

## Health and Human Services Committee March 21, 2019

**HOWARD:** [00:00:01] [RECORDER MALFUNCTION] -- starting on my right with Senator Arch.

**ARCH:** [00:00:03] John Arch, District 14, which is Papillion, La Vista, and Sarpy County.

**CAVANAUGH:** [00:00:08] I'm sorry. Machaela Cavanaugh, District 6, west-central Omaha, Douglas County.

**B. HANSEN:** [00:00:14] Senator Ben Hansen, District 16, Washington, Burt and Cuming Counties.

**HOWARD:** [00:00:19] Also assisting the committee is our legal counsel, Jennifer Carter, and our committee clerk, Sherry Shaffer, and our committee pages, Maddy and Erika. And we're going to start today with the gubernatorial appointment of Danette Smith to the Department of Health and Human Services. Welcome, Danette. Good afternoon.

**DANNETTE R. SMITH:** [00:00:54] Good afternoon. Good afternoon, Chairperson Howard and members of the Health and Human Services Committee. I am Dannette R. Smith, D-a-n-n-e-t-t-e, middle initial R., last name Smith, S-m-i-t-h, chief executive officer of the Nebraska Department of Health and Human Services, and I'm here today to begin the confirmation process. Before I continue, I want to thank Governor Ricketts for appointing me. It is an honor and a privilege to serve Nebraskans as the CEO of DHHS. I would also like to thank each of you and other senators I have met so far for taking the time to sit down with me over the past few weeks. I am looking forward to meeting the other legislators in the coming days and to develop a productive working relationship. I'm called to public service and committed to serving the most vulnerable people in the

state. This has been my mantra of my career for more than 25 years. I've been a nonprofit executive and an executive leader in large and complex states, regional and municipal government organizations that deliver and coordinate human services in urban, suburban, and small rural communities. When you review my resumé, I think you will find that my academic, professional, and community engagement experiences have prepared me for this new role. I am happy to answer any questions about my background but I would like to take this opportunity to talk about a few aspects of my professional experience and the direction of DHHS under my leadership. During my tenure, specifically in cities of Seattle and Virginia Beach Department of Human Services, I led several initiatives. The following one is, one, behavioral health developmental services were inculcated into the Department of Social Services to create a seamless human services organizational structure and service delivery system. Number two: developed same-day access for behavioral health services for children and adults which reduced wait lists and wait times. Number three: developed and coordinated healthcare systems through our children's hospital, called Children's Hospital of the King's Daughters, for children entering foster care so that we would have diagnostic assessments completed at the time they were placed in our care. These assessments focused on physical health, which is well-being, behavioral health needs, and dental and assessment and treatment. Fourth: collaborated with public health to promote safe and stable families through home visiting programs, and also partnered with public health in coordinating safe medical shelters during disaster events. And finally: focused on data-driven results with the creation of a data dashboard that measured the processing and distribution of SNAP and Medicaid benefits. Throughout my career, I have been known as a visionary leader who can guide and inspire organizations to focus on their future state while delivering on day-to-day operations. I have also demonstrated that I can align and execute a shared vision through developing and setting internal guidance and public policy. I have often been known and described as a gracious, transparent, and a woman of great integrity who is focused on serving vulnerable populations. My teams and I are always forward-thinking and exploring opportunities to have a deeper influence in the services we

provide for our fellow citizens. To achieve this, I have used data-driven, collaborative approaches which have energized change in the organization I have led and served. My experiences have prepared me to lead the Nebraska Department of Health and Human Services, to deliver on our mission of helping people live better lives through effective, efficient, and customer-focused services. Over the past month, I have been focused on learning the culture of DHHS. I've met with numerous team members and it is evident that we have caring and committed team members. I look forward to meeting team members from Omaha metro area to the Sandhills in the near future. I have also been meeting with external stakeholders and I look forward to enhancing our mutual efforts. My vision for Nebraska is to deliver integrated services that enhance the customer experience. This is a great opportunity for the state. We will reach our goal by continuing to effectively work together to reinvent our organizational infrastructure, to strengthen information technology systems, human resources, and our procurement process. Some additional divisional focuses that we will be focusing on, and one in particular that you know about, is Director Van Patton and the MLTC is focused on delivering Medicaid expansion. The team continues to develop the necessary components, for example, looking at strengthening our informational system, and developing a comprehensive service array for a successful implementation. We are-- we are committed to having a fully functioning product for eligible Nebraskans when we implement the expansion. The Division of Children and Family Services is continuing its effort to successfully implement the Family First Prevention Services Act. As you heard a couple of weeks ago from Director Wallen, we have been collaborating with our stakeholders for a year on the implementation. We are excited to focus on prevention services and evidence-based practices to ensure we keep families together and that we minimize child and family risk. An area I am very passionate about is creating the capacity for-- for delivering robust, comprehensive behavioral health and developmental disabilities, and I would also include intellectual disability services. We will continue working with statewide stakeholders to improve behavioral health and disability services in the community. Finally, we want to ensure the Division of Public Health is addressing health and social

determinants as the division provides services in the community. In conclusion, I'd like to reiterate my vision for DHHS: enhancing the department's internal infrastructure; creating an integrated service delivery system; establishing and enhancing collaborative relationships with legislators, stakeholders, and the community at large; and finally, aligning DHHS teammates under our mission of helping people live better lives. Thank you for listening and this completes my comments.

**HOWARD:** [00:08:42] Thank you. Are there questions? Senator Cavanaugh.

**CAVANAUGH:** [00:08:46] Thank you, Chairwoman. And forgive me, I'm inclined to call you Director Smith, but not yet. So, Ms. Smith, thank you for being here today and-- and thank you for sharing your vast experience. You've done some very interesting things in life. I am personally very interested in the data side of things and we-- we kind of spoke about that previously. You mentioned a data dashboard. Could you give a little bit more information on what that is and how that would look and work?

**DANNETTE R. SMITH:** [00:09:25] So in Virginia Beach we were having difficulties with processing SNAP and Medicaid applications according to our time frames. And so one of the things that we developed was the data dashboard that told us specifically the workload of each worker, the timeliness of processing those applications, and what was-- what was causing them from processing those applications on time. What we found is that the more that we were looking at how our staff were processing, the better the process became, and it was very detailed down to each day, the applications that they were processing, when they were being checked by the supervisors, so that we could get everything out of the door. We ended up creating it on the front end, so it was for all incoming applications for SNAP and Medicaid. We were not able to implement the back end, which in Virginia Beach was our ongoing, those are applications that we maintain, we were not able to complete. But it ended up being a very good process for us, ended up being first a paper trail, and

then we used technology to help us look at where each team stood by the worker and by that division. We ended up sharing that with the state as well, and so they were very pleased to see that our numbers had improved, and there was talk about adopting the-- the technology that we created with the state.

**CAVANAUGH:** [00:10:52] And did that technology, that process show where there were problems in the process and--

**DANNETTE R. SMITH:** [00:10:59] Yes, it did.

**CAVANAUGH:** [00:11:00] --and corrections could be made?

**DANNETTE R. SMITH:** [00:11:02] That is correct. And so that allowed-- every morning the supervisors reviewed the previous day's data. Every morning we had huddles with our teams, so they would go over that data to look at where they could make improvements. Sometimes it had to do with processing, sometimes it had to do with work performance, but what it allowed us to see was the gaps in the work getting done.

**CAVANAUGH:** [00:11:28] I have just an additional on that topic, sort of. This committee has met with some of our managed care organizations that we contract with, and also people who are on the other side that are working with the managed care organizations, and there's some conflict in processing of claims. Is this something that you would see as the role of-- of the department to step in and-- and find corrective action? And based on your experience using a data dashboard, is-- do you see any opportunities there?

**DANNETTE R. SMITH:** [00:12:06] Absolutely. I see myself working very closely with Matt Van

Patton. This week I had the opportunity to meet with the Hospital Association and some of those issues were brought up. And what I suggested to that particular association is that we wanted to know the specific details on the claims that we're have-- were being difficult to process. And we wanted to know which hospital was expressing some difficulty. We hope to hear back from them in the coming weeks.

**CAVANAUGH:** [00:12:37] OK. Great. Thank you.

**HOWARD:** [00:12:40] Senator Hansen.

**B. HANSEN:** [00:12:40] Thank you, Chairwoman Howard. Thank you for coming--

**DANNETTE R. SMITH:** [00:12:44] Thank you.

**B. HANSEN:** [00:12:45] --and speaking with us. Maybe just a couple questions about Virginia in particular, because right now you're-- you work with the state of Virginia?

**DANNETTE R. SMITH:** [00:12:52] Yes, I did. Yes, sir.

**B. HANSEN:** [00:12:54] OK. And they, if I'm not-- I think I'm correct. They expanded Medicaid eventually?

**DANNETTE R. SMITH:** [00:13:00] Yes, we did.

**B. HANSEN:** [00:13:01] Was it this last year?

**DANNETTE R. SMITH:** [00:13:02] Yes, we started January of this year.

**B. HANSEN:** [00:13:04] OK. Did you have any involvement with the rollout of that at all or how that--

**DANNETTE R. SMITH:** [00:13:08] At the local level, yes, I did.

**B. HANSEN:** [00:13:08] OK. All right.

**DANNETTE R. SMITH:** [00:13:09] Yes, I did, um-hum.

**B. HANSEN:** [00:13:11] How-- how did that-- how did that play out so far when you were there?

**DANNETTE R. SMITH:** [00:13:14] Well, it--

**B. HANSEN:** [00:13:14] We're-- we're going to be going through that here shortly [INAUDIBLE]

**DANNETTE R. SMITH:** [00:13:15] Yes, we are.

**B. HANSEN:** [00:13:16] --currently we are, so--

**DANNETTE R. SMITH:** [00:13:16] Yes, we-- yes, we are. Here's what I would say. I think that it was an exciting time for us. We did a lot of outreach. We explained who would qualify. We did a lot of work. And when I talk about outreach, let me be clear. We talked a lot with the community about what the Medicaid expansion was going to mean for them so that they were clear when they apply. When you look at the process, we saw our numbers slightly increase because we were

processing more people who thought that maybe perhaps they would qualify. I would say to you, in my jurisdiction, we were organized. We knew that we needed to make sure that our staff were real well trained, in this case it would be our MCOs in this community, but we wanted to make sure that our staff was well trained, that they understood the process so that we could deliver services quite quickly. Did we see a little uptick in numbers? Yes, we did. We saw an uptick in numbers. But I think the most important thing is the right-- have the right technology and have the right systems in place to be able to manage the additional work.

**B. HANSEN:** [00:14:26] OK. And again, if-- if I-- if I'm correct, did Virginia implement any kind of work requirement for Medicaid?

**DANNETTE R. SMITH:** [00:14:33] Not yet. That's next year.

**B. HANSEN:** [00:14:36] OK.

**DANNETTE R. SMITH:** [00:14:36] The work requirement is not now.

**B. HANSEN:** [00:14:37] What are your thoughts on that?

**DANNETTE R. SMITH:** [00:14:37] Well, work requirement is fine. I don't know that a work requirement necessarily moves a person up to the next level of where we really want them to be. I think what we really want to do is to be able to see that people have an ability to be self-sufficient and that they want to work. But part of working is being able to get the benefits too.

**B. HANSEN:** [00:15:08] OK.



**DANNETTE R. SMITH:** [00:15:08] And so, you know, we'll see how work requirement works out in Virginia, but we did not start out with the work requirement.

**B. HANSEN:** [00:15:16] OK. Thank you.

**HOWARD:** [00:15:18] Senator Arch.

**ARCH:** [00:15:20] Just a-- you mentioned something about an integrated delivery system.

**DANNETTE R. SMITH:** [00:15:23] Yes.

**ARCH:** [00:15:23] As you were talking about that, it's always a challenge, right, because--

**DANNETTE R. SMITH:** [00:15:27] It's always a challenge.

**ARCH:** [00:15:28] --we're dealing with different pots of funding and different regulations based upon what service. How-- what's-- what's been your experience? Have you-- have you seen some success in trying to integrate a delivery system?

**DANNETTE R. SMITH:** [00:15:40] Yes. Let me give you an example of one, and it's very small but it's a very good example. Oftentimes we have children who come into foster care who need multiple arrays of services, and one of the things that I was fortunate to have under my leadership is that I had the social service side and the behavioral health side. I had an opportunity to integrate adult and child behavioral health into the child welfare system so that when kids came into system, into the system, we could treat them and we could work with their parents. Now the parents, of course, and the child in care was Medicaid so I was able to oftentimes bill Medicaid. There were

times when I had families who were self-insured, had private insurance. But the bottom line was the ability to access that service through one door so that we could move that case along was very good. And so in Virginia Beach we looked for multiple opportunities where we could integrate services. Another example: behavioral health sometimes working with my intellectual and developmental disability clients to be able to deal with the dual issue that was going on with that particular customer. Sometimes where the roadblocks could be was the braiding of funding because we weren't always able to do that, we had to keep it separate, but the issue was allowing our customer to be able to access services through one door and making all of our services available. So on my behavioral health side, my supervisor-- I had a couple of teams that sit over there on the behavioral health side that when people came in for services, we could actually go ahead and process SNAP applications or Medicaid applications. The city of Virginia Beach just opened a housing center for people who are experiencing homelessness. Up on the third floor, I have 65 people up there that when people come in who are homeless or are at-- or who may be becoming homeless, instead of putting them in the shelter, we were able to get their benefits, get their support, everything going through one door instead of having them look at several different locations. So one is program integration that I'm speaking of in here, and then the other is beginning to look at how we do braided funding, which I think is the most difficult because we have so many rules, and then the second one is having us sit, kind of sit together and be able to provide those services as well.

**ARCH:** [00:18:19] Did you in-- in implementing that, did you find organizational challenges? I mean you mentioned funding and-- and-- those sources of funds. Culture, did you find any-- any organizational challenges to-- to try to integrate those services?

**DANNETTE R. SMITH:** [00:18:34] Absolutely. You know, in human services sometimes we're very comfortable in doing what we like to do in our particular area. And so it was cross-training staff, sharing with staff the vision for why this is in the best interest of the people that we serve, and

what they would get out of it. And to be honest with you, what staff got out of it was a partnership. What our customers got out of it was the ability to move forward and to be self-sufficient.

**ARCH:** [00:19:04] Thank you.

**HOWARD:** [00:19:05] Other questions? Senator Cavanaugh.

**CAVANAUGH:** [00:19:06] Thank you, Chairwoman. Excuse me. With the program integration, did you find that that, in addition to being an efficient delivery system, was it cost-effective?

**DANNETTE R. SMITH:** [00:19:23] Oh, absolutely.

**CAVANAUGH:** [00:19:24] Was it cost savings, would you--

**DANNETTE R. SMITH:** [00:19:26] Yeah. And, you know, from this perspective, there were times that I could blend staff responsibilities, not all the time but sometimes. What I would say to you is it was better coordination, less time in getting the work done, better services to the customer. That was the payoff. That was the savings is that our customers weren't traveling all over Virginia Beach to get services. How it impacted my staff is that they found partners to be able to do the work, which I think that in itself can be a savings, and times there were, you know, some cost savings as well, because I wasn't having to hire additional staff when I had staff that could partner to get the work done.

**CAVANAUGH:** [00:20:12] Sure. We're-- I ask because, as I'm sure you're aware, we are conscious of our budgets--

**DANNETTE R. SMITH:** [00:20:19] Yes.

**CAVANAUGH:** [00:20:19] --budgets here and wanting to have cost savings is of course important, but concerns about cutting services is also important. So with the upcoming expansion of Medicaid here in Nebraska, do you see Medicaid as having a role to serve in the behavioral health and developmental health arena, do you think?

**DANNETTE R. SMITH:** [00:20:47] Absolutely.

**CAVANAUGH:** [00:20:48] And do you think that that could lead to cost savings if we are-- ensure that that is part of the expansion?

**DANNETTE R. SMITH:** [00:20:56] Well, here's what I would say to you. I think that the team, the Medicaid and Long-Term Care are assessing where there are opportunities, I think, one, to provide good services, and, two, we want to be very responsible with our budget. I think we're still doing that work. I think wherever we can overlap services, we certainly want to do that. But I think that we're still in the midst of doing that work and it might be too early for me to tell at this point.

**CAVANAUGH:** [00:21:28] OK. Based on your experience in Virginia, did they include-- include behavioral health in their expansion?

**DANNETTE R. SMITH:** [00:21:34] No.

**CAVANAUGH:** [00:21:35] They did not.

**DANNETTE R. SMITH:** [00:21:35] No, this was just Medicaid and SNAP.

**CAVANAUGH:** [00:21:37] OK.

**DANNETTE R. SMITH:** [00:21:38] Behavioral health was not included.

**CAVANAUGH:** [00:21:39] OK. Interesting. Thank you.

**DANNETTE R. SMITH:** [00:21:42] Yes, was not included.

**HOWARD:** [00:21:43] Senator Hansen.

**B. HANSEN:** [00:21:44] Thank you. I know this sounds like kind of such a cliché interview question, but it kind of gives me a little better idea of your thought process or your philosophy. What do you see as like the biggest concern, your biggest-- since the time you've had here already to discuss with the departments and other people, what do you think is probably the next year or two-year biggest concern when it comes to this department and like your-- the thing you're kind of worried about the most?

**DANNETTE R. SMITH:** [00:22:09] Well, I think I outlined them in my remarks, so I think there's three things. I think that an organization that has a strong infrastructure can probably do any type of program, but it comes down to three things for me: good fiscal management, good procurement and contract, and good staff. Without those things, I think that you have some difficulty. I think we always can enhance our relationships in the community and we certainly can enhance our relationship with you. So building those relationships and making sure that the community, our legislators, and key stakeholders are clear of the direction, I think that's absolutely important; and then finally I think as we implement the programs that we're realistic about what we're

implementing, that we try to stay as true as we possibly can. And sometimes when you're serving people, you can't always stay as true as you want to be, but we be as transparent about what we think we're going to be able to initiate and what we're not. But again, I go back to the strength of good infrastructure. And so I would say those top three things are the things that concern me.

**B. HANSEN:** [00:23:17] The joys of being a director and dealing with different personalities and different people, that's probably the department have to deal with the most different kinds of people, I think, and--

**DANNETTE R. SMITH:** [00:23:23] Well--

**B. HANSEN:** [00:23:24] --I think goal setting is probably the biggest, what did-- like you said, like having good, clear goals.

**DANNETTE R. SMITH:** [00:23:29] Yes. Well, I think, you know, for me, the piece that I've always enjoyed the most about my job, which has been-- could be seen by other directors as difficulty, is making sure that we've laid a good foundation. When an organization has a good foundation, and I want to suggest that I'm not saying that DHHS doesn't have that in place now, what you hear me saying is I want to enhance it and I want to strengthen it because we have a lot of good things that are going to be happening for the citizens of Nebraska. But in order for us to achieve those goals, we've got to make sure that the infrastructure is in place. So one of the strengths that I think I bring to this job is that I'm a real good collaborator. I'm a good listener. It's okay to agree to disagree with me. I'm about collaboration and I'm wanting to hear from other people and I'm wanting to hear from my staff. And from that, I'm hoping that we are able to make some collective decisions. So that's the strength that I think I bring to this job.

**B. HANSEN:** [00:24:29] OK. Thank you, appreciate it.

**HOWARD:** [00:24:31] Senator Arch.

**ARCH:** [00:24:32] You in your previous positions have had opportunity, I'm assuming, to work with elected officials?

**DANNETTE R. SMITH:** [00:24:38] Yes.

**ARCH:** [00:24:40] How would those elected officials have described you?

**DANNETTE R. SMITH:** [00:24:45] Oh, boy, good. That's a good one. Here's what I think they would say: strong leader, defined, gracious, fiery, determined, compassionate, very passionate, overly energetic, will work hard, you may tell her to go home. I think that's what they would say.

**ARCH:** [00:25:18] OK.

**DANNETTE R. SMITH:** [00:25:18] But, OK, my most recent administrator would say when Danette and her team presents, I just get the checkbook out because they're so well organized and they make a case and it's hard to say no.

**ARCH:** [00:25:38] Okay, very good. Thank you.

**HOWARD:** [00:25:41] Any other questions? Senator Cavanaugh.

**CAVANAUGH:** [00:25:44] Thank you. I already had this question written down, but it's a perfect,

I think, segue from Senator Arch's question. We have frequent interactions and relationship and I would say a strong relationship with your department, your agency. And I'm curious to hear from you what you see as the role of the department as it pertains to this committee. Oftentimes your wonderful staff that I see sitting here in the room is sitting in that chair. And what do you see as the role when your agency comes in to participate in the hearing process about legislation?

**DANNETTE R. SMITH:** [00:26:33] Well, you know, what I know that they're doing, and I think what we'll be doing forward, moving forward, is we certainly want to be able to provide good communication to you and make sure that you're aware, as appropriate, of the things that the department is proposing or may be opposing, but you have a good idea where that's coming from and why. I think we want to continue to be transparent with you. We want to continue to have good communication. And I always think communication isn't always perfect. So I think we always strive to be good communicators. I think we also want to make sure that we listen to your feedback and be able to take that in and see if there's opportunities for us to listen and hear both sides and do-- do something with that. But what I'm hoping we'll continue to do is to foster a good relationship with you, continue that work, continue to better communicate. If it's not clear, we want to make it crystal clear, and most importantly, to be as transparent as we can appropriately be.

**CAVANAUGH:** [00:27:35] Thank you.

**HOWARD:** [00:27:37] I just have two very quick things. One is one of the big issues that we're looking at is the Olmstead and implementing our Olmstead plan, or creating our Olmstead plan and then implementing it.

**DANNETTE R. SMITH:** [00:27:46] Yes.



**HOWARD:** [00:27:47] What's your experience with the Olmstead--

**DANNETTE R. SMITH:** [00:27:50] Well, in Virginia we were under a lawsuit. DOJ came in because we were slow to implement. And with that, DOJ came in, implemented their lawsuit, and it felt like within days our life changed. We rapidly moved from providing services in a residential setting to more of being in the community. We had to retrain our staff. Our IT systems had to be different. We also had to go out and find private providers quickly to be able to move to meet those specified guidelines. What I'm hoping here is that we can kind of beat the clock in that 16 years ago it was 50 states that did not have an Olmstead plan. It's now down to 16. And we really want to be able to move quickly to get our strategic plan in place by December of 2019 for implementation in January. The department is committed with our consultants to develop a very good strategic plan. The strategic plan, though, the way that we envision it, is a plan, but it's going to be a plan that is evolving, that we should be kind of cascading our goals and making sure that they're measurable and that we're moving along. Is the strategic plan the final document? No, it is just the beginning, but we should have a plan document on how we expect to execute or we could foresee something very similar to Virginia.

**HOWARD:** [00:29:27] Thank you. And then I also want to thank you for your work on the flooding in your department.

**DANNETTE R. SMITH:** [00:29:32] Oh, the--

**HOWARD:** [00:29:32] You were very gracious when I texted you on Saturday to help with Senator Walz. Is there anything you'd like to tell us about in regards to your work for-- in regards to this disaster in particular?

**DANNETTE R. SMITH:** [00:29:43] Well, the first thing that I want to say is how proud I am of my staff. They came in on Saturday with me and some of my other leaders to make sure that-- from two perspectives, one that we were supporting our staff that were affected. I had close to 50 staff that have been affected, particularly in the Fremont area, and it has been very emotional for them as well as for their peers and their supervisors, but yet my staff came in on Sunday, not Saturday, Sunday. We did a call to make sure that we could place our staff in places where they could continue to work, at the same time trying to care for people who have had damaged homes and have lost everything. So we've been meeting every Friday-- I mean every day at noon to talk about how our operations are going and what we could do to support our staff but most importantly, what we can do to support our customers and to make sure that we're taking care of them. I have two-- five very talented deputy directors or division directors who are working with their staff to make sure we have behavioral-- behavioral health services in place, that we have our benefits programs in place, that our MCOs are aware of the needs of our constituents and that we're addressing it, our Public Health department is making sure that EOC is staffed up, that we're doing air quality and water quality testing so that we leave nobody in harm. So I have just been just so proud of them. My-- this is just three weeks I've been on the job and I-- it couldn't have happened at a better time to really get an opportunity to work with the staff and to see how I can better serve them. And so that's what I'd say, very proud of them.

**HOWARD:** [00:31:30] Well, thank you so much for your time today and--

**DANNETTE R. SMITH:** [00:31:33] Thank you.

**HOWARD:** [00:31:33] --for telling us a little bit about yourself and answering our questions.

**DANNETTE R. SMITH:** [00:31:35] Thank you.

**HOWARD:** [00:31:36] We do appreciate it. And this will close the gubernatorial appointment-- well, should we do-- oh, yes. All right. So thank you. Is there anyone wishing to speak as a proponent? Anyone wishing to testify in opposition? Anyone wishing to speak in a neutral capacity? All right. And this will conclude the gubernatorial appointment for her, Ms. Dannette Smith. Thank you for your time today.

**DANNETTE R. SMITH:** [00:31:59] Thank you.

**HOWARD:** [00:32:01] All right. All right. Good afternoon and 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 with Senator Murman.

**MURMAN:** [00:32:24] Hello. I'm Senator Dave Murman from District 38, Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and southwestern Buffalo County.

**ARCH:** [00:32:33] John Arch, District 14, which is Papillion, La Vista, and Sarpy.

**CAVANAUGH:** [00:32:38] Machaela Cavanaugh, District 6, west-central Omaha, Douglas County.

**B. HANSEN:** [00:32:42] Senator Ben Hansen, District 16, Washington, Burt, and Cuming Counties.

**HOWARD:** [00:32:46] Also assisting the committee is our legal counsel Jennifer Carter and our

committee clerk, Sherry Shaffer, and our committee pages, Maddy and Erika. A few notes about our policies and procedures, please turn off for silence your cell phones. This afternoon we'll be hearing two bills and we'll be taking them in the order listed on the agenda outside of the room. On each of the tables near the doors to the hearing room, you will find green testifier sheets. If you're 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 white sign-in sheets at each entrance where you may leave your name and other pertinent information. Also, I would note if you're 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 if you do have any handouts, that you please bring ten copies and give them to the page when you come up to testify. 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. And when the light turns red, it's time to wrap up your thought-- your final thoughts. 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 on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, 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 hearing with LB629, Senator Pansing Brooks's bill to provide criteria for recipients of the Title X grant funds. Welcome, Senator Pansing Brooks.

**PANSING BROOKS:** [00:34:31] Thank you, Chair Howard and members of the Health and Human Services Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent District 28 right here in the heart of Lincoln. I appear before you today to

introduce LB629. This bill stipulates that the Nebraska Department of Health and Human Services shall only grant funds received under Title X to entities that are licensed under the Health Care Facility Licensure Act and provide services to recipients of medical assistance under the Medicare-- excuse me, Medical Assistance Act, and that they are compliant with the provisions of the federal Health Insurance Portability and Accountability Act, otherwise known as HIPAA, and that they are able to diagnose and treat sexually transmitted diseases and infections and are able to provide gynecological exams. I brought this bill because I want to ensure that Title X funds go to those providers who offer the vital healthcare services women need. These are precious federal dollar-- resources and dollars and we must make sure that they are granted to the providers who have the means and ability to carry out the purpose of this crucial funding. The debates we've had on the floor of the Legislature over the-- over the last two years and the ongoing threats to standalone clinics has left me concerned that future grantees may not meet the basic requirements of this bill. What is at stake is access to confidential services for low-income women, including cancer screenings, health services for sexual assault survivors, STD testing and treatment, HPV testing and vaccinations, and other important health and lifesaving procedures. Lack of access to these critical health services has strong repercussions for women and children. I also wanted to bring this bill because I have said repeatedly that these kinds of social policy debates should occur in public committee hearings and outside of the budget process. We know that efforts to use our budget for these kinds of bills have created chaos on the floor of the Legislature in the past and we don't want to have a repeat of that this year. By bringing this bill on Title X grant eligibility requirements, I'm also making a statement that this is the appropriate avenue for these issues which are at times incendiary-- incendiary. People with a variety of opinions are able to come before this committee today and make their views known on a standalone issue that shouldn't be buried in a state budget. The fiscal note on this bill says that all current Title X grant recipients meet the requirements of this bill, so there should be no problem codifying this in statute. I know we have a number of people today who are eager to get into the specifics of these services and why these requirements should

provide a minimum standard for grant recipients. I want to thank the cosponsors of this bill. And in closing, I'd be happy to answer any questions, but I will also refer them to the experts behind me. And I also will need to waive closing because I have a bill in another committee right-- right away, so--

**HOWARD:** [00:37:45] Thank you.

**PANSING BROOKS:** [00:37:45] Thank you, Vice Chair-- or Chair Howard.

**HOWARD:** [00:37:49] Whichever is fine.

**PANSING BROOKS:** [00:37:49] Yeah.

**HOWARD:** [00:37:50] All right. Are there questions from the committee? Senator Arch.

**ARCH:** [00:37:53] I have one. If-- if, as you say, all recipients currently meet the requirements, why-- why do you feel the need for the law?

**PANSING BROOKS:** [00:38:00] I just feel that this-- we have had lots of discussion on the law. I think there's been a misunderstanding of this law in the past. And so I want to make sure that-- that the minimum standards being HIPAA qualified are covered. So that's-- I just felt it was necessary because there was misunderstanding on the floor of what this really covers. That's why.

**ARCH:** [00:38:23] Thank you.

**PANSING BROOKS:** [00:38:23] Thank you.

**HOWARD:** [00:38:24] Any other questions? Thank you. Seeing--

**PANSING BROOKS:** [00:38:28] Thank-- thank you for your time today.

**HOWARD:** [00:38:29] Thank you. Our first proponent testifier for LB629. Good afternoon.

**SCOUT RICHTERS:** [00:38:46] Good afternoon. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB629. We'd first like to thank Senator Pansing Brooks for bringing this bill. I am circulating written testimony and will just briefly summarize it here. LB629 serves to realign Title X with the original intent of the program, which is to ensure that all Nebraskans have access to quality family planning healthcare services. We are so grateful to Senator Pansing Brooks for bringing this bill because it rightly recognizes that if we want to make changes in how the Title X program is administered in our state, it should be done in a bill in front of this committee, just as we're seeing with LB629 today. It should not be done in the state budget as it risks the budget's integrity and also removes the opportunity for other items in the budget to receive necessary and fair debate. So we are-- we would reiterate that we're so grateful to Senator Pansing Brooks for bringing this to really uphold the integrity of the legislative process. Specifically, LB629 really ensures that patient safety, regardless of what is happening with federal regulations with the program, really, we make sure we have a minimum standard of care for Nebraska Title X patients. We know how important Title X is for Nebraskans, as it really serves as an entry point to healthcare for many low-income Nebraskans who would otherwise go without care. Again, we would reiterate our gratitude-- gratitude to Senator Pansing Brooks and I'm happy to answer any questions.

**HOWARD:** [00:40:28] Thank you.

**SCOUT RICHTERS:** [00:40:28] Thank you.

**HOWARD:** [00:40:30] Are there questions? Seeing none, thank you for your testimony today.

**SCOUT RICHTERS:** [00:40:34] Thank you. Thanks.

**HOWARD:** [00:40:36] Our next proponent testifier for LB629.

**HEATHER YOUNGER:** [00:40:48] Hello.

**HOWARD:** [00:40:49] Good afternoon.

**HEATHER YOUNGER:** [00:40:50] Senator Howard--Chairperson Howard--and Health and Human Services Committee, my name is Heather Younger and I am the community health educator for Family Health Services Inc. We are a Title--

**HOWARD:** [00:41:01] Would you spell your name first?

**HEATHER YOUNGER:** [00:41:02] Oh, sure, absolutely. H-e-a-t-h-e-r Y-o-u-n-g-e-r.

**HOWARD:** [00:41:07] Thank you.

**HEATHER YOUNGER:** [00:41:08] My husband has a lot of jokes about that, so there it is, about being "Younger." So again, I'm with Family Health Services. We were founded in 1973 in Tecumseh, Nebraska. We provide services, Titles X services, in 13 counties. Our agency has been



there really providing these services in that area. However, Title X has been around really since 1970 under the Nixon administration when it was passed with unanimous support, bipartisan support. And it was always to provide reproductive health services to low-income people. Under Lyndon B Johnson, actually, birth control was provided also under his war on poverty. So these services have been provided for years and years and years. And we pride ourselves on our focus is low-income people. That-- that is more than half the people we see. Of course, we also can bill like a normal clinic, but we are a nonprofit. We ask for donations. We rely on grants for a lot of our community programming. My job is funded under a grant. Our Title X agency, we-- we meet people where they're at. We do extensive education with every patient because that is required under Title X. And we are there to help them reach their goals, whether it be pregnancy or preventing pregnancy, and/or unintended pregnancy, as we lovingly refer to it in our-- as our agency. So we provide all of those services and-- and because we are able to provide those services, we also are able to provide other services outside of Title X on a sliding-fee scale because we get this support. We provide, if someone has an abnormal pap smear, we are able to provide colposcopies. Title-- that is not a Title X service, but because of the support we receive, we are able to provide those services that usually they would have to go to another provider and it could be quite costly, but we're able to slide that. So we have made those choices and so we are dedicated to helping those in our communities, especially in our smaller communities in that southeast corner. Quite a few of those people fall under that 200 percent poverty. So we are-- we have always provided these healthcare we know it is very vital that it remains with health because we do the wraparound with all those services. Any questions?

**HOWARD:** [00:43:34] Sure. Are there questions? Senator Arch.

**HEATHER YOUNGER:** [00:43:39] Yes.

**ARCH:** [00:43:40] Probably a given, I am assuming that your organization and the services you provide comply with-- with the four requirements in this bill?

**HEATHER YOUNGER:** [00:43:49] Absolutely. We provide all those services and then just a few bonus ones just because we can.

**ARCH:** [00:43:55] OK. Thank you.

**HOWARD:** [00:43:57] All right. Any other questions? Seeing none, thank you for your testimony today.

**HEATHER YOUNGER:** [00:44:00] Thank you.

**TIFFANY SIEBERT JOEKEL:** [00:44:15] Good afternoon, Chairperson Howard, members of the HHS Committee. My name is Tiffany Siebert Joekel with the Women's Fund of Omaha, T-i-f-f-a-n-y S-i-e-b-e-r-t J-o-e-k-e-l. I'm here-- we're here to testify in support of LB629. I've distributed my written testimony. I just want to highlight a few things. As Heather indicated, the Title X program was part of the Public Health Service Act enacted in 1970. As it's amended, it authorizes the Secretary of Health and Human Services to make grants and enter into contracts with public or private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods. In 2018, the Nebraska Title X program served over 27,000 unique patients, 85 percent of which were women; 61.6 percent of those patients served were under 100-- at 100 percent or less of the federal poverty level, so they were in poverty; 60 percent were uninsured; 31 percent of those female patients obtained a pap smear and of those, 800 women were found to have abnormal results. Thirty-six percent received a breast exam and because of that exam, were referred-- 1,200 were referred for

further evaluation. And 18-- over 18,000 patients were tested for chlamydia, over 19,000 for gonorrhea, over 2,000 for syphilis, and over 4,000 for HIV. So I only do that to highlight that these services are-- are about family planning, they're also about broader preventive and health screening-- screening services. While Title X includes educational and social components, the core family planning services are healthcare services, and that's why we think LB629 is important in requiring subgrantees to be licensed medical facilities and HIPAA compliant. I provided a couple of citations of federal regs and state publications on the program to reinforce that. For many patients, Title X may be their only regular point of access to a healthcare provider. As I said, in 2018, 60 percent of patients were uninsured that were seen at Title X clinics. And by ensuring a broad range of healthcare services available to those patients--we are including physical exams, cervical and breast cancer screening, STD and treatment-- STD testing and treatment, high blood pressure screening, anemia screening, and among other services--we are providing the highest level of care that we can in that moment. Certainly, referral is an important part of the healthcare system, but we think it's important that STIs, for example, are tested and treated in these clinics and that they have an ability to provide gynecological exams because, particularly for low-income patients, every referral represents additional time taken off work, it represents an additional cost, whether that be in childcare, whether that be in a bus ride, whether that be an out-of-pocket cost for another appointment. So to the extent that we can meet the healthcare needs of patients within these existing settings for which we are receiving these federal dollars, we think that's really important. Additionally, the bill requires that these clinics also seek-- or serve Medicaid patients. I think this seeks to reestablish what is a clear priority of the Title X program, which is that we are focusing on low-income populations and by serving Medicaid more broadly, I think that reinforces that priority. So with that, we'd respectfully request your support of this bill and in support of the public policy of the state to ensure the utmost effectiveness of the Title X program. I'd be happy to answer any questions.

**HOWARD:** [00:48:06] Thank you. Are there questions? Senator Hansen.

**B. HANSEN:** [00:48:11] Yes, thank you. Maybe just from more semantics about the handout that you gave, Nebraska Reproductive Health--

**TIFFANY SIEBERT JOEKEL:** [00:48:19] Yes.

**B. HANSEN:** [00:48:19] --is that what we're looking to include in part of the-- is with the bill, including--

**TIFFANY SIEBERT JOEKEL:** [00:48:25] Yeah, I'm sorry, I should have provided some context for that.

**B. HANSEN:** [00:48:27] No--

**TIFFANY SIEBERT JOEKEL:** [00:48:27] The reason I included that was the grantees, the Title X grantees, are at the bottom of that page so you can see that.

**B. HANSEN:** [00:48:31] OK. I-- I think I just wanted maybe to get your opinion on a definition.

**TIFFANY SIEBERT JOEKEL:** [00:48:35] Sure.

**B. HANSEN:** [00:48:36] When it says "reduces unintended pregnancies," what does that mean?

**TIFFANY SIEBERT JOEKEL:** [00:48:41] I think, as Heather indicated, so a core component of the Title X program, as made clear in federal regulations, is ensuring that patients are prepared to

have pregnant-- to-- to have a pregnancy if that is-- that is what they should choose. And if that is not what they choose for themselves at this time, they are given the full range of information about healthcare options available to them to prevent those pregnancies. So contraception, contraceptive access is obviously a huge component of this program.

**B. HANSEN:** [00:49:13] You think that contraception is included in reducing unintended pregnancy?

**TIFFANY SIEBERT JOEKEL:** [00:49:18] Absolutely, yeah.

**B. HANSEN:** [00:49:21] OK. All right. OK, thanks.

**TIFFANY SIEBERT JOEKEL:** [00:49:22] Sure.

**HOWARD:** [00:49:22] Other questions? Senator Murman.

**MURMAN:** [00:49:26] Thanks for coming in.

**TIFFANY SIEBERT JOEKEL:** [00:49:28] Sure.

**MURMAN:** [00:49:28] You mentioned that the original intent of Title X was to provide services for low income. And you also mentioned that you don't turn away any Medicaid patients. Are there other clinics that are turning away Medicaid patients that receive Title X funding?

**TIFFANY SIEBERT JOEKEL:** [00:49:48] I don't believe so. The fiscal note I think was pretty clear on this bill that of the provisions that are being required in LB629, the existing Title 10

grantees would meet those. So I think we know that the existing realm of subgrantees does currently serve Medicaid patients.

**MURMAN:** [00:50:03] OK. Thank you.

**TIFFANY SIEBERT JOEKEL:** [00:50:04] Sure.

**HOWARD:** [00:50:05] Any other questions? Seeing none, thank you for your testimony today.

**TIFFANY SIEBERT JOEKEL:** [00:50:12] Thank you.

**HOWARD:** [00:50:12] Our next proponent testifier for LB629? Seeing none, we do have some letters: Sarah Hanify from the National Association of Social Workers, Nebraska Chapter; Ryan King from Choice Family Health Care; Amy Behnke, Health Center Association of Nebraska; Phyllis Salyards and Sherry Miller of the League of Women Voters of Nebraska. Is there anyone wishing to testify in opposition to LB629? Good afternoon.

**BO BOTELHO:** [00:50:52] Good afternoon, Chairman Howard and members of the Health and Human Services Committee. My name is Bo Botelho, B-o B-o-t-e-l-h-o, and I serve as the interim Public Health Director of the Department of Health and Human Services. I'm here to testify in opposition to LB629. Last year the Nebraska Legislature made positive updates to the Title X program which are reflected in the Governor's current budget recommendation. The changes have provided clearer guidelines and ensure program integrity. As a result, we are more confident in the services being funded within the program. In fact, on February 22, 2019, the U.S. Department of Health and Human Services updated its Title X regulations which are scheduled to go into effect in May. The federal government revision mirrors changes made by the Nebraska Legislature last

session. Our objection to LB629 is that it limits the Title X network of care. Last year's budget language set out clear guidance that any facility could choose to comply with. It established in the "and/or" testing to objective independence was a bar that any facility or clinic could choose to meet. This bill clearly eliminates certain types of providers that are allowed in the Title X program. The four eligibility requirements established in this proposed legislation would prohibit at least one federally qualified health center that currently provides services under their practitioner's license and would effectively ban practices, clinics, and facilities that offer a various, more narrow set of Title X-related services. It is the department's goal to provide a robust network of care that is made up of a variety of types of providers and to administer the program with integrity. LB629 inhibits us from achieving that goal and providing a robust network to Nebraskans. Before I close, I want to provide a general update about the Title X network in light of the changes made during the last session. I shared this information with Appropriations Committee last week on Tuesday. Last year, several raised concerns that people would not be served if the budget language were enacted. These fears have been unfounded. Nebraska has been able to continue to serve citizens seeking Title X services. Preliminary data for 2018 shows Nebraska serves approximately 27,000 people and added a new subrecipient to network. One subrecipient opted to leave the network and they have publicly said they will continue to serve their customers without Title X funding. Also, we have not received complaints about services not being available. We will continue to work to expand our network. And with that, I'll answer any questions.

**HOWARD:** [00:53:17] Thank you. Are there questions? Senator Cavanaugh.

**CAVANAUGH:** [00:53:18] Thank you, Chairwoman Howard. Thank you for being here today, Director, and for your testimony. So I'm taken aback by the fears are-- have been unfounded, that-- that people would not be served by the budget language that was enacted last year. That is founded because the provider that-- I don't know that they opted to leave the network. They opted to not

change the services that they provided, therefore, they were forced to leave the network. And they are continuing to provide the services that they provide through other means of funding, not Title X funding. So if they were not able to raise those funds, people would not be served. And we're talking about Planned Parenthood. I mean let's not skirt around the issue. Planned Parenthood had to leave the network because of services that they provide, and that was decided, and I don't want to engage in that debate here. But they're-- they continue to serve a population that wasn't receiving abortion services because they believe in that. And they have been raising funds to serve people, to serve families, to serve men, women, and children in reproductive health, STD health. And if they chose not to do that, if they chose to stop raising funds for that, then there would be people not receiving healthcare services, and that one person who-- or agency that has come into the network would not be making up that difference. Would you like to speak to that?

**BO BOTELHO:** [00:55:15] Yes, and I can speak to that. You're assuming that those folks that are still going to the Planned Parenthood wouldn't go to another provider.

**CAVANAUGH:** [00:55:21] They wouldn't go to another provider because another provider is not available to them.

**BO BOTELHO:** [00:55:25] We-- we believe that there are other providers available, they could go to other providers.

**CAVANAUGH:** [00:55:33] Have you worked to make arrangements for them to be able to go to other Title X providers?

**BO BOTELHO:** [00:55:39] With-- with the-- with them as individuals?



**CAVANAUGH:** [00:55:41] Yes.

**BO BOTELHO:** [00:55:42] If they were to contact us, yeah, we can tell them where they can go and we do, do that. We haven't had anyone contact us and say they-- they're not able to get these services.

**CAVANAUGH:** [00:55:50] So if Planned Parenthood tells all of their clients that they were previously funded through Title X, contact DHHS and they will get you to another provider, you're confident that all of those people will have another provider accessible to them?

**BO BOTELHO:** [00:56:10] We would provide--

**CAVANAUGH:** [00:56:10] Not available, accessible.

**BO BOTELHO:** [00:56:13] Well, I'm not sure what you mean by accessible, Senator.

**CAVANAUGH:** [00:56:15] That they can get to that provider, that it's within the--

**BO BOTELHO:** [00:56:18] I'm fairly certain that we could do that, yes.

**CAVANAUGH:** [00:56:19] --with-- that it's within the transportation of their-- their vicinity now. You're-- you're confident of that?

**BO BOTELHO:** [00:56:28] I believe so, yes.

**CAVANAUGH:** [00:56:30] Then that's a conversation we should have with Planned Parenthood

because they're raising funds to pay for this, something that our tax dollars used to pay for. So I guess that's one question. My other question is, I'm very concerned that you're in opposition to this because I'm looking at the four things that Senator Pansing Brooks has brought forward and these seem like really reasonable things that anybody who's receiving tax dollars should be covering. So what of these four things is at issue for the department?

**BO BOTELHO:** [00:57:08] Title X funds allows, per federal regulation, for what they call a single-method contraceptive method provider. A lot of these entities are not clinics. They don't provide clinical treatment. They provide counseling. This bill would effectively preclude any of those entities from applying to the program.

**CAVANAUGH:** [00:57:28] Any entity that provides counseling?

**BO BOTELHO:** [00:57:31] That only provides counseling, it does not provide the clinical services.

**CAVANAUGH:** [00:57:34] Well, that's not-- I mean, counseling is important but that's not a medical reproductive service. That's not comprehensive. If you can't get comprehensive, then why are we giving tax dollars to them?

**BO BOTELHO:** [00:57:46] The program requires a-- the broad spectrum of services. You can meet that through the program by either referring-- by having your own referral network or referring to an entity that provides those services. You do not have to provide those services in every single entity.

**CAVANAUGH:** [00:58:04] Individuals that are seeking services that are funded through Title X

are financially disadvantaged, and funding an entity that doesn't offer them comprehensive care in that visit only places a further burden on those patients to then seek comprehensive care elsewhere. If I can't be counseled on my reproductive health options and get a pap smear, that's a massive waste of time off of work, transportation, childcare. That is a huge burden for people. We should have a minimum threshold that agencies that are receiving taxpayer dollars-- you don't think that that's reasonable?. The Department of Health and Human Services doesn't want tax dollars to be reasonably administered?

**BO BOTELHO:** [00:59:01] No, we do want to be reasonably administered. But what I'm saying is the federal regulation specifically allows, specifically calls out the ability for a single-method provider to be part of Title X, and this proposed legislation would exclude them.

**CAVANAUGH:** [00:59:20] It wouldn't-- it wouldn't exclude them if they-- you can provide a single type of reproductive health. You can provide-- I'm-- I'm making an assumption because you don't say which one it is, but I'm-- I'm assuming that it's somebody that counsels on natural family planning. But you can offer natural family planning and you can also do a pap smear. So if the agency that does just one type of contraceptive or reproductive health were to also offer these other things, they would not be excluded. They're being excluded because they don't offer-- offer healthcare. They offer counseling on one thing. We're excluding another agency because they do something that we don't like, but they offer all these things. I guess I just don't understand why the Department of Health and Human Services is taking issue with that.

**BO BOTELHO:** [01:00:16] Well--

**CAVANAUGH:** [01:00:16] Why are we-- that's-- I-- I have had-- we've had numerous people from the department come and testify about being stewards of the taxpayer dollars, which in my view is

the responsibility of the people sitting on this side of the table. But this testimony is the complete opposite of being a steward of taxpayer dollars. What you are saying to me is that we shouldn't be a steward of taxpayer dollars when it's ideological; then, we should do what we want even if it's the most ineffective, inefficient thing for the people of Nebraska. This is very problematic. I'm very troubled by your testimony. I guess my only question left for you is, is there anything else you'd like to say about it?

**BO BOTELHO:** [01:01:00] No, I believe I laid my position out in testimony.

**HOWARD:** [01:01:04] Are there any other questions? Mr. Botelho, I did have a question about one of the federally qualified health centers. It's-- they're providing services under their practitioner's license--

**BO BOTELHO:** [01:01:15] Yes.

**HOWARD:** [01:01:16] --instead of a facilities license?

**BO BOTELHO:** [01:01:17] Yes.

**HOWARD:** [01:01:17] Is that common?

**BO BOTELHO:** [01:01:20] I don't know how common it is outside of the Title X, but in our network there's one that does it currently.

**HOWARD:** [01:01:27] Who-- so-- because I know five out of the seven FQHCs are doing Title X.

**BO BOTELHO:** [01:01:30] It'll be the Good Neighbor in Columbus.

**HOWARD:** [01:01:34] Oh, OK. OK. That doesn't seem very common. I--

**BO BOTELHO:** [01:01:38] I don't-- I don't know if it is or not, Senator. It doesn't-- from our view here regarding this program, it's not, obviously, common.

**HOWARD:** [01:01:45] And then would your concerns be addressed if the licensing issue was-- was clarified?

**BO BOTELHO:** [01:01:52] The other issue would be the clinical services, like I was explaining to Senator Cavanaugh. There are those individuals, those entities that don't provide clinical services, they provide counseling--

**HOWARD:** [01:02:03] Serve STDs and the pap [INAUDIBLE]

**BO BOTELHO:** [01:02:03] --and they would be excluded.

**HOWARD:** [01:02:05] But then the HIPAA would be OK?

**BO BOTELHO:** [01:02:07] Yes.

**HOWARD:** [01:02:08] OK. Wonderful. Thank you.

**BO BOTELHO:** [01:02:10] You're welcome.

**HOWARD:** [01:02:10] Any other questions? Seeing none, thank you for your testimony today. Our next opponent testifier? Good afternoon.

**MARION MINER:** [01:02:45] Good afternoon, Madam Chair Howard, members of the Health and Human Services Committee. My name is Marion Miner, M-a-r-i-o-n--excuse me, sorry, I've got a cold--Miner, M-i-n-e-r. I'm here on behalf of the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic Church and advances the gospel of life by engaging, educating, and empowering public officials, Catholic laity, and the general public. And I'm here today to express the Conference's opposition to LB629. And I just-- I wanted to open my testimony by actually reiterating a few of the points that the proponents made that I think actually bolster the opposition which is, first, what is at stake is access. Second, entry point to healthcare for low-income people is provided through Title X. And third, the only regular access to healthcare for some patients is offered through Title X clinics. So with that in mind, the U.S. Department of Health and Human Services announced new rules earlier this month that invited providers who offer viable healthcare services but have not traditionally been part of the Title X program to become new participants. The new rule holds that so long as the entire Title X project in a state, the entire state network of providers offers the full range of traditional Title X services, individual providers need not be excluded because they only offer some of those services. Some providers that have operated for years in communities in Nebraska and nationwide offering high-quality medical services to patients who have little or no ability to pay have been encouraged by the DHHS, federal DHHS, to apply for participation in the Title X program. Some of these providers help low-income patients apply for Medicaid, but they do not accept Medicaid themselves because they offer all of their services for free. They seemingly would be ineligible under LB629. Some offer a partial range of STD and STI screening and treatment. It is unclear to me whether or not they would be eligible under LB629 since the scope of such services an entity is required to offer is not clearly defined. Some providers offer many traditional Title X services but would need to refer to another provider

for a full gynecological exam. Those providers would be excluded under LB629 as well. In short, LB629 erects new barriers for eligibility under the Title X program that have never been required by federal or state law. These barriers make it more-- and again, it bears repeating, this program has been in existence since 1970. These barriers make it more difficult for small providers serving low-income patients to qualify for federal aid when it is exactly those types of providers who could use the aid the most to further develop the range of services they offer and to increase the reach of their work to more low-income individuals and families. These proposed barriers cut directly against the intention of the finalized new federal rules which are meant to encourage small, nontraditional providers to apply. So for those reasons, the conference urges that you not advance LB629.

**HOWARD:** [01:05:46] Thank you. Are there questions? Senator Cavanaugh.

**CAVANAUGH:** [01:05:50] Thank you, Chairwoman. Thank you, Mr. Miner, for being here today. My question to you is-- is similar to my previous questions. Don't you believe that we should have a standard-of-care requirement when we're talking about taxpayer dollars?

**MARION MINER:** [01:06:10] I'm sorry, could you-- could you rephrase that maybe?

**CAVANAUGH:** [01:06:11] So you-- well, I-- you-- towards the end of your testimony, you say that LB629 erects new barriers for eligibility under Title X programs.

**MARION MINER:** [01:06:22] Um-hum.

**CAVANAUGH:** [01:06:22] And I would assert that it doesn't create barriers so much as requirements for eligibility because these are taxpayer dollars--

**MARION MINER:** [01:06:33] OK.

**CAVANAUGH:** [01:06:33] --and we need to be stewards of taxpayer dollars.

**MARION MINER:** [01:06:35] OK, sure.

**CAVANAUGH:** [01:06:36] So the threshold, the barrier or the threshold, should be high.

**MARION MINER:** [01:06:41] Well, that-- that hasn't-- that hasn't-- depending on what you mean by what constitutes a high threshold, I think--

**CAVANAUGH:** [01:06:49] You should-- if you're getting dollars for healthcare, you should provide healthcare.

**MARION MINER:** [01:06:53] So if you're getting dollars to provide Title X services, which traditionally have to do with pregnancy testing and counseling, assisting clients who wish to conceive, and fertility-- basic infertility, preconception health services, STD/STI treatment and screening, contraception, all those types of things, which the full network, not every individual provider, has to have available through the program under the rules, I mean that's the standard is that you have to be able to provide some of these services as a participant in the program. And I think the point is that you want to open this up to as many providers who can offer these services, especially in low-income and remote areas, as possible because they're such an important entry point into healthcare for so many people. And so it seems counterintuitive to me to sort of increase, to erect new or taller barriers to access in the program, when the program is really designed to-- to really make access easy for people, especially who don't have access because of their low means or because of their remote location.



**CAVANAUGH:** [01:07:57] But it's for that very reason that the dollars should go towards the-- the providers that provide comprehensive because access is an issue and it-- and the dollars, there's only so much in that pool, so where they're going should go to serve the most need.

**MARION MINER:** [01:08:21] If I-- if I--

**CAVANAUGH:** [01:08:22] And that's what Senator--

**MARION MINER:** [01:08:24] I'm sorry, go ahead.

**CAVANAUGH:** [01:08:24] --Pansing Brooks's bill lays out is what that need is. These are the four things that Title X dollars cover, so we expect that if you're going to receive Title X dollars, that you would cover these things.

**MARION MINER:** [01:08:36] Title X covers a lot more than those four things that she mentioned. Those are just four that-- that were singled out. So--

**CAVANAUGH:** [01:08:45] These are four things that I-- she's not here to close, but I would assert that Senator Pansing Brooks believes are critical and need funding because people don't have access to them.

**MARION MINER:** [01:09:00] So I remember now what I was going to say earlier.

**CAVANAUGH:** [01:09:02] Sure.

**MARION MINER:** [01:09:02] And you can bring me back if this isn't directly on point, but I think one of the things that you mentioned was that there's a limited amount of dollars, federal dollars that we receive to distribute under the program. And my recollection of how that works is that actually part of what determines how much money we get is how many patients we're actually serving through the program. So again, if we're-- if we're erecting new barriers to access, which means that we're serving less people, potentially, that doesn't help us to actually expand the amount of money that we get to-- to expand the program.

**CAVANAUGH:** [01:09:34] Well, then we should reintroduce Planned Parenthood to the mix, if that's the argument, because we-- we cut out a whole pool of people when we did that. And I don't think that's the argument you're intending to make and I'm not going to put those words into your mouth. I just want the-- to state that we did-- we did restrict access and we did restrict providers. And we should have a standard and this is not-- this is not a high threshold. This is a standard asserting that you should provide comprehensive services. So if the standard were something other than these four things, if it was you have to provide two of these four things, would that still be problematic?

**MARION MINER:** [01:10:19] I think that the best thing to do is-- is simply to follow the federal rules.

**CAVANAUGH:** [01:10:26] Well, I think testifying in front of the Legislature to tell us that we shouldn't do our jobs at the state level is probably not a good avenue to go, but thank you for being here today.

**MARION MINER:** [01:10:36] No, I think that that's the best way that you can actually fulfill your responsibility is simply to not-- not erect new barriers for participation in a program that we've

heard from-- from testifiers that is so critical for-- for access for people. Rather than cutting down on the number of people who are eligible, we should be expanding it, and that's what the new federal rules allow us to do.

**HOWARD:** [01:11:00] Any other questions? Mr. Miner, for the language that was created last year, did it follow federal rules exactly?

**MARION MINER:** [01:11:08] It was compliant with federal rules, yes.

**HOWARD:** [01:11:11] But did it follow them exactly?

**MARION MINER:** [01:11:13] I'm not sure what you mean by that. It followed them in-- insofar as it was compliant with them

**HOWARD:** [01:11:18] It was certainly compliant, but it didn't follow them exactly.

**MARION MINER:** [01:11:22] It wasn't a restatement of them exactly, if that's what you're getting at. I'm not sure what you're getting at.

**HOWARD:** [01:11:26] Well, I believe the federal guidance allowed us to have more providers than we allowed. So in that regard, we didn't follow them exactly, did we?

**MARION MINER:** [01:11:36] What we did was actually make very clear that we are going to take seriously the intent of Congress when it said in federal statute through the Title X program that abortion is not to be used as a method of family planning in this program. And I think what we have found historically, not only through audits in our own state but also through experience in the

federal Title X program nationwide going back years, is that it's very, very difficult to fulfill that requirement without formal program integrity requirements. And so that's what we did. That's what the state Legislature did last year.

**HOWARD:** [01:12:14] So would you say that this, while it's not exactly federal legislation, it is something we could do.

**MARION MINER:** [01:12:24] Oh, yeah, it's something you could do. My-- my position would be that it's just not-- it's just not a good idea.

**HOWARD:** [01:12:28] Similar to what we did last year, we sort of went rogue and did a little bit more to reduce access, this would do a little bit more to reduce access as well?

**MARION MINER:** [01:12:38] It-- I think it certainly would reduce access. The question is, again, what I-- what differentiates this-- this-- this piece of legislation from what happened last year is what happened last year was simply saying there are rules laid out for how this program has to be administered, we're not following those rules, so we have to do something to ensure compliance going forward. And I think it's worth noting that the federal government, with the new rules that came out earlier this month, actually followed the approach that-- that the state of Nebraska did largely. And so I think that position was vindicated.

**HOWARD:** [01:13:14] And my apologies, because I don't-- I want to make sure the record is clear. We were not out of compliance with Title X when we made that language. We were--

**MARION MINER:** [01:13:23] Every time that Title X money is used directly in provision for abortion services, that is a violation of federal law and that was shown to have occurred.

**HOWARD:** [01:13:30] However, none of them had been previously used for abortion services. But I don't think I want to travel down that path with you.

**MARION MINER:** [01:13:36] I'd invite you to look at the--

**HOWARD:** [01:13:37] May I ask you specifically--

**MARION MINER:** [01:13:38] --the audits.

**HOWARD:** [01:13:39] Mr. Miner--

**MARION MINER:** [01:13:39] I'm sorry, go ahead.

**HOWARD:** [01:13:42] --may I ask you specifically about the HIPAA compliance? Are you-- do you have concerns about that?

**MARION MINER:** [01:13:46] I-- I don't really know enough about the ins and outs of HIPAA to address whether or not that's-- by itself is of major concern.

**HOWARD:** [01:13:55] And then, do you know, are any of the clinics that are currently receiving Title X funds, would they be able to meet these requirements?

**MARION MINER:** [01:14:04] Any of the clinics current-- I'm sorry, could you repeat that? I lost you.

**HOWARD:** [01:14:07] Do all of the clinics that currently receive Title X funds, outside of the one federally qualified health center with the wonky license, do all the others, to your knowledge, would they be able to meet these requirements?

**MARION MINER:** [01:14:17] I'm-- I'm not able to say for certain.

**HOWARD:** [01:14:19] OK. What we heard from the proponents was that they would be able to.

**MARION MINER:** [01:14:23] That may be-- that may be so. I'm not sure.

**HOWARD:** [01:14:25] OK. Thank you. Are there any other questions? Seeing none, thank you for your testimony today.

**MARION MINER:** [01:14:30] Thank you.

**HOWARD:** [01:14:30] Our next opponent testifier. Good afternoon.

**KAREN BOWLING:** [01:14:44] Good afternoon. Good afternoon, Chair Howard and members of the HHS Committee. I am Karen Bowling. I serve as the executive director at Nebraska Family Alliance and I represent them in my testimony this afternoon. NFA is a nonprofit policy research and education organization that advocates for marriage and the family life and religious liberty. We represent a diverse statewide network of thousands of individuals, families, and--

**HOWARD:** [01:15:20] I'm so sorry, did you spell your name for us?

**KAREN BOWLING:** [01:15:22] Thank you. K-a-r-e-n B-o-w-l-i-n-g. Thank you. My apologies.

On February 22, 2019, U.S. Department of Health and Human Services issued the final rule to review the regulations governing Title X family planning program. We believe LB629 will not comply with the statutory intent of the program and the new rules adopted and, therefore, oppose LB629. The final rules require that grant recipients protect the patient-healthcare provider relationship, removes the requirement for abortion referral, replaces it with a prohibition on referral for abortion as a method of family planning, ensures conscience protection for Title X health providers by eliminating the requirement for providers to counsel on or refer for abortion, expands coverage partnerships and innovation, improves Title X services by encouraging diverse and nontraditional Title X partners, prioritizes expansion of the numbers served by changes in selection criteria for grant proposals. And finally, my third point is, it returns Title X flexibility to states and other grantees, restores states' ability to prioritize funding according to the needs of the populations, and formally revokes the 2016 rule which put unnecessary restrictions on states and other grantees and which had been rendered void by a joint resolution of disapproval passed by Congress under the Congressional Review Act and signed by the President. Because of these three primary reasons, we ask that the committee oppose LB629. I'll take any questions.

**HOWARD:** [01:17:18] Thank you. Are there questions? Senator Cavanaugh.

**CAVANAUGH:** [01:17:23] Thank you, Chairwoman. Thank you, Ms. Bowling, for being here today. I'm still trying to kind of digest what you've laid out here. The final rules require-- you're talking about the U.S. rules.

**KAREN BOWLING:** [01:17:42] Correct.

**CAVANAUGH:** [01:17:44] So these three points, the protect the patient-healthcare provider, expand coverage, and return Title X flexibility, you-- to the states, you view that this bill doesn't do

those things?

**KAREN BOWLING:** [01:17:59] That is correct.

**CAVANAUGH:** [01:18:00] OK. Well, returning the Title X flexibility to the states, I-- I-- I think as the state body, we-- we are administering our flexibility with this bill, so I guess I don't understand how-- how you view that as not being us having flexibility.

**KAREN BOWLING:** [01:18:29] It would restrict some of the people that are interested in Title X funds that are nontraditional, and so that's why we oppose that. And I think also we would not be in compliance. I think it's very clear in the code when-- 1970, when it was established, what it can and cannot do. And so we have providers that are interested and we're going to restrict particularly areas in rural Nebraska that maybe cannot provide the full services that are asked in LB629 but they can provide many of the services.

**CAVANAUGH:** [01:19:06] Are there-- is there a rural Nebraska service provider right now that would be eliminated by this?

**KAREN BOWLING:** [01:19:15] At this-- with-- if you implemented LB629, there is the possibility. I would note that a testifier, a proponent that was here, I can't remember her name but from the clinic in Tecumseh, they already-- they already qualify and are receiving Title X funds this year.

**CAVANAUGH:** [01:19:37] But who is-- who is the provider that would be eliminated? What provider--



**KAREN BOWLING:** [01:19:43] The-- the new rules, Senator Cavanaugh, are to expand those, and so there are current--

**CAVANAUGH:** [01:19:49] I-- I-- no, I'm asking if LB6-- I'm asking, if LB629 were enacted into state statute, what provider would be-- be losing out on these funds?

**KAREN BOWLING:** [01:20:00] There is the potential of those that would apply for Title X grant recipients.

**CAVANAUGH:** [01:20:06] Who currently? Is there somebody currently that we would be excluding?

**KAREN BOWLING:** [01:20:08] I have talked to some, yes, that are--

**CAVANAUGH:** [01:20:11] Could you share--

**KAREN BOWLING:** [01:20:11] At this point I'm not willing to do that because they are not-- they have not given me permission to do that.

**CAVANAUGH:** [01:20:18] Well, if they're funded by Title X, it's public record.

**KAREN BOWLING:** [01:20:22] Absolutely. They have not applied. Maybe I should make that clear

**CAVANAUGH:** [01:20:24] I'm asking who--

**KAREN BOWLING:** [01:20:25] They are asking future with these new Title X rules--

**CAVANAUGH:** [01:20:28] I'm asking you-- I'm sorry. I'm trying to be as clear as I can.

**KAREN BOWLING:** [01:20:32] Thank you.

**CAVANAUGH:** [01:20:32] Could you tell me who currently receives Title X funds in the state of Nebraska who would no longer receive Title X funds in the state of Nebraska if we enacted this bill?

**KAREN BOWLING:** [01:20:43] OK, who currently.

**CAVANAUGH:** [01:20:44] Yes.

**KAREN BOWLING:** [01:20:44] I'm sorry, I misunderstood your question.

**CAVANAUGH:** [01:20:46] No, that's okay.

**KAREN BOWLING:** [01:20:46] I think I'm following you now. So in 2018, there were 15 recipients awarded. Currently, there are 12 of them active. And of those 12, I'm-- I don't know-- honestly, I don't know if they would be prohibited. One testifier that does receive those was here today and they supported and they appear to say that they would not be affected.

**CAVANAUGH:** [01:21:17] OK. Well, I know-- and I suppose I should have asked this of Director Botelho because he said that there was one, and I just wanted to know who that was and where they're located because-- yeah, sorry. Thank you.

**KAREN BOWLING:** [01:21:36] Thank you.

**HOWARD:** [01:21:37] Any other questions? Did you have any concerns about the HIPAA portion?

**KAREN BOWLING:** [01:21:42] Senator Howard, I'll be real honest. I don't know enough to be able to comment about that.

**HOWARD:** [01:21:47] About the privacy protections?

**KAREN BOWLING:** [01:21:48] Right, right.

**HOWARD:** [01:21:49] OK. Thank you.

**KAREN BOWLING:** [01:21:49] But thank you for the question.

**HOWARD:** [01:21:51] All right. Thank you. Thank you for your testimony today.

**KAREN BOWLING:** [01:21:53] Yes. Thank you. Thank you.

**HOWARD:** [01:21:54] Our next opponent testifier? Anyone wishing to testify in a neutral capacity? We do have one letter for the record, Meg Mikolajczyk from Planned Parenthood of the Heartland. Senator Pansing Brooks has waived closing, and this will close the hearing for LB629 and open the hearing for LB735, Senator Chambers' bill to provide a duty for the Department of Health and Human Services. Welcome, Senator Chambers.

**CHAMBERS:** [01:22:31] Thank you, Madam Chair and members of the committee. My name is Ernie Chambers. I represent the 11th Legislative District in Omaha. I had prepared a handout. I don't think that I hand-- brought it here, before, did I?

\_\_\_\_\_ : [01:22:45] I don't think so.

**CHAMBERS:** [01:22:46] Well, I will get-- because it's mainly for the members. That was sent, but I made another one from-- well, the other one that I made had to do with testimony-- not testimony, but statements during floor debate because in one of those documents I had said that I was going to use the Legislature as a bully pulpit to discuss this particular issue. So I will make sure that I get a copy of that to all of you so you'll know that I don't make idle threats. I'm not going to take a long time. I've done what everybody does, which is to present a statement of intent. So that will be the bulk of what I say. Then I'm going to actually read into the record what has been prepared in the fiscal note and will answer questions. Prior to getting into this statement, the new senators don't know me, don't know anything about me, and some of those who've been around for a while don't really know me. But I have-- I had three sisters. All of them have died. I have innumerable nieces. And as all of us can say, my mother was a woman, and she has passed on also. When I see in this male-dominated society women who are in vulnerable positions taken advantage of and the one taking the advantage is in a position that goes beyond just authority but of trust and that trust is violated to the detriment of the woman, the word that I would have to use to describe what I experience is "fury." I am infuriated and I see that person not only as unethical and lowlife, but a coward taking advantage of his status to do that which would be a crime if a person did it on the street. When a professional does that, it demeans not only that individual but the profession of which he is a part. And the reason I use the male pronoun is because what I'm talking about involves males. For the record, this will be a verbatim rendering of my statement of intent. The

impetus for LB735 is the refusal of DHHS as to take any action against a doctor against whom I filed a formal complaint August 17, 2017, for performing a purported "hernia" examination on a female patient (a mandatory pre-employment requirement of the State Patrol). The examination was described by the Omaha World-Herald 8-2-17, meaning, naturally, August 2, 2017. As part of the exam, the patient said she was to remove her pants, lay on her back on the examination table, bend her knees to put her feet flat on the table, and open her knees, exposing her genitalia. Then she said she was required to roll over, exposing her anus. The World-Herald quoted several healthcare professionals, including doctors, who employed such descriptors as "no legitimate medical purpose," "highly unusual and a bit suspect," and asserted that "a pelvic hernia exam could not be done with a look alone," and noted the medical instrument (speculum) which would be required, and how used. The doctor-female patient relationship is especially unique because a particular type of very personal interaction is involved which implicates the expectation of respect, decency, personal dignity, bodily integrity. It is grounded in trust and confidence not only in the doctor's medical knowledge and competency, but trust that he will not take advantage of his professional position as a means to act inappropriately or salaciously, and that he will do only what is medically necessary and proper under the circumstances of her situation. The health and well-being of the patient is the paramount goal of the practice of medicine ("First, do no harm") and not to provide the maximum opportunity for indulging inappropriate predilections when dealing with an uninformed, vulnerable, trusting patient. Because the doctor's conduct was determined not to warrant any type of sanction whatsoever, a protective protocol for pelvic examinations of any and every type should be developed by DHHS and be required to be made available to every female patient, as well as every doctor, so that no repetition of the herein described sexual misconduct will occur. An appropriate sanction should be annexed to it so that it will have some "bite" and be more than merely a recital of aspirational platitudes. Revocation of the license to practice medicine is warranted. Before I read the fiscal note, I want to say something that new people may not realize. Because of the power of the Catholic church in Nebraska, the Department of Health and Human

Services, pursuant to all kind of language in the statute, have to give certain information to women who want an abortion. You should go to the place in the statute and read that. It goes on and on and on and on and on. So for DHHS to be required by statute to give all of that kind of information to a woman who wants an abortion, they say so that the woman will be aware of what she's deciding as though she doesn't know, it is reasonable to make sure that every patient who is going to receive a pelvic exam be informed of the nature of the examination, what the purpose of it is, and how it's going to be conducted, and then something like this cannot happen. Even after this happened and the victim had complained to her superiors at the State Patrol who had a contract with this doctor, other females who were seeking a job were put through the same kind of examination. A certain amount of pressure must have developed because then the State Patrol altered the requirement that all the women go to this doctor and said they would be permitted to go to their own personal physician for this pre -employment physical examination. My main goal is to put this before the public by way of this hearing. And personally, I want the committee to advance the bill. But whether the committee does it or not, I have a responsibility because I'm not religious; I have a responsibility because I'm not a part of law enforcement; I have a responsibility because I'm a human being, I'm a man, I have respect for everybody, and I don't want to see anybody taken advantage of. And all of you can mock me after I leave, you can tear this bill up, but I'll be discussing it on the floor and I will try to embarrass and humiliate everybody that I can, because this woman testified how degrading, the experience, it was, how humiliating it was, she wound up going for psychological counseling, and yet the man got away clean. One of the articles that I included in what I gave to you, I didn't give the whole article because I didn't want the document to be too thick. There was a male doctor who was performing an inappropriate anal action on male patients, inserting a catheter where it wasn't necessary, maybe in the penis also. He was suspended and fined. But when this humiliating, degrading, what I consider sexual assault-type activity was done to a woman, the doctor got away clean, and it was not clean. I'm going to read the fiscal note: This bill requires the Department of Health and Human Services to establish a protocol that

specifies when and how a pelvic exam of a female is to be conducted. Changes to the program manual and rules and regulations would need to be revised. The department indicates an advisory committee would be assembled to assist with the development of the protocol. The cost to the committee-- the cost of the committee is \$9,000. The costs would be paid for life-- the costs would be paid for license fees. Staff time would be existing staff, and informing the licensees would occur at renewal at no additional costs. Explanation of estimate: LB735 requires the Department of Health and Human Services (DHHS) to establish a protocol that specifies when and how a pelvic exam of a female is to be performed by any person licensed by the department. In order to fulfill the requirements of LB735, the DHHS would need to revise the program manual and the appropriate governing rules and regulations. The department expects that the development of the pelvic exam procedures would require extensive coordination with several boards and committees affected by LB735. At least six different healthcare-related boards have been identified who should have input into the establishment of a pelvic exam protocol. This estimate is based upon an advisory group being formed with members of each applicable board or committee. DHHS expects the advisory group would need to meet an average of six times to develop and concur on the specifics of the pelvic exam protocol at an approximate cost of \$1,500 to cover expenses for each meeting. The total estimated cost for the advisory group meetings is \$9,000. Once the advisory group has finalized the specifics of the pelvic exam protocol, minor changes to applicable rules and regulations for each board would be required at the following raw staff costs for each, then they give a little chart. The total estimated personnel costs to write and prepare changes to rules and regulations is \$3,612. Total personnel costs with labor burden are-- and then they give the \$6,000-- \$6,428. This estimate is based on the changes to the rules and regulations being reviewed and approved at a regulatory-- a regularly scheduled board meeting at no additional cost. Also, notification to the licensed individuals affected by the protocol would be included with license renewal information at no additional cost. If somebody can tell me why this should not be done, my mind is open. If somebody can tell me how these female patients can be guaranteed that this won't

happen without protocol, Then my mind is open. But nobody can tell me that women are not entitled to notice of what's going to happen. I'm a man of peace. I use words. But my words are not empty words. If something like this had happened to a female member of my family, the doctor would have been taken care of by me, and I probably couldn't be a member of the Legislature because anybody convicted of a felony is not allowed to hold elective office unless you get a pardon and I know I would not be pardoned for that. But some things mean more to me as a man and one who assumes personal responsibility to act on my beliefs and convictions that the threat of being punished by society for doing what I believe is not a deterrent to me. I'm not going to intentionally do something to harm anybody. I'm not going to intentionally violate a law to obtain some advantage or to obtain some profit. But in behaving in the way that I do as a protective brother, as a protective uncle, as a protective husband, as a protective son, what I would do in that role might be defined under the law as an action which can be punished as a crime, and I would take that punishment. This woman I don't even know. I did not talk to her. The only time I saw her was when she appeared before another committee of which I'm a member and she and others were talking about which level of officers ought to be a part of the bargaining unit in the State Patrol. And when she identified herself, I made reference to the fact, or she did, that I had filed this complaint, and she expressed her appreciation that somebody would do it. I hear a lot of conversation on the floor of the Legislature. I see posturing by the Governor, by the Attorney General, and by others when it's a particular issue that will get press coverage. But when it comes down to doing the actual work at what you might call ground zero to deal with the problem, I'm the one in public office here who will do it. And that's what brings me before this committee. And regardless of what the committee does, this will not be the last time that this matter will be discussed. The reason I haven't been talking about it on the floor prior to this is because I had made up my mind that the approach I should take first is to do something that will ensure that it won't happen again, and that would be to have the protocol. Nobody who has become aware of what I'm trying to do has stated that such a protocol cannot be done. The language in the fiscal note explains how it can be done. So I now am prepared



to answer any questions that you want to put to me. And since you are seeking information and explanations and I sit on the Judiciary Committee and two others, questions are what we put to people who offer legislation, and especially when a senator does it, there should not be any holds barred in terms of the questions that are asked. And because of the way I myself operate, comments are not off limits either, as far as I'm concerned. So I now am at your disposal.

**HOWARD:** [01:41:02] Thank you. Are there questions? Senator Cavanaugh.

**CAVANAUGH:** [01:41:06] Thank you, Chairwoman Howard. And thank you, Senator Chambers. Since comments are-- are allowed in your view--

**CHAMBERS:** [01:41:15] Could you speak just a little louder, please?

**CAVANAUGH:** [01:41:17] Sure, sorry. Since comments are allowed in your view, I'd like to first say thank you for doing this. What seems like maybe an innocuous thing happened to this woman. We've become very desensitized in society to the sexual violations that are perpetrated against women. And this is important and this is meaningful, and it is important and meaningful to me, and I appreciate your words today. I appreciate that you brought this today. And I am horrified. But something that you said stuck out to me and I wanted to ask for some clarification on it. When-- this happened in a physical exam prior to employment, and this was a doctor that the department-- and I-- I don't know which department it was, but that they-- that they required new employees to go to, is that--

**CHAMBERS:** [01:42:31] It was the State Patrol.

**CAVANAUGH:** [01:42:31] The State Patrol, and they required new employees, female employees,

to go to this specific doctor for a physical exam, correct?

**CHAMBERS:** [01:42:37] Yes.

**CAVANAUGH:** [01:42:39] So since you are a man, you have not had a pelvic exam, you have not had a vaginal exam, and you can probably conceptualize, because you've probably had other physical exams., how invasive and intrusive that is. I only go to female doctors. I never go to a male doctor. If I go to the emergency room and I need some sort of physical exam in that way, I ask if there is a female doctor that can do it. So the idea that I would have to go and have such an exam by a stranger is horrifying to me, in addition to how the exam went, just the fact that we're requiring state-- people down are going to work for state agencies, women, to have an intimate exam by an unfamiliar doctor is really horrific. And I wonder if you would be willing to add additional language to your bill or-- or if it's even possible for us to put in state statute that that is not the case, that if you are having this level of an exam, that you can go to a doctor of your choosing, you can go to your own doctor, because I would never let a stranger in my vagina willingly.

**CHAMBERS:** [01:44:13] I think even though it's in the context of a specific job, when it comes to that type of exam, I think something like that could be put into any legislation so that if in connection with obtaining a job one of these exams have to be given, then the woman has the right to select the doctor of her choice. And by the way, the work environment was such that she no longer works for the State Patrol.

**CAVANAUGH:** [01:44:43] That's probably best for her well-being, unfortunately, and I appreciate that. I-- I view what happened to her as-- as state-sanctioned sexual assault and I'm very sorry for her, and thank you for bringing this.

**HOWARD:** [01:45:04] Are there other questions? Senator Arch.

**ARCH:** [01:45:07] Senator Chambers, I--

**CHAMBERS:** [01:45:07] Yes.

**ARCH:** [01:45:08] Just so that I understand the intent, this-- this-- the language, very short, but it identifies that it would be-- it-- this would apply to any person licensed by the department. So the intention would be then that family practice, internal medicine, OB/GYN, anybody that-- anybody that has been trained, that is licensed by the department, any individual in the community, not-- not specific to state employees, not specific-- I mean while that happened to have been the incident that-- that brought this, this would be for any physician.

**CHAMBERS:** [01:45:44] Across the board, right.

**ARCH:** [01:45:46] OK. Are you-- are you aware, are there-- are there other protocols for other procedures at the department or do they allow-- would this be unique or are all of those other procedures defined by the various accrediting bodies, the boards of-- of the various specialties?

**CHAMBERS:** [01:46:06] The reason I did it this way is because I'm mandating it by law and the Department of Health and Human Services is in a position to bring together, as the fiscal note says, all of the different entities which would be necessary to have the protocol put together. I could not order, for example, I don't think, the American Medical Association to do it. Maybe we could pass a resolution or something, but I wanted it to be a requirement and I wanted to place it on the agency of government that already exists, that has, I use the term "protocol," protocols for things across the board that relate to health, and this would fit into that. And I don't believe it would be too difficult

to do. In fact, without being able to use medical language, I probably could give them a template. So I don't think it's going to be difficult at all, but I wanted to be sure that the female patient is made aware of what these examinations consist of. None of the women in my family ever saw anything prior to going to a doctor that explained, or a printed document, of just what they were going to be subjected to. And until I read about this case, it never occurred to me that something like this would happen. That's why when I read about it, I just knew that DHHS was going to undertake an investigation, that women's organizations would be outraged, and that it's one of those things that I wouldn't have to do. But that's not the way it worked out. When they were charging at the institution unreasonable amounts for women to get sanitary or hygiene products, I was the one who wrote the letter to the head of the Department of Corrections and objected. And then Senator Pansing Brooks got involved and she was able to tie up all the loose ends, and that was corrected. But generally I am the bad actor in the sense of being the one who won't let people be comfortable and get away with doing things to helpless people. I wouldn't feel that I have to defend either of you men. I don't mean if somebody [INAUDIBLE] be in a gang. I mean men are in a position where some things are not going to happen to them in the first place. I come to the aid of those who have nobody to help them. And when I attack somebody on the floor of the Legislature, it's not somebody weak. But it might be somebody who projects strength but is projecting it by saying bad things ought to happen to people who can't defend themselves. And this might seem off the subject, but you all deal with child welfare issues. I've been trying to get rid of a juvenile court judge in Douglas County named Liz Crnkovich. She has manifested all kinds about bizarre behavior on the bench. People of all races, nationalities, religions have come to me because of how she not only dealt inappropriately, they feel, with the children, but with the parents who were there trying to offer support, they would be treated worse than a child. Well, she did something the other day, and I will be the one to file a judicial complaint against her, ordered three lawyers to leave her courtroom. And the case that she was dealing with, she may not have been appropriately dealing with it because it was on appeal. But forget that. These lawyers had an interest in the case. One had been a former

prosecutor, one may have been representing the family, but they were not just there as spectators. But even if they were, these hearings, of the kind they attended, are open to the public. She said she didn't want these lawyers in here, and they mentioned that it's a public hearing, they had a right to be there. She said, I want you out of here. That's a judge. So I'm going to write the complaint. I'm going to send it to the Judicial Qualifications Commission. And maybe that's why the Speaker, without realizing he was giving me some time, is going to let us take off tomorrow, because by Monday my complaint will be completed. I've gotten judges disciplined, several of them for sexual inappropriate conduct. One had taken his robe and put court employees inside of his robe. One had made inappropriate statements. One had the woman who worked-- she may have been a stenographer, but her job brought her in close contact, and he put his hand on her knee and went part way up her thigh. And guess who filed a complaint, spent hours drafting and crafting it? I did. And there was a judge in Omaha who people thought was untouchable. I was the one approached because he had urinated on the carpet of a female judge. And everybody in the courthouse felt he was untouchable, but everybody would say, well, Ernie will do something about it. So when it was brought to me, I was outraged and I began talking to court employees and they said complaints had been made before and the Qualifications Commission had never done anything about it so they did not want to jeopardize their position by doing this. I said, let me tell you something, and you might think it's racist but I'm saying it for emphasis, because he was huge. I said, I won't be like Captain Ahab after Moby Dick where Captain Ahab at the end was shown, he was tangled in these ropes around the whale and the whale won. I said, I will beach this white whale. And they all talked to me and I documented meticulously everything all of them told me. And when I filed it, even before they made a finding, I was able to persuade the court to suspend him. And my argument was that he has rendered himself totally ineffective and the suspension is not a determination that he is guilty of anything, but, for the sake of the integrity of the bench, he should be suspended. Kermit Brashear at that time was Speaker of the Legislature, I believe, but he was one who would talk to the media and opined that this would not be done because it had never been done. And it had never been done until

I got it done. And the complaint that I filed, because I'm meticulous, listed out each complaint involving each employee. And when they made the finding that he should be kicked off the bench, that was the template that they followed because everything was there. I do these things. I give more time in this job than anybody now or ever before. The volume of work that I do has never been duplicated. The issues that I involve myself in, not because anybody asks for help, usually the people that I will help have been turned away or made to believe that there is nobody who would help them anyway. So if I see something like what happened to this woman-- I didn't even talk to her. I didn't have to. I know what my job is as I perceive it. And I don't have any religion. And when they swear you in, as they call it, they use the words of the U.S. Constitution because there can be no religious test for office so he will say, I hereby swear or affirm. When affidavits are put out, it says, on oath or affirmation, so I don't need religion to make me do the right thing. And that's why I always say, if I got religion, I'd probably stop doing it because people with it don't do what they should. If the people who have positions in this state in government knew that others were going to be as attentive to the welfare of the public as I am, some of these things wouldn't happen in the first place. When, and this is for some of the new people, Brad Rice became the new head of the State Patrol after the one who was in charge during this incident-- and he wasn't fired or anything because of this incident, maybe. That wasn't given the reason. He was hired because he went to the church, he was a church member of a lady that the Governor respects, so he hired Brad Rice. And the Troopers complained because he wanted to open their official meetings with a prayer. He had religious tracts put in their mailboxes, all kind of things like that, and they felt uncomfortable. There were some other issues, and I'm not going to take a long time to go into that, but they reached a point where I said, and I may have put it in a letter, that the Governor needs to fire Brad Rice. And the Governor's spokesman's immediate response was, Senator Chambers is ridiculous. Guess what happened less than a week later. The Governor fired Brad Rice. And I'm going to show you all the articles because you don't believe me. And maybe I can stimulate some of these other senators to do some of the work that I try to do. I'll do as much as I can, but I can't do everything and I'm not

aware of everything, but I will make this as an offer. If any of these issues are brought to any of you all and for any reason, and I won't condemn you or question you about it, you cannot deal with it, bring it to me. It can be done anonymously, but I would have to be able to talk to somebody who's familiar with the facts of the case so that it's not putting me in a position where I cannot vouch for the validity of what I'm saying. In most of these matters I do my own research. When the media write about it, they call it an investigation. I didn't have to do that with this particular case because so much of it was carried in the newspaper and because of that, I'm repeating, I didn't think I'd have to do anything on it. I was just waiting to see what would be done and when nothing was, that's when I had to take off my sweatshirt, reveal that "S" on my chest, not for "Superman" but for "simpleton," for getting involved in these things which are not a formal part of my job description. This is the last bill I think that you have. And I thought I'd just go ahead and take a little time to put some things in the record so you'll know this is not a personal grudge I have with anybody. I wouldn't know this doctor if I saw him. I had never seen the victim and I saw her only once. I've not tried to contact her since. I don't establish any kind of relationship, and I don't mean by that romantic or whatever, but like we're friends or buddies or anything like that. I'm just doing what my job requires me to do. People have sent me money and I send them a thank-you note but let them know I don't accept money from anybody for anything that I do. I'm paid for everything that I do. I'm not paid well, but I'm paid for it, and nobody has to pay me for anything that I do. And I hope people will become aware of this so that they won't-- they won't send me anything. I don't want-- I mean I need money like everybody. Money is not what I need, other than for things that you consider essentials and you have to pay money for. But I'm not doing it for pay. I've had the offer of jobs with law firms, even though I'm not licensed to practice law because I won't take the bar exam or join the Bar Association, and that's a principled position. But I know the law. I know how to study the law. I've studied the constitution and I've found flaws where lawyers didn't. And for some lawyers who recognize that knowledge, wherever you can find it, is worth taking advantage of, have shown me briefs that they've written, laid out the theory of their case, and asked me what my view

is. I got changes in the law relative to the use of radar and other electronic devices. They've had to change the training. I was the one who got into the law that sheriffs even had to have updated training in the realm of not only radar but certification. So I have been the one who would try to make things work the way that people whose system this is--it's not mine--say that it should work. And I do it because the public have been given reason to believe that this is what they can expect. And I don't think the public should be deceived. There is a difference between our not having the wherewithal to do everything everybody wants and our not doing what we're able to do and in some cases, what people shouldn't even have to ask us to do. So I'm taking advantage of the committee in a sense, but an opportunity to try to create an ambience in the Legislature where we who tend to be protective of those who cannot protect themselves, no matter how unpopular it makes us-- and most of the time I come out right. I was called by Congress to testify against that Defense of Marriage Act because they were aware of things that I've done in Nebraska. So I went there and I gave my frank opinion. And as it turns out, the U.S. Supreme Court, not because of anything I said, took the same opinion-- position that I had. I was the first one in the country to get a law that said if a person committed what would be a capital offense before they were 18 years old, they could not be executed. Subsequent to that, the Supreme Court took the same position. To show how long ago I got this other one, the term was "mental retardation." Anybody who was mentally retarded could not be subjected to execution. And two men were removed from death row in Nebraska because of that. Subsequently, the U.S. Supreme Court took the same position. Sometimes when you are the only voice, it doesn't mean you're the only one thinking that; it means that you may have to be the one who is the point person to go ahead and maybe get something going. But even if that doesn't happen, you do what it is that you believe, and that's why I can stand alone and challenge any- and everybody, don't need a lot of company along, because all the company that I need is inside of me and it comes from doing and being. And now, if you don't have any other questions, I will let that be the end of my opening.



**HOWARD:** [02:03:06] Thank you, Senator Chambers. I do have a few very specific questions about the language, if you don't mind.

**CHAMBERS:** [02:03:12] Fire away.

**HOWARD:** [02:03:13] So when you're thinking of the protocol, is your expectation that when someone receives a--

**CHAMBERS:** [02:03:20] Pardon me, could you speak just a little louder?

**HOWARD:** [02:03:21] Sure. My apologies. When you're thinking of the protocol, your expectation is that when someone renews their license or gets a new license, that the department will give them information about their expectations for their protocol? Or are you thinking that it would be when a woman goes in for her exam that she would receive the information?

**CHAMBERS:** [02:03:38] Both the doctors and every female patient--

**HOWARD:** [02:03:42] The doctor--

**CHAMBERS:** [02:03:43] --so it would be in-- in the office of every one of these persons who would give these kind of examinations.

**HOWARD:** [02:03:51] OK. And then when you're thinking of the protocol, just to build a record, who are you thinking will create it? Are you-- is your expectation that the individuals at the department who create it will be medical professionals?

**CHAMBERS:** [02:04:04] Do I think that medical professionals should do it? That's what you're asking me?

**HOWARD:** [02:04:10] Yes, sir.

**CHAMBERS:** [02:04:11] I'm leaving it to HHS and that's why I deliberately left it open-ended. And in the fiscal statement, they talked about various departments, in whatever terms they use, who would have to be drawn together to do it. And I think they would have-- it would be automatic to contact medical persons, but I couldn't-- I wouldn't dictate that to private physicians by way of a law. The Department of Health and Human Services can do it and they have access to whatever resources are necessary to bring the people together. And this fiscal note described some of the ones who would participate. And if they just can't do it, I'd be willing to help them.

**HOWARD:** [02:04:54] OK. Thank you. Are there any other questions? Senator Arch.

**ARCH:** [02:04:58] I just have-- I just have one more. Do you-- do you equate protocol with guideline?

**CHAMBERS:** [02:05:01] Say it again?

**ARCH:** [02:05:02] Do you equate protocol with a guideline?

**CHAMBERS:** [02:05:05] It would be more than a guideline. It would be a mandate.

**ARCH:** [02:05:08] OK, it would be a mandate.

**CHAMBERS:** [02:05:09] Yeah, in the sense of this is the way this is to be done--

**ARCH:** [02:05:11] --this, this is the definition of what an exam is, this is what you must do.

**CHAMBERS:** [02:05:16] Uh-huh.

**ARCH:** [02:05:17] OK.

**CHAMBERS:** [02:05:17] And here's what I mean by that. I don't mean necessarily we say one, two, three, four. But in the medical profession there is an acceptable way to remove a gallbladder if you're going to do it. And if you depart from that, you can be charged of medical malpractice because you're not acting in compliance with the standard of care in the area where you're-- you're functioning. And I deliberately avoided setting out in the statute any specifics, and "protocol" was a general enough term to include everything but specific enough to let them know, I hope, that it's not just good advice. And that's why I say on the record and when I was talking here that-- and I think I put it in my statement of intent, there should be some sanction, and by saying loss of license, I cannot dictate that and wouldn't, but just to show how serious I view this to be. And for the record, I think most doctors, when they're presented with what it is they're required to do, especially for licensing purposes, they'll do it because it's easier to do it than not to do it, in my opinion.

**HOWARD:** [02:06:34] Any other questions?

**CHAMBERS:** [02:06:36] And the one who needed it most has just now arrived, so you all are going to have to fill him in.

**HOWARD:** [02:06:41] We will. Thank you, Senator Chambers. Will you be staying to close?

**CHAMBERS:** [02:06:45] If necessary, so I'll just sit it out.

**HOWARD:** [02:06:47] Thank you. Is there anyone wishing to testify in-- as a proponent for LB735? Is there anyone wishing to testify in opposition to LB735? Anyone wishing to testify in a neutral capacity? Seeing none, Senator Chambers?

**CHAMBERS:** [02:07:09] I've taken enough time. Thank you.

**HOWARD:** [02:07:10] He waives closing. Thank you, Senator Chambers.

**CHAMBERS:** [02:07:12] And now that my hearing is closed, I'd rather be here than at the Judiciary hearing.

**HOWARD:** [02:07:18] You're always welcome. All right. This closes the hearing for LB735 and concludes our hearings for today. Have a great weekend.