole thing and look at what we need to do to help these people. There's money out there. It's being spent on bridges, roads, utilities. We need to go after some of that money for these people. These people need help. I'm telling you, as the parent of one of these children, that these families go through so much, trying to take care of these kids, and are so lost at times that they just don't know what to do or how to do it. I worked with a family a year ago. Mom-- there were three kids. There was an older boy that was in a car crash-- cattle got out of a pasture-- and he ended up in a wheelchair. And he, and he is right now an international wheelchair athlete. The second-born was an 18-year-old boy, a DD boy, all kinds of problems. Then there's a 13-year-old girl in the home-- 13 years old-- who'd been raised by her dad because mom spent all of her time working to try to help this DD boy. She had spent six years, contacted every entity in western Nebraska-- first-name basis with people in those offices-- had a stack of paperwork 12 inches deep. And when I got involved, she didn't even have a caseworker. She didn't have a caseworker. For six years she asked for help. How does that happen? Lack of funding-- lack of funding. You need to put together a coalition of senators-- you've got a good committee here with a good Chair-- and go after this money. Find it; dig it up; commit to this. I spent 30

years with my son and-- three decades-- and watched them, the state government pull millions of dollars out of that budget till a little girl died and then they pulled the medical license. And I'll tell you what, 12 individuals, DD individuals, died. You know why? Because they were pulled out of their home, away from the people that cared for them. They died of broken hearts. That's what these parents go through. That's what we struggle with on a daily basis. So I ask you, please, please, address these bills; go after some money. Let's knock down this waiting list. I lost my son ten years ago and, to this day, every day, I think about that waiting list. It eats at me day after day and, if I had more time, I'd tell you what it did to the rest of my family. This needs to be addressed. You need to go after this. You need to help these people. They are struggling; families are falling apart. Siblings are going down the wrong road. I appreciate your time. I'm sorry that I get emotional, but I loved my son very much. Thank you for your time.

HOWARD: Thank you, Mr. Kruse. Our next proponent testifier. Seeing none, we do have three letters for the record: Kelsey Wilson from the National Association of Social Workers, Nebraska Chapter--

ERIN PHILLIPS: Hey.

HOWARD: Oh, would you like to testify?

ERIN PHILLIPS: Yeah.

HOWARD: Oh, good. Wonderful, welcome.

ERIN PHILLIPS: I don't have papers, but--

HOWARD: That's OK.

ERIN PHILLIPS: --but I have that. I'm, I was here before; sorry. I, I have a disability and have seen a lot. I am under ADA. ADA-- I have-- I mean I can't be timed.

HOWARD: Yeah, perfect.

ERIN PHILLIPS: In front of you-- I'm in front of you as a disability woman, woman. I support this bill because I'm in a day program. This time-- this is the first [INAUDIBLE]. I was under this for two years. We were going to a day program. Of those years, I sat at home, I got bored and lose my skills that I learned in school. I don't know where my friends would be if there was no day programs or services. I know you will make the right decision. Thank you.

HOWARD: Erin, would you do me a favor and spell, spell your name for us?

ERIN PHILLIPS: E-r-i-n P-h-i-l-l-i-p-s.

HOWARD: Perfect. Are there any questions? Seeing none, thank you for your testimony today.

ERIN PHILLIPS: Thank you.

HOWARD: Is there anyone else wishing to testify as a proponent for LB540? Good afternoon.

MARY HAHN: Good afternoon. I'm a rookie at this, so here we go. My name's Mary, M-a-r-y Hahn, H-a-h-n. I'm here today to support this due to the fact that I currently have a 16-year-old son that attends Lincoln High School and will be graduating in the next couple of years and graduating into, more than likely, a day program. I'm very familiar with the day programs due to the fact I work with Walmart and I have associates that currently work with me with intellectual disabilities. And they express the continued need to be in a facility and an opportunity to have, have an opportunity to be themselves, be what they have learned and to have-- sorry, kind of nervous first time around--

HOWARD: No, you're good.

MARY HAHN: --just to be able to associate with other people and have the direct contact with people. I also have two other sons that have graduated high school. I am fortunate enough that my 21-year-old is employed and also does day systems at this point, but my concern is, two years down the road, where is my son going to be, as far as being able to connect and have an opportunity-- excuse me-- and to have a respite for mom and dad to take a couple of days for themselves or something like that. He is not always the most attentive person. He's a routine kid so a day program would be a nice routine for him to continue with his learning abilities. He is currently learning on some of his social skills in, in school. I also know that John will not graduate with a normal high school diploma. He'll graduate with the life skills, which is perfectly fine with me as long as he continues to grow as an adult. That's all I have; thanks.

HOWARD: Thank you, Mary. Are there any questions? Seeing none, thank you for your testimony today. Our next proponent testifier. Anyone else wishing to testify in support? All right, seeing none, we do have letters for the record: Kelsey Wilson from the National Association of Social Workers, Nebraska Chapter; Kristin Mayleben, Mayleben-Flott, Nebraska Council on Developmental Disabilities; and Carol Forsman, representing

herself. Is there anyone wishing to testify in opposition to LB540? Good afternoon.

COURTNEY MILLER: Good afternoon, Chairwoman Howard and members of the Health and Human Services Committee. My name is Courtney Miller, C-o-u-r-t-n-e-y M-i-l-l-e-r, and I am the director of the Division of Developmental Disabilities in the Department of Health and Human Services. I am here to testify in opposition to LB540. Currently state law requires DHHS to provide services comparable to the day services available under the Home and Community-Based Services Waiver to those who are high school graduates age 21 and older, in the event DHHS determines there is insufficient funding to serve all eligible individuals in this category. The current law goes into effect July 1, 2019, and sunsets these entitlement services on June 30, 2021. LB540 will remove the sunset clause for this entitlement, and it result-- and will result in a misalignment of our funding priorities to meet the needs of individuals eligible for developmental disability services. In 2017, CMS advised that prioritization of participants to receive state entitlement services, as the first priority, would not be approved within our Medicaid-funded Home and Community-Based Services Waiver application. DHHS worked collaborative, collaboratively with this committee to update Nebraska law to outline the priorities

for serving individuals on the Medicaid Home and Community-Based Waivers. The department is committed to prioritization, based upon the severity of the participants' needs and/or other qualifying circumstances, which includes providing services for individuals transitioning from the education system to maintain skills and receive the supports necessary to pursue economic self-sufficiency. Slots were reserved for capacity within the Medicaid, with, within the approved Medicaid waiver application, specifically for this subset of population. DHHS med, made Medicaid waiver funding offers to all 2017 and 2018 graduates and is making offers to 2019 graduates approaching their 21st birthday, based on funding availability within the division's budget appropriations. In sections of, if sections of law is not allowed to sunset, the law will continue to prioritize funding entitlement services for graduates over all other categories of eligible applicants, including Priority 1 applicants who have demonstrated emergent health and safety needs. This would require full state General Funds until the participant receives a funding offer to participate in the Medicaid Home and Community-Based Waiver program, based on prioritization criteria in Nebraska law. Any redirection to utilize 100 percent General Fund appropriations translates to a reduction in funding offers that can receive the federal matching funds. Each year I travel

the state to engage stakeholders in the delivery of developmental disability services. In the fall of 2018, I had honest and candid conversations with participants, their families, friends, providers, and advocates-- all critical voices associated with the programs that serve Nebraskans with developmental disabilities. A concern I continue to hear, year after year, is how the department is going to serve individuals on the waitlist, with aging parents or caregivers, who are unable to care for themselves. If the entitlement language is not removed, it will prioritize funding for a current graduate over the highest priority group defined in Nebraska law. These individuals are also waiting for funding, but LB540 extends indefinitely a funding priority for high school graduates whose needs may be met by other DHHS programs, community resources, or natural supports at that point in time and may cause further funding delays for Priority 1 applicants in dire need. The health and safety of all individuals must be the primary concern, especially when there are funding constraints. By prioritizing services for a select group of high school graduates over others that do not meet the emergency criteria, a threat to the health and safety to an individual on the waitlist could occur. Thank you for the opportunity to testify before you today, and I'm happy to answer any questions that you may have.

HOWARD: Thank you. Are there questions?

ARCH: I have one; I have a question.

HOWARD: Senator Arch.

ARCH: Could you help me understand the transition service, as far as ages are concerned?

COURTNEY MILLER: Um-hum. So according to federal law that individuals must exhaust all other funding streams before utilizing waiver services, it's, it's essentially the payer of last resort. And the school system allows for transition services for individuals through the age of 21 with developmental disabilities. And so the, the federal law requires, as well as a section of state law in Nebraska, that those individuals must participate in those programs and exhaust that through the age of 21. At 21, then we have the adult day waiver that we can make an offer for, based on Priority 4 of the statutory criteria, and then they come into the services with, through the developmental disabilities.

ARCH: So 21 is-- at-- when they turn 22, then they are no longer eligible for the transition services.

COURTNEY MILLER: They're no longer-- through the school systems.

ARCH: OK.

COURTNEY MILLER: But they are eligible for the day service array from the Medicaid Home and Community-Based Waivers.

ARCH: OK, thank you.

COURTNEY MILLER: So it's the handoff from the education system to the adult system, which is administered by the Division of Developmental Disabilities.

ARCH: Thank you.

HOWARD: Senator Hansen.

B. HANSEN: And that's kind of your biggest rub, right, is that this will take priority over-- those over the age of 21 [INAUDIBLE]?

COURTNEY MILLER: The, the rub, as you say, is that the statute outline-- we, I get, I get one appropriation from the Legislature every year and the, the statute lays out the funding criteria. The statute says I "shall" administer the Medicaid waiver program. And there are six funding criteria or levels of prioritization in statute, one through six, and we established in statute last year-- my ask was, with the entitlement program in the previous statute, it indicated that I "shall" serve on

the entitlement program and in another area of statute it said, I "should" serve those in emergency needs. And so, if we had \$1.00 of funding, who gets it? It would have been the high school graduate. And, as a director, I have to tell those families that, that funding isn't available for them when they're when there's limited funding. And so we're establishing the criteria in statute with the priorities allows a clear designation of where those dollars go when they're available. If the entitlement program is not eliminated, it goes back to the divide or the misalignment of the, of the dollars. And so when you go to make funding offers throughout the year, you look at your forecasting and your dollars. It's very difficult to know for a, for a certainty, how many individuals are going to appear at our front door, asking and meeting the criteria for Priority 1. And so if, if we have an entitlement program, that means that we'll have to set aside and ensure that we get roughly 150, 180 graduates a year that come into the program, so that we would have to ensure that we would be able to fund them with 100 percent state General Funds. That's additional dollars set aside, when serving them on the waiver gets you that federal match.

B. HANSEN: And that wording is-- that's per state statute, or is, or we're doing it to mirror federal statute, like the "shalls" and the "should?"

COURTNEY MILLER: That's state statute.

B. HANSEN: So can we change that at all?

COURTNEY MILLER: That, that's the, I think, the question that we're working on is the, is the entitlement program, if we're going to have the entitlement program with the "shall," if I'm understanding you correctly, Senator.

B. HANSEN: Can we change the lingo at all, like and change the wording so they both say "shall?"

COURTNEY MILLER: If they both say "shall" and you have a Priority 1 group and a Priority 1 group, that still leaves the--

B. HANSEN: Just [INAUDIBLE]; OK. Just--

COURTNEY MILLER: It, it took-- I mean, are you referencing turning the Medicaid waivers into an entitlement program where all the priorities are served?

B. HANSEN: No. I just-- if there's no other way to make a little bit easier to-- then you guys have a better-- you know, make--

better decision making, who's going to get, receive the funding instead of saying this is a priority or they can both be a priority. Then you can decide who's going to get it, based on personal priority and--

COURTNEY MILLER: Um-hum.

B. HANSEN: --that's all. That's-- I was kind of curious about it. Were you able to change that at all?

COURTNEY MILLER: We, we were able to address it last year in statute. We were able to create the prioritization so that it is one, two, three, four, five, six, and the graduates are in that prioritization by acuity level or need.

B. HANSEN: OK, thanks.

HOWARD: Dr. Miller, do you want to walk us through the priorities?

COURTNEY MILLER: Sure. It's here, OK.

HOWARD: That might help.

COURTNEY MILLER: Absolutely. OK. So within statute, the priorities for funding is as follows: The first funding priority of the state shall be responding to the needs of persons with

developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person. The second funding priority of the state in responding to the needs of persons with developmental disabilities shall be for persons that have resided in an institutional setting for a period of at least 12 consecutive months and who are requesting community-based services. The third priority funding of the state in responding to the needs of persons with developmental disabilities should be for serving wards of the department or persons placed under the supervision of the Office of Probation Administration [SIC] by the Nebraska court system who are transitioning upon age 19, with no other alternatives, as determined by the department, to support residential services necessary to pursue economic self-sufficiency. The fourth funding priority of the state in responding to the needs of persons with developmental disabilities shall be for serving persons transitioning from the education system upon aging, age, attaining 21 years of age to maintain skills and receive day service, as necessary to produce, pursue economic self-sufficiency. The fifth funding priority of the state is to-- I'm sorry-- responding to the needs of persons with developmental disabilities shall be, upon approval by the Centers for Medicare and Medicaid Services of the United States Department of Health

and Human Services, for serving a dependent of a member of the Armed Forces of the United States who is a legal resident of this state, due to the service member's military assignment in Nebraska. And the sixth priority shall be serving all other persons by date of application.

HOWARD: And then how many slots are available for high school students right now?

COURTNEY MILLER: Two hundred.

HOWARD: And then how many offers were given out in 2018?

COURTNEY MILLER: Ooh. I don't have the exact number of offers, but I know an average of the last three years has been between 150 and 180 persons-- graduates.

HOWARD: One fifty and one eighty.

COURTNEY MILLER: Yep. We, we, we set the 200 high so that we didn't have to go back to do a waiver amendment and pause on serving somebody, pending that approval.

HOWARD: And so the cap is in the waiver. The number of slots are in the waiver?

COURTNEY MILLER: Yes.

HOWARD: And so we have a number of slots for each one in the waiver or just for the high school students?

COURTNEY MILLER: We have waiver slots for-- they call it reserve capacity-- for a couple of different groups. We have those for emergencies for the first priority; we have slots reserved. We also have those for deinstitutionalization, those transitioning out. We also have those for the state wards and probation kiddos, upon 19, and then we also have the 200 for the high school graduates. And then we have some for the military dependents set aside. And so the rest are the first come, first served by date of application.

HOWARD: OK, thank you. Other questions? Seeing none, thank you for your testimony today.

COURTNEY MILLER: OK, thank you.

HOWARD: Is there anyone else wishing to testify in opposition to LB540? Seeing none, is anyone wishing to testify in a neutral capacity? Good afternoon.

JOE VALENTI: Hi, good afternoon. How are you doing? You guys will be here until about 7:00, won't you? My name is Joe Valenti, J-o-e V-a-l-e-n-t-i. I'm only neutral because of what Ms. Miller said. You know I think back to Mr. Kruse's comments,

it's all about money. You hate to say that, but it's about money. And, you know, with Medicaid, you know, CMS you get matching funds, which helps the situation. But if you try to pull it out of General Funds-- you guys know more about that than I do but I would just say that you, I can't oppose what Lynne is trying to do 'cause it's obviously natural; I mean, that's what you want to do. You want to help these high school kids move when they get out of high school. So again, I'm only neutral because of the fact I think it's a funding question and a prioritization question. And how do you, how do you take care of that whole picture? You have a huge job and I'm not telling you something you don't know-- for \$12,000. I have no idea why you do it exactly [LAUGHTER], but I know you get great benefits. You get great-- you must have parking privileges somewhere, don't you? I'm off, I'm off-- I'm off task, aren't I? I want to go back to, just real quick, since I have an opportunity, 'cause it fits into the Olmstead discussion, going back to BSDC. How many of you have ever been to BSDC?

HOWARD: Unfortunately you're not able to ask us questions, Mr. Valenti.

JOE VALENTI: Oh, we can't ask you questions? OK. Well, let's just say you haven't been there. Let's go that direction. You

need to spend some time at BSDC. I think it was Mr. Kruse-- I think his name was Mr. Kruse-- and my son was there. Our son was there for about 12 years. He is now in the community. And I think the gap you've got, going back to something that Lynne and I talked about before, was do a diagnosis. This committee and this Legislature has to address the placement of individuals in the community with dual diagnosis. It's a huge, huge problem. Beatrice had served that need-- very, very well by the way. No matter what you read in the past 5-10 years, they served that need. And with medically fragile, that was a disaster, what they did to those individuals. And obviously, Mr. Kruse lost his son because of it. But anyway having said that-- I got a go off task here just a little bit-- but I think-- because I think it just it needs to be emphasized how important BSDC is to the state. In Heineman's administration-- I know you won't comment-- we got rid of all the regional centers to-- for all intents and purposes. There's nowhere for these individuals to go that have mental conditions and dual diagnoses; there's just no place to go. So anyway, appreciate your time. Thank you. Questions?

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today.

JOE VALENTI: Thanks.

HOWARD: Is there anyone else wishing to testify in a neutral capacity?

MARK BULGER: Hello again. My name is Mark Bulger, M-a-r-k B-u-l-g-e-r, and I really hadn't intended to testify in this. But I'm a disabled person, I'm an advocate. I also serve as a commissioner for the vocational rehabilitation services for the blind. And it just struck me strange that we didn't hear anybody from Vocational Rehabilitation. We're talking about people that-- disabled people, that some of them, we want them to work. And I do know that the Workforce Initiative Opportunities Act [SIC] was recently passed to address some of these issues, the idea being that people that are born with disabilities, we want to get them on the track to lifelong skills; and work is included in that. I do know that I can-- I can't speak for the vocational rehabilitation for the-- I can speak only as a commissioner on the "voc" rehab for the blind-- is they start working with blind people with all kinds of disabilities, including developmental disabilities, when they're young and at the age of 14. And a significant portion of the money that, that the agency has-- and it's 15 percent-- and that doesn't include a lot of other expenses that are dedicated to get people ready for employment. So I do know when they hit 21, if they're in the, in the, in the Workforce Initiative Opportunities Act [SIC], that they become a

client. And I do know, also, that right now Vocal Rehabilitation is on order of selection, so there are waiting lists. But I just wanted to make sure that Vocal Rehabilitation is part of this solution and not, not just, not part of the problem. Well, I just-- I'm just perplexed why they're not involved, and I, I, I know that as a commissioner-- and I'm just speaking for myself-- I, I know life experiences says that transition is difficult. And I'm a blind person. They, I, they used to say unemployment-- every five years you're out of the work force; that's like a generation. So if we don't get the transition right from 21 on, I think that you, we know what the outcome is going to be. So we need to start. I think we need to start as soon as possible, and there needs to be continuity to, with Vocal Rehabilitation. And then I just haven't heard that today, so that's why I'm neutral. But we need to get those people at the table and make them part of this process. So that's all I have.

HOWARD: Thank you. Are there questions? Seeing none, thank you, Mr. Bulger.

MARK BULGER: Thank you.

HOWARD: Our next neutral testifier? Seeing none, Senator Walz, you are welcome to close.

WALZ: All righty. Well, I guess I want to start out by saying thank you so much to everybody who came to testify today. And there are a couple things that I heard that are really going to stick out for me and that I'll remember. And they're not things that I, you know, are new, but it's just a good reminder. And one of the things is something that I think Sherri said. And it's just a reminder that, for years and years, parents have fought for the rights of their children. And honestly, they have been trailblazers. I think the A-r-c, the Arc has been around for at least 60 years. And it's just the fact that the parents have the strength and the courage, and that they really did pave the way for all people with disabilities. So that's something that I, I wanted just to remind you of, and it's a good reminder for me. The other thing that really sticks out is it does all come down to money. It all comes down to money. And I don't remember his name, but the gentleman who said it takes a coalition of senators to go after the money, to find the money that people need for support. And I hope that we can look outside the box and be creative and find that money. This is not only a great program but it is an essential one. And it's already been implemented into the budget. This is not something that we should let the thought process of how to cut spending corrupt this wonderful program. Again, I think this bill ties in

very well with our upcoming discussion-- whew-- on Olmstead. This is yet another program by the state to work towards the goal of providing housing and services to individuals with disabilities in the most community-based setting possible. Another note-- Senator Williams, you asked what kind of services can be provided through this transition program. And I want to tell you that the opportunities are endless. You know, not only are there services just to provide learning opportunities for soft skills and in gainful employment, there's structured employment through hotels and grocery stores and manufacturing plants and medical facilities and daycares, all those employment opportunities. There's entrepreneurship opportunities. I know of one couple, a couple of individuals who have developmental disabilities that started up a pet daycare, and I will tell you they are pretty successful at that. And if we're creative and provide training and supports, again, those opportunities are endless for people. As a state, we need to be looking at what we can do for our citizens, not what services we are going to take away from them. With that, I would encourage you to advance this bill on to General File, and I would be happy to try to answer any questions that you may have.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Oh, thank you for your closing. This

will close the hearing for LB540. And the committee will take a brief break, and we will reconvene at 3:40.

[BREAK]

HOWARD: All right, we will reconvene and start with LB-- this will open the hearing for LB570, Senator Walz's bill to change provisions relating to an advisory committee and a strategic plan for services for persons with disabilities. Whenever you're ready.

WALZ: Thank you. Good afternoon, Chairman-- Chairwoman Howard and my fellow colleagues on the Health and Human Services Committee. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent District 15. As you know I am here today to introduce LB570, which will amend the state statute 81-6,112 {SIC}, to include and develop a comprehensive Olmstead plan. LB570 seeks to fulfill the Olmstead Act by bringing together agencies of the state and advocacy groups, in order to help provide services across the state to individuals with disabilities, in the most integrated and comprehensive manner possible. I have provided the committee with an amendment to make a few changes to this bill. The first change would we, would require-- blech-- would require other departments to have a stake in producing this Olmstead plan. DHHS has a significant

amount of disability services housed within their administration but they are not the sole agency that deals with this issue; and this plan needs to be a statewide effort. The second change is to include the Commission for the Deaf and Hard of Hearing and the Commission for the Blind and Visually Impaired in the stakeholder advisory committee. We may need an amendment to change the date. The department is required to submit a comprehensive plan-- to submit the comprehensive plan to the Legislature. A little background on this issue-- the Olmstead lawsuit originated in Georgia with Louis Curtis [SIC] and Elaine Wilson. These two women were diagnosed with mental health conditions and intellectual disabilities. They were consistently put in state hospitals due to the lack of community support. Their case made it all the way to the Supreme Court, where it was ruled that requiring people to receive services in areas that are isolated from the community cons, constituted discrimination against people with disabilities. In addition, the Court ruled that states needed create a comprehensive Olmstead plan to administer services in the most integrated manner possible. This June, we will be approaching the 20th anniversary of this Court decision and Nebraska still does not have a plan in place. Not only does this leave our state open to a lawsuit that would end up costing us much more, in the long

run, than if we were to create and implement a plan. In 2016, LB1033, by Senator Campbell, was passed, creating an, creating an advisory committee within the Department of Health and Human Services to overlook and create an Olmstead plan. The advisory committee issued a statement last December, addressing what has been accomplished and what still needs to be done regarding the creation and implementation of the plan. In the report, they recommended, they recommended the need for cooperation from all levels of the Nebraska state government, from the local city council all the way up to the Governor's Office and the Legislature. There is also the need for more oversight and accountable, accountability, which is why I am working with individuals to create a legislative resolution on this issue. This is a very complicated process, and the Legislature needs to have an investment in order to implement this correctly and understand it entirely. The creation of an Olmstead plan is an essential step for our state, and I believe it is an exciting road map to assuring the highest level of independence, inclusion, employment, and increased quality of life for Nebraskans with disabilities. I understand that it's going to be a difficult process but, honestly again, I think we should view this as a great opportunity. Our ability to work together to implement this plan will not only improve the opportunities for

equality, full participation in communities where people live, independence, economic self-sufficiency, and additional housing and transportation services. These are all very good qualities that Nebraska can be proud of. According to the National Association of States United for Aging and Disabilities, there were 27 states with an Olmstead plan in place in 2008, which is over half the states in our nation. This is another reason why we, as a state, need to step up and put more effort into creating this plan. We need to show the country that we care and that we, too, will step up to implement a plan that will improve the lives of people who live in our state. It is my hope that you will advance LB570 to General File. And with that, I would be happy to try and answer any questions that I can.

HOWARD: Thank you. Are there any questions? Senator Hansen.

B. HANSEN: The states that haven't implemented this yet, have any of them been sued yet?

WALZ: Yes.

B. HANSEN: How many, do you know?

WALZ: I don't know for sure, but I bet there's somebody who can answer that question.

B. HANSEN: OK. And just to make sure, this doesn't, this bill doesn't like, it's not needed to be in like any kind of federal compliance. It's just more to protect us from litigation?

WALZ: It-- I'm going to have somebody else--

B. HANSEN: That's fine.

WALZ: --answer that, as well.

B. HANSEN: I was just curious; that's all right. Thanks.

HOWARD: Other questions? Seeing none, you'll be staying to close?

WALZ: Sure.

HOWARD: All right. We'll now invite our first proponent testifier for LB570. And just out of curiosity, who all is wishing to testify on this bill, by a show of hands? OK, great. All right, welcome.

BRIAN HALSTEAD: Welcome. Senator Howard and members of the Health and Human Services Committee, for the record, my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. We're here in support of LB570. For those who may not know, the Nebraska Department of Education

handles special education, vocational rehabilitation, and disability determinations for the state of Nebraska. We are at the table currently, trying to assist DHHS with this. We have no problems if we are named in a statute to assist in the plan. And as you can see from the fiscal note submitted by the agency, this will not cost us any money. Our staff is willing to help if we can help. I'll stop right there and see if you have any questions.

HOWARD: Thank you. Are there questions? Thank you for your willingness to help out. All right. Our next proponent testifier. Good afternoon.

DIANNE DeLAIR: Good afternoon, Senator Howard and members of the Health and Human Services Committee. My name is Dianne DeLair, spelled D-i-a-n-n-e D-e-L-a-i-r. I'm the senior staff attorney with Disability Rights Nebraska, and I'm here to testify in support of LB570. I've been practicing law with Disability Rights Nebraska for over 18 years. I've seen a lot of changes in the disability arena. And this movement towards the development of an Olmstead plan is very significant for our state, and I get to talk a little bit more about that and, hopefully, answer some of the questions that have already been asked of Senator Walz. Three years ago I testified before this committee on LB1033 and

worked closely with Senator Campbell in establishing that law. In my testimony to this committee, I urged the passage of LB1033 due to the fact that we are at risk of litigation if we do not move, move forward. I want to give a little bit of a crash course on the Americans With Disabilities Act and the integration mandate just so that we're all familiar with the terms and using the same terminology. So as you know, in 1990, George-- President George H. Walker Bush signed into law the Americans With Disabilities Act. This was a major piece of legislation that moved our country forward in integrating people who had been left out for so many years. The ADA is a universal ban of discrimination on the basis of disability in employment, transportation, telecommunications, public accommodation, and public services. Title II specifically prohibits state and local government agencies, along with other public entities, from discriminating against people with disabilities in their programs, services, and activities. The U.S. Department of Justice issued regulations that implemented Title II of the Americans With Disabilities Act. And Title II requires public entities, like our state and including Health and Human Services, to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The most integrated

setting appropriate has been defined as a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible. This is what's called the integration mandate. Moving forward to 1999, we have *Olmstead v. L.C.*, and the central issue, as Senator Walz mentioned, was the interpretation of the integration mandate and what it requires of states to be in compliance with federal law. The Court's decision made clear that the integration mandate requires public entities to ensure services provided to qualified individuals with disabilities are administered in the most integrated settings appropriate to their needs. *Olmstead* extends not only to those institutionalized, but also to persons at serious risk of institutionalization or segregation, and is not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out an *Olmstead* violation if a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution. In light of the on, the *Olmstead* decision, President George H. Walker Bush made it a high

priority for his administration to tear down barriers to equality and to expand opportunities available to Americans living with disabilities. In 2009, President Obama, through the Department of Justice, instituted the Olmstead enforcement unit within the Department of Justice. And since that time litigation has occurred all across this country in many different areas. And so essentially what Olmstead-- part of what Olmstead said is: Look states, you-- it will take time to demonstrate your compliance with this integration mandate. And if you are sued and you have an Olmstead plan, you can use that to what's called an affirmative defense to that lawsuit. We don't have that. We don't-- we still don't have that today even though work has begun on the development of Olmstead. People mentioned the waitlist today. Part of what's included in an Olmstead plan is concrete and reliable commitments to expand integrated opportunities, specific and reasonable time frames, and measurable goals for which the public entity may be held accountable. So state of Nebraska, what is the plan for moving individuals off the waitlist? Those must have concrete deadlines. How many people are moving off the waitlist each year?

HOWARD: Ms. DeLair, we have the red light. Would you like to wrap up your final thoughts?

DIANNE DeLAIR: That would be great; I appreciate it.

HOWARD: Sure.

DIANNE DeLAIR: I just want to note that the Nebraska Department of Health and Human Services has hired the Technical Assistance Collaborative to conduct studies about community integration in our state, not only in 2014, 2016 and then today, to begin the development of the Olmstead planning process. In their reports that they issued in 2014 and '16, which you can find on our Web site, they said: Nebraska, you are at risk of litigation because you do not have an Olmstead plan. The Department of Justice, when they were back here in 2008 dealing with Beatrice State Developmental Center, said the same thing. I urge you to move this forward. Litigation is costly. And if you'd like to see a list of what other states have gone through, I urge you to go to ada.gov and look at the settlement agreements and the consent decrees that states are currently under or have been involved in the past. That type of litigation takes 5, 10, 15 years and is very costly. We have an opportunity to create a plan that's right for Nebraska and that we develop ourselves. And I'll take any questions.

HOWARD: Thank you. Are there questions? Senator Hansen.

B. HANSEN: So what, what is the range of litigation settlements that you see in other states? Is it like-- is it costing states \$1 million or is it costing them like \$100 million? Vary-- is it going to vary based on how compliant the state has been?

DIANNE DeLAIR: It really varies on how in-depth the lawsuit-- how many years the lawsuit takes to move forward. I think the real cost, in addition to attorneys' fees, are the commitments that states have to abide by in the settlement and consent decrees. So this is-- it's not simply additional funding but it's also revising policies and procedures and the way you organize things so that you're not needlessly segregating and discriminating against people with disabilities. It's to take a fresh look. How are we doing things, you know-- can it be done better? For example, in Connecticut they-- a lawsuit enforcing Olmstead was filed in 2006, and that lawsuit is still active and they are wrapping it up, and we are now in 2019. So part of that lawsuit involved monitors to make sure that consent decree was implemented and that is paid for by the state.

B. HANSEN: And that Olmstead task force that President Obama set up, is that still current? Do they still currently have that? Or has that been dismantled at all? Or--

DIANNE DeLAIR: Nope. If you go to ada.gov, you'll see on their page Olmstead enforcement section, and it'll give you the types of lawsuits, by issue, throughout the entire United States. And the breadth and depth of Olmstead litigation, over the last 20 years, is quite extensive, and a change in administration will not change the federal law that's been created within this country around this issue.

B. HANSEN: And I think it's mainly because, I mean, it's-- personally with me-- I always have an issue whenever the federal government threatens us to do something with litigation. I totally understand the, that-- I think this is a good plan. I think it's something that probably needs to be put in place. But I just-- always a little leery whenever, whenever the federal government tries to get involved in our state business and almost forces us to do something. And so with this bill that we have put in place that you've seen so far, do you think that covers what needs to be done? So in case we put this all in place the federal government still comes in and says: You're not doing it right; we're still going to sue you.

DIANNE DeLAIR: This is, would be the first step, is developing the plan. And then the state will need to show that it's implementing the plan. And the federal government is not the

only entity that would come in and sue the state of Nebraska;
private lawsuits can be filed, as well.

B. HANSEN: Sure, OK. OK, thank you; appreciate it.

HOWARD: Other questions. Can you-- I was around in 2016 with
Senator Campbell's bill, and so were you. How is this different
or how does this build on what she had done in 2016?

DIANNE DeLAIR: Well, that bill required that the plan be
completed in December of 2018; and that deadline has since
passed. Now work has begun, and I'm sure other people testifying
will describe the work that has been done. But no plan is in
place and for, for whatever reason, you know, funding for
consultants, you know, this is the same story. And I'm back--
you know, we're back here again three years later and I'm
telling you, it's, it's, it's not when the state will be sued--
if-- it will be when. When, when is that lawsuit coming? 'Cause
we've had ample opportunities-- we've been advised by TAC and
also the Department of Justice that we're in violation of
federal law.

HOWARD: Thank you. Any other questions? Seeing-- oops-- Senator
Arch.

ARCH: So I've read the report from December 15th; you know which report I'm referring to.

DIANNE DeLAIR: Yes.

ARCH: And it appears as though that there is agreement that that June 30th date is realistic. Would you, would you agree with that?

DIANNE DeLAIR: That date was given to us by the consultants, the Technical Assistance Collaborative.

ARCH: OK.

DIANNE DeLAIR: And I have not heard anything that would dissuade me.

ARCH: So it won't require-- won't require a follow-up bill to change that to July 31, 2019, or what it [INAUDIBLE]?

DIANNE DeLAIR: Well, I can't say that for sure, but I really urge the committee to take a serious look about the implications of not doing something proactively and--

ARCH: I understand.

DIANNE DeLAIR: --having to do it retroactively.

ARCH: Thank you.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

DIANNE DeLAIR: Thank you.

HOWARD: Our next proponent testifier.

ERIN PHILLIPS: Good afternoon, Senator Howard and members of committee. As I said before, my name is Erin Phillips, E-r-i-n P-h-i-l-l-i-p-s. I am one of the disabled, disability policy specialists for People First of Nebraska. I am asking for an accommodation under the Americans with Disabilities. In order for my speech to be understood, I need more time; thank you. My colleague, Jenn [PHONETIC] James, had plans to testify. She became ill and cannot be here. I'm giving her story to-- for her. You have her testimony in front of you. People First is an organization that is made of self-advocates. Our mission is to empower, train, and advocate for all people with disabilities. People First supports LB570, Olmstead-- LB570. Olmstead was a decision made by the Supreme Court in 1999. The Supreme Court said that states cannot keep people in institutions if they were able to live in the community with services and supports. Under the Americans With Disabilities Act, states can't-- not-- cannot

lock us up. [INAUDIBLE] these, you will hear from other people. All of you hear how these, this affects people with disabilities. Many of us who are-- end up in a situation, in this situation. I would rather stay in the community than to be locked away. I don't want to, to be told when I can use the bathroom, when I get sleep, and when I can eat. I wouldn't to be able to communicate with my friends or family. Jenn [PHONETIC] and her mom live together and can help each other. If something happened to either one of them, the other would be in danger of force, of being forced in an institution. Jenn [PHONETIC] would not be allowed to take her emotional support animals with her. They are why she gets out of the bed in the morning. They give her to, give her companionship. They calm her down. They help her calm gone down and they help her stay calm. Jenn [PHONETIC] uses a wheelchair and doesn't always need it. But many institutions won't allow, won't let her decide when she needs it and when she doesn't. They will not allow her to do independent living. Her muscles would atrophy and wouldn't be able to [INAUDIBLE]-- her muscles would tighten and she wouldn't to be able to [INAUDIBLE] to walk. How would you make-- how would this make you feel? Again, People First of Nebraska is in support of LB570. Thank you.

HOWARD: Thank you. Are there questions? Seeing none, thank you for reading Jennifer's testimony.

ERIN PHILLIPS: Thank you.

HOWARD: Our next proponent testifier? Good afternoon.

DEANNA HENKE: Good afternoon, Senator Howard and members of the Health and Human Services Committee. For the record, my name is Deanna, D like in David-e-a-n-n-a Henke, H-e-n-k-e. I'm speaking to you today in support of LB570, and I'm speaking as an individual on behalf, on behalf of myself only. I am disabled with a progressive disease. At this time I use medical equipment, including a ventilator every night, oxygen supplies, and a wheelchair. I'm under the care of a respiratory therapist, and my disease will become worse, requiring more care. I'm terrified that I, like so many other people with disabilities, could be forced into a nursing home or another institution if there is no Olmstead plan in place for me to remain in my own home in the community and get the services that I need. Multiple studies have shown that people in a facility die at a quicker rate than those cared for at home. It's also been proven that in-home care is cheaper than institutional care. As far as financial concerns, people have mentioned the litigation. That's a very real option. As the lady before me had said, it's not if,

it's when. Of the 12 states, including Nebraska, that don't have Olmstead plans, 6 of them are under litigation currently, so that's 50 percent. Also, as far as in-home care, it costs far less to give a person services in their own home than it does to give them services in the institution which, of course, would save the state money, as well. People with disabilities want and deserve the same dignity, opportunities, and choices as anybody else. In an institutional setting, I would be stripped of these choices, even something as simple as what time to go to bed would not be my choice. My quality of life would be significantly affected. Advancing LB570 will help to move the process forward on developing an official Olmstead plan, which would allow people with disabilities a chance to live, participate, and thrive in the community. Thank you for your time. I'd be happy to answer any questions you have. One thing I did want to say-- I think you had asked about the deadline.

ARCH: Um-hum.

DEANNA HENKE: I can't say whether that deadline will be met or not. I can tell you there have been three to four previous deadlines, and each one has passed without, without the things being met that were supposed to. So as far as that-- like I said, I can't say that it won't happen but, if history is any

indication, I'm not hopeful that that deadline won't be met without urging from law.

HOWARD: Any other questions-- or any questions? Thank you for your testimony today.

DEANNA HENKE: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

KRISTEN LARSEN: Good afternoon. Senators, my name is Kristen Larsen; it's K-r-i-s-t-e-n L-a-r-s-e-n, and I am here on behalf of the Nebraska Council on Developmental Disabilities, to testify in strong support of LB570. Although the council is appointed by the Governor and administrated by the Department of Health and Human Services, the council operates independently and our comments do not necessarily reflect the views of the Governor's administration or the department. We are a federally-mandated, independent council, comprised of individuals and families, of persons with developmental disabilities, community providers, and agency representatives who advocate for systems change and quality services. The council serves as a source of information and advice for state policymakers and senators. When necessary, the council takes a nonpartisan approach to provide education and information on legislation that will impact

individuals with developmental disabilities. The council is very grateful to Senator Walz for introducing LB570. Our council members support the Olmstead decision that provides the fundamental right of individuals with disabilities to receive services in the least restrictive environment. In 2016, you've learned that Senator Kathy Campbell introduced LB1033 to develop Nebraska's Olmstead plan. The bill was passed by the Legislature and signed by the Governor. LB570 promotes for, efforts to further the goals as established in the state statute. LB1033 required DHHS to perform specific tasks to develop a comprehensive plan. It was not designed to be disability specific; rather, the ultimate goal was for Nebraska to develop a cross-disability, comprehensive Olmstead plan. The completed Olmstead plan was to be delivered to the Legislature and Governor by December 15, 2018. A variety of reasons resulted in DHHS not being able to submit a completed Olmstead plan by that date. However, they did submit a very good report that provides information on the progress that's been accomplished, which included recommendations with additional steps needed in order for Nebraska to complete a Olmstead plan. Within this report Bo Botelho, then interim CEO of DHHS, provided the following statement: It is the ethical and legal responsibility of all levels of government throughout Nebraska to develop and commit

to an Olmstead plan. In January 2018, Senator Walz also had introduced LB800 to change provisions in the statute to again strengthen the movement towards getting an Olmstead plan completed. More importantly, it required DHHS to hire a consultant to develop that plan, and it provided a fiscal note to pay that consultant. Unfortunately, LB800 was indefinitely postponed, so funding for the consultant was not appropriated. So when the council met in May 2018, members discussed this funding gap that was stalling the development of Nebraska's Olmstead plan. The council approved funds of \$127,000, to be used by DHHS to hire Technical Assistance Collaborative, TAC, to develop the plan. Utilizing council federal funds on the TAC contract furthered progress on the council's community inclusion state plan goal. DHHS entered into contract with TAC in July 2018. They had very short time frame, to December 2018, to develop that plan. They have extended tax contract through March, the end of March-- that's the maximum amount that's allowed by law-- to continue development. At that time, TAC will provide a guidance document which will contain recommended components to include in the Nebraska Olmstead plan. This document will be a draft framework for an Olmstead plan but not the final Olmstead plan. And as noted in their report, TAC provided a proposal recommending a new contract, with a cost of

\$37,200, that would allow an additional 90 days to provide, to provide Nebraska with a complete Olmstead plan. These funds must be appropriated to complete this work. The TAC contract time line was very aggressive to meet the time, the deadline. The lack of sufficient time was a factor in TAC not being able to complete the Olmstead plan process, as noted in the report. Another challenge was that the entire responsibility to develop the comprehensive state plan fell on DHHS, as noted in their report. The department did not have the authority to mandate that all levels of government, like the Department of Transportation, Department of Labor, Department of Education participate in the development of the Olmstead plan. LB570 addresses this issue by clarifying which state departments must participate in the Olmstead plan. It's-- I'm happy to hear that there will be in a-- 'cause we recommended an amendment, on page 2, to make sure that all of the listed entities "shall" develop the comprehensive strategic plan. Without that change, the DHHS remains in the same predicament without the authority to ensure all key players are at the table and taking ownership of the plan. And likewise, the Legislature needs to be invested and have jurisdiction of Nebraska's Olmstead plan, whether through an additional amendment or a legislative resolution. The Legislature also needs to allocate funding to keep the plan

moving forward. So I just have a quick-- I know I'm red but I'm just going to say, you know, to comply with Americans with Disabilities Act, Nebraska must take the steps noted in LB570 to complete this important work. We have neglected to develop an Olmstead plan for 20 years. And as one of 12 states in the nation without an Olmstead plan, we are at incredible risk for legal action, which could result in a loss of state funds and additional setbacks for our folks with disabilities across the state. We're very close to completing an Olmstead plan. Let's get it done and do it right.

HOWARD: Thank you. Are there questions? Senator Hansen.

B. HANSEN: Just some questions about the funding to get this plan finished. It looks like on the fiscal note-- well, we're going to split it with federal, it looks like, so it's going to cost the state of Nebraska \$111,000 for next two years, per year.

KRISTEN LARSEN: My understanding-- I believe that the DHHS has put that fiscal note-- I'm not, I can tell you, as advocates, we're concerned with the fiscal note because you-- really, we know, to get the plan done-- we have it written in that report that you've received-- that TAC would need \$37,200 to get that done.

B. HANSEN: Um-hum.

KRISTEN LARSEN: Nowhere in the report did it say that we, that DHHS should hire an Olmstead administrator; that, that's coming from the department. It's a great idea but if-- I know in this climate of funding, that putting a price tag on-- an expensive fiscal note can make things much more difficult to move out of committee. But that being said, yes, it would be federally funded. And \$111,000 of state funds is far less than the litigation amounts that you could you--

B. HANSEN: Sure, yeah.

KRISTEN LARSEN: -- that you're a threat for, for having [INAUDIBLE] do it.

B. HANSEN: Yeah, not bringing it up at all really.

KRISTEN LARSEN: OK.

B. HANSEN: I'm just kind of making sure we don't fall. I [INAUDIBLE]. I think we kind of talked about this already a little bit.

KRISTEN LARSEN: Yeah.

B. HANSEN: Your committee did, but then you kind of touched on this, a little bit, about the cost is-- the council approved funds for \$127,000.

KRISTEN LARSEN: Those were just federal funds. Those were our federal funds to move the, the, that we're, we're told by the Administration on Intellectual Developmental Disabilities to work on state plan goals.

B. HANSEN: Um-hum.

KRISTEN LARSEN: So that was a way for us to continue work on and to come-- community inclusion goal. It was federal funds. Now, however, in the previous year, if the committee-- if LB-- her previous bill, LB800, had moved out of committee and the funds had been appropriated, you would have been able to get like the 50 percent-- that Medicaid--

B. HANSEN: OK.

KRISTEN LARSEN: --match of 50 percent state dollars. However, that didn't happen, and so there just wasn't the fiscal money to keep the work going. And the council members felt very strongly that this was something that we could do to provide some leadership in the state and to get things going in the right direction. We understand that that time line was very difficult

for TAC to meet. They did an amazing amount of work in the time that they, that they have worked.

B. HANSEN: It seemed kind of short--six months.

KRISTEN LARSEN: They've done great outreach with stakeholders. We just-- they need additional time, especially to get those key players around the table that need to also participate, you know, have some ownership in the plan. It's, it's beyond Medicaid services that DHHS provides: it's transportation, it's education, it's housing. It's a big heavy lift. We're, we're close to having something in place. And I think, for you folks as the authorities and leaders in our state, I don't think-- I really think you want to contemplate taking the risk of being sued rather than doing what is right for citizens with disabilities in our state.

B. HANSEN: I think I'm just trying to be a little specific with the money that we're spending 'cause it looks like--

KRISTEN LARSEN: Right.

B. HANSEN: --we end up having to spend more, like they didn't get finished or then we had to spend more money, and then we had add a couple more [INAUDIBLE].

KRISTEN LARSEN: Yeah, I would encourage you to look at that report.

B. HANSEN: Sure, I understand that. And so I'm just making sure that, if we're going to do this plan-- and it is needed-- that we're not going to run out of funding and then it's going to take us longer to do it.

KRISTEN LARSEN: Right.

B. HANSEN: And then, now we have to have another bill to get more funding or it comes from General or some other kind of funds.

KRISTEN LARSEN: Right.

B. HANSEN: So I'm just--

KRISTEN LARSEN: That's a good-- well, I--

B. HANSEN: That, that's my--

KRISTEN LARSEN: And I think--

B. HANSEN: --only concern when I look at the--

KRISTEN LARSEN: Yeah.

B. HANSEN: --history of the funding of the plan and, and the, and, and where we're at right now. So--

KRISTEN LARSEN: I've-- my understanding, Senator Hansen, is that when LB1033 went through, there was not a fiscal note with it. So we decided, as a state, to work on the plan without a fiscal note there. And that was a pretty heavy lift to do that kind of work without a fiscal note. Earlier somebody asked about the deadline. I think it's fair to, to listen to the department because they'll probably tell you, you know, that the funding is all about-- based on the appropriation. And what TAC was telling you is we can get this report done in a 90-day time frame. But you know, we know that that's all pending on if, if the funds are appropriated.

B. HANSEN: Sure, OK. Thank you; appreciate it.

HOWARD: Other questions? Seeing none, thank you for your testimony today.

KRISTEN LARSEN: Thank you.

HOWARD: Our next proponent testifier for LB570. Good afternoon.

EDISON McDONALD: Good afternoon-- I'm back. Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm here with the

Arc and wanting to talk today about Olmstead. On June 22, 1999, the United States Supreme Court held, in *Olmstead v. L.C.*, that unjustified segregation of persons with disabilities constitutes discrimination in violation of Title II of the ADA. We've been out of compliance with federal law since then. Thirty-three other states have passed a plan, either by the leadership of the governor or forced by a lawsuit. On April 2016, the Governor signed Senator Campbell's LB1033 that the Legislature passed, requiring the state to have an Olmstead plan. December 15, 2016, the state was to have an update to the plan. December 15, 2017, they were supposed to have another update. December 15, 2018, the state was supposed to have a completed strategic plan to the Legislature. The state is now in violation of not only federal law, but also Nebraska Revised Statute 81-6,122, by failing to complete an Olmstead plan. The state has failed to take action. Instead they've submitted reports that have talked about other things that they are required to do and tossed it into a report. Although these are pieces that go into what an Olmstead plan ultimately is, it is not an Olmstead plan. Last year Senator Walz came to the Legislature, asking for the funds to ensure this implementation since the department had not properly requested it in the necessary funds. The department said the total cost would be \$150,000 to implement this, as indicated in

the fiscal note passed out from LB800 last year; \$75,000 of that, as we heard, would have been supported by the federal government. In the interim, the Planning Council offered up the funds to go and help make sure that we could go and support that and get that plan continued. Today sitting in front of you is the fiscal note for this bill which I was very confused about, too-- \$223,669. So I'm a little bit confused and I'm really excited to hear from the department the explanation as to how we got to that fiscal note. It's helped to get us stakeholder groups, we know, analysis of documents, and the outline of a plan that, if you looked, like Senator Arch, later in that report it does have at least an outline of a plan that I think is beneficial. Unfortunately, the necessary stakeholders, especially from state departments, did not participate, which has apparently not only deferred the results, but apparently massively increased the cost. Maybe it's just the department attempting to defer action on this item by placing a misleading fiscal note. As we actively participated in this process, ensuring that most stakeholders were engaged in the process, we came to realize that the department was going to come up short. So we approached Senator Walz's office with an update to statute so that we would not fall out of compliance with Nebraska Revised Statute 81-6,122, including extending the date,

clarifying for nonparticipating departments that the term "other state agencies" means them, and the ensuring for an ongoing process because this is ultimately an ongoing process; this is not just a one-and-done sort of deal. Getting the initial plan together is great, but these are continuing updates. I don't know if any of you are business owners or, you know, have run an organization, but I'm a big fan of strategic plans or having a business plan or an operations plan, and I always refer to them as living documents. This is a living document. Instead of having all these different little pieces of the conversation around a lot of these disability issues, I think what Olmstead helps to do is pull them all together and set realistic steps so that we can ultimately achieve the goals that we're really striving for. And then it's better coordinated, 'cause right now it seems really kind of scattershot and we deal with things in bits and pieces. This pulls it all together into one place. As I've seen in other states with other Arc directors, they've really had a lot of benefit, and to be able to really focus in on an Olmstead conversation helps to clarify the process. So after we heard from the state that they would be, not be able to complete a plan by March, then by-- then their December 15th report showed-- not a completed plan-- said that it would be done by June 30th, verified at a stakeholder meeting. So we

updated the bill to fit this date. Now today I'm sure they'll be pushing to extend the date even further out, that they can push this past this session and even into the next session. Or perhaps they will say that, unlike most of the 33 states, that they have not been able to create quality plans without deferring responsibilities to the counties. I strongly urge you to look at the Minnesota plan and-- realize my time's run out-- and I'd encourage you to pass this bill and work to stay engaged with the process because, ultimately, we do need you to stay engaged with this process as we work with stakeholders, advocates, and the state to go and really make sure that we move this forward. Thank you. Questions?

HOWARD: Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier for LB570. Good afternoon again.

MARK BULGER: Yes, hi. This is Mark Bulger, M-a-r-k B-u-l-g-e-r. We've heard about the history of the Olmstead Act. I was just going to talk briefly about the Americans With Disability Act [SIC]. It was passed by President Bush's administration in the early '90s and, at that time, the disabled community really looked at it as if it was a civil rights bill for the disabled, and there was a lot of celebration. It's been 20-some years

since then. Has it accomplished everything it wanted to? No. But it does have an-- it still has some guiding principles that we want to follow. The Olmstead Act was kind of a result, a result of the American, Americans with Disability [SIC], and, you know, like a lot of times like the-- it's when the Supreme Court gets involved that they have to kind of "interpretate" the law. And that's what they did; they interpreted the law. And based on it, they said that-- they, they, they mandated that every state should have an Olmstead Act. And here in Nebraska we, we like to take our time. We like to weigh things. And I-- on one hand, I'm glad we didn't rush into anything. It's been about 19 years, and I know there's been a lot of good work that's been done. My background's in engineering and project management and, you know, I'm going to use a couple phrases like that we used in building things, like failing to plan is planning to fail. If you have no plan, nothing's relevant. So I, I, I appreciate and applaud the efforts that have been taken prior to this to, to take the effort to pass an Olmstead Plan. It's, it's, it's a big deal. It's-- what I've learned in being blind is even I don't understand other blind people completely or understand what it's like to be another disabled person. But I do understand what it's like to want to be independent, and most people want to be independent. They want to have a say in what, what happens. They

want, they want to be integrated, not segregated. I know there's a lot of work to be done. I know that it's going to take a lot of people to get, get this done. This bill, LB5, LB570 will help, help this plan move along, and it will get us one step closer. A thought I had is, is the reasons that we should be doing this is, yeah, we want to avoid lawsuits. Yes, we, we want to comply with law but we want to give a plan that will make sure that everybody is on the same page and that, when decisions are made, that the disabled people are part of it, and it brings everybody together to develop this plan. So two final thoughts. One is I'm a little, little concerned. I know we have to say, well, what's it going to cost to do this. But what at what point do we have to ask our self, what's it going to call, cost if we don't follow the law? Laws are made for a reason, and we should do it because it's a law. I understand it's going to take time and if-- we need to take as much time as we can. I think we've demonstrated goodwill, so that's good. And the last thought I have is, you know, Helen Keller once said, "Alone we can do so little; together we can do so much." And if we do this together-- and what I've, what I've heard, read in LB570, I think it's our best chance to, to reach that Olmstead plan. So with that, I'll conclude my testimony and just say thanks again, everybody.

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier? Is there anyone else wishing to testify in support? Going once-- all right. We do have some letters for the record: Peggy Reisher from Brain Injury Alliance of Nebraska; Judy Nichelson from the Nebraska Brain Injury Advisory Council; the members of the Nebraska Association of Service Providers; Carole Forsman, representing herself; Kathy Hoell, representing herself; Mark Bulger, representing himself; Angela Gleason, representing herself. Is there anyone wishing to testify in opposition to LB570? Seeing none, is there anyone wishing to testify in a neutral capacity to LB570?

BO BOTELHO: Good afternoon, Chairman Howard and members of the Health and Human Services Committee. My name is Bob Botelho, B-o B-o-t-e-l-h-o, and I serve as the chief operating officer of the Department of Health Human Services. I am here to testify as neutral to LB570. LB570 changes the provisions relating to the Olmstead Advisory Committee and the strategic plan for Nebraska, as previously set out in LB1033 in 2016. The department appreciates the continued dialogue and cooperation by Senators Howard and Walz and their willingness to work with the department to develop the state Olmstead strategic plan. DHHS divisions have been working to develop the DHHS specific plans

to meet Olmstead requirements since the original statute was passed in 2016. DHHS submitted a report to the Legislature December 15, 2018, and that outlined progress to date and identified barriers to completion of the plan. The scope of the state Olmstead plan is not limited to DHHS. In this case "state" does not referred to state government alone or a specific agency within it, but is encompassing of all levels of government in the state. For a state Olmstead plan to be successful, participation and collaboration by municipalities, counties, school districts, the Nebraska Legislature, and various state agencies and others are needed. As stated in the report submitted on December 15th, it is the ethical and legal responsibility of all levels of government throughout Nebraska to develop and commit to an Olmstead Plan that provides for the least restrictive and most integrated settings for Nebraskans with disabilities. The department is committed to working with the state and local partners, but the development of a plan needs everyone to come to the table. DHHS has no authority to require commitment or, or collaboration with other government entities, nor commit another entity to any deliverables of a state Olmstead Plan. We look forward to collaborating with state and local partners, and DHHS remains committed to the

development of the state Olmstead Plan. With that, I thank you for your time and will answer any questions.

HOWARD: Thank you. Are there questions? Senator Arch.

ARCH: Go ahead.

WILLIAMS: No, go ahead.

ARCH: No, go ahead [LAUGHTER].

WILLIAMS: Okay.

HOWARD: Senator Williams.

WILLIAMS: Thank you, Chairperson Howard. And thank you, Director, for being here. And I appreciate your comments about who has authority to bring these people together. I guess my question-- my first question is if, if there is a lawsuit, who gets sued, and is-- who gets sued?

BO BOTELHO: The state.

WILLIAMS: And if the state gets sued, who will-- will anybody be forced to bring these parties together at that point?

BO BOTELHO: Yes. The way-- when your any federal lawsuits come in, they basically say: Your state is out of compliance. And

they tell the state to generate a plan, and the states offer plans. They usually go in-- it's, you know, almost a form of federal mediation. And they will approve or not approve, and say: go back, come back, make it better. And, and you go back and forth with the feds to reach a plan that they approve of. And then you have to implement the plan. I mean we're talking about the plan, and having a plan is a first step. But a plan is just a piece of paper. I mean the real work here is implementing the plan.

WILLIAMS: Right. And that's, that's my second and final question, and I'd just like you to respond to this. We've heard testimony today about the lengthy time period, the delays in meeting goals. And I appreciate and applaud the work that's been done recently. Is there any dragging of the feet on this because the implementation will simply cost money that we don't have today?

BO BOTELHO: No. No. I mean the-- no. I mean implementation is going to take time. You're not going to build and develop an Olmstead plan and be compliant with an Olmstead Plan the next day.

WILLIAMS: Right.

BO BOTELHO: If you are, then your Olmstead Plan is very, very shallow, right? So you're going to have to phase out an implementation, and you are going to have to figure funding levels. And it's not just going to be at the state level, because a majority of these services are going to be at, at the local levels. So we'll have to work with local partners, as well, to get their collaboration, get their understanding. And this will all have to be funding. But you're not going to be able to fund on day one.

WILLIAMS: But, but your, your testimony is that from, from your standpoint and from any direction that that you've received, as, as you're boss, slowing this down wouldn't be because we don't have funds for implementation.

BO BOTELHO: No. I mean, you're going to have to set the implementation up with available funds. Obviously you have to be strategic about how you implement the plan.

WILLIAMS: Right.

BO BOTELHO: And no state can, can be compliant with any plan on, on the next day. This is a long-term-- and there was many testifiers before me that said this is a long-term commitment by, by states to get into compliance with Olmstead.

WILLIAMS: OK. Thank you.

HOWARD: Senator Arch.

ARCH: Thank you for coming. I have a question as a follow-up and a, and another question. But are there federal funds available for the implementing of the, of programs that may be required to comply with the Olmstead decision?

BO BOTELHO: I would have to suspect that many of the implementation parts of any plan are going to have some federal funding component. It just-- not everything, but I'm sure there will be.

ARCH: OK, all right. This, this has obviously been a multiyear project, and I'm late to the discussion but, but there was a letter that was-- just so I keep the date straight-- there was a letter that was addressed to you by TAC on December 5, 2018. And on the back is the recommendation and the proposal for \$37,200. It identifies June 2018. I'm sure that's a typo; they meant 2019.

BO BOTELHO: Correct.

ARCH: But, but-- yeah, yeah, just trying to keep the-- I, I'll ask the same question. Do you believe that that date is realistic?

BO BOTELHO: TAC believed that that date was realistic at the time they wrote that letter, and that was contingent on having everyone they needed to get the information for the plan. It really comes down to having the people or the entities to talk to, to develop the plan.

ARCH: Okay, all right. Thank you.

HOWARD: Other questions? Senator Hansen.

B. HANSEN: What if they don't meet the guideline by June 2019? Like they say it's going to be done by a certain time. Will it cost us more money then? They're saying: Oh, it'll take us another year, so then we need \$100,000, \$150,000. Do you foresee anything like that ever happening?

BO BOTELHO: The, the-- I mean you asked about the fiscal note. Our fiscal note is based on retaining that consultant over the next biennium. Again, writing the plan is step 1. Then you have to begin to implement it and phase it and, and track the progress. So I mean-- could it take longer than, than June 30th? Yes. Again, it depends on if TAC has access to the resources

they need to develop the plan. And if the, and if it goes longer than that and we have to retain them longer, then yeah, it would cost more than the, the, I think the \$37,000 that they anticipated to get through June 30th. But our fiscal note does have-- we're asking for funds to retain them over the next biennium.

B. HANSEN: OK. I think-- OK, I understand stuff costs money, you know, when you ever have to hire consultants or people to do it.

BO BOTELHO: Yes.

B. HANSEN: Like when, like in the city I worked-- you know, on the city council at Blair. It's, it's amazing how much a consultant would cost to do one thing, like you know-- and so I kind of understand, I think, maybe me how much they're charging us. I want to make sure we're spending our money wisely and we're not just pushing things back. And I mean--

BO BOTELHO: No, I--

B. HANSEN: --make sure, make sure they're doing the work that we're hiring them to do for the money we're paying them for.

BO BOTELHO: They, they are.

B. HANSEN: OK.

BO BOTELHO: I think TAC has been a very good vendor for us.

B. HANSEN: OK, good. I just, just kind of want to get your personal opinion. And maybe one other thing. I think you mentioned this a little bit in the report that you kind of gave out, too, is-- do you see like the biggest roadblock to implementing this is working with local authorities?

BO BOTELHO: I don't know if it's, it's a roadblock. I don't think we have up until this point. I don't think there's been a lot of communication with them, and we need to start talking to them about Olmstead, as well.

B. HANSEN: Yeah. I don't know if we get ahead of that or we should, we wait or--

BO BOTELHO: No.

B. HANSEN: I can--

BO BOTELHO: I don't--

B. HANSEN: I can see--

BO BOTELHO: I don't think we can--

B. HANSEN: --that being-- like that's a multifaceted--

BO BOTELHO: I don't think we wait. I mean I spoke with Senator Howard and I spoke with Senator Walz about that. We need to start, start doing that. I, I think previously it seems like it was, you know, HHS developing an Olmstead Plan. And-- but we could develop a plan, but that's not going to get Nebraska where it needs to be. And so that was the whole point of the report. I said, you know, we need, we need more than just HHS here. And then that's why I was asking for some legislative involvement because I think the Legislature does need to be involved. And Senator Williams, you brought it up. You can't-- any change the state makes is going to have to have funding, and we have to start planning for that, as well. And the local communities and municipalities may need to plan for that, as well. They need to be engaged in this, as well.

B. HANSEN: I think I kind of share some of the-- Senator Williams' concerns. So I just want to make sure that you have the funding in place to keep the ball rolling, and we're not having to wait, you know, because-- well, we need more money because we didn't get stuff done, or who knows what. I just want to make sure that part of your equation is taken care of on our end, I guess, to make sure that this gets implemented and gets done in a timely manner. So thank you very much; appreciate it.

BO BOTELHO: You're welcome.

HOWARD: Any other questions? Seeing none, thank you for your testimony.

BO BOTELHO: Thank you.

HOWARD: Our next neutral testifier. Anyone wishing to testify in a neutral capacity? All right. Seeing none, Senator Walz, you are welcome to close.

WALZ: All right. Oh, I don't need that. Well again, I want to thank you for your time and your patience today. I know it's been a long day. I also want to thank the people who came in to testify today. The people behind me have been waiting about 20 years for Nebraska to create this plan. An Olmstead document is a very complicated document, and it will take a long time to implement. We, as the Legislature, are going to need to continue to educate people on the process and in the areas which we are making progress. There will need to be oversight and investment by the Legislature. I also want to say that, speaking of this process, it is a big job. It is a long process, but I want to remind you again that this is more of an opportunity for us. This is an opportunity for Nebraska to make a really good change, to create a plan that would provide for so many great

things to happen, not only for people who have developmental disabilities, but also for communities who need transportation services and don't have them, who need housing, people, communities who need employees, communities who need volunteers. I really look forward to this opportunity and working with agencies and advocates and communities to create a plan that will benefit and really move Nebraska forward. As far as the fiscal note goes, I also don't believe it's accurate. The need for an administrator was not discussed, either through the TAC report or in any of my conversations with DHHS. So I am engaging in some conversations with the fiscal note in order to eliminate this section. Again, we have been waiting for 20 years. And I want to talk about the due date. The due date was issued by Senator Campbell, and it was already missed this past December. The TAC report commissioned by the department stated that they believed a more apt due date would be around April or June of this year. And so that is the date that we are going with in this legislation. With that, I would urge you to advance this bill on to General File so we can move Nebraska forward for everybody, regardless of disabilities or abilities. And I would be happy to try and answer any questions that you might have tonight-- almost. Thank you for your patience and your time.

HOWARD: Thank you. Are there questions? Seeing none, this will close the hearing for LB570, and we'll end our hearings for the day. And we're not going to have an Executive Session.