Health and Human Services Committee March 27, 2019

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

WALZ: Hi. I'm Senator Lynne Walz and I represent District 15 which is Dodge County.

ARCH: John Arch, District 14, Sarpy County.

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

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

HOWARD: And this afternoon we'll be continuing a series of briefings that this-- that this committee has been conducting during this session. And we've invited Liz Hruska from the Legislative Fiscal Office to give us a briefing on the status of the Health Care Cash Fund. So welcome, Ms. Hruska.

LIZ HRUSKA: Good afternoon, Senator Howard and members of the Health and Human Services Committee. It's always a pleasure to

come before you and-- and brief you on issues that you have had before this committee. My name is Liz Hruska, Li-z H-r-u-s-k-a. As Senator Howard said, I'm with the Legislative Fiscal Office and I'm presenting an overview on the Health Care Cash Fund. The Health Care Cash Fund initially consisted of two funding sources, the Medicaid Intergovernmental Transfer Fund and the Master Tobacco Settlement Funds. The funds in the statute are called trust funds but they do not meet the definition of trust funds. They're really-- they really should be labeled "distributive funds." We don't appropriate out of them. But they aren't-- they don't meet the condition of a trust fund because the Legislature can change the amount and the distribution of these funds at any point in time where trust funds are held in trust for the purpose of the trust. I'm sure Senator Williams is very familiar with that, with his banking background. A new revenue source was added in 2015. Former Senator Jeremy Nordquist sponsored LB418 which directs $1,250,000 a year of the cigarette tax fund into the Health Care Cash Funds. The State Investment Council is charged with investing the money and determining the distribution of the two funds and is required to report to the Legislature on or before October 1 of every even-number year-- even-numbered year on the sustainability of the transfers. The original intent of establishing the Health Care

Cash Fund was to sustain the fund into perpetuity. In the 2018 Investment Council report to the Legislature, it shows the-- showed the sustainability of the fund to be at risk at the current level of expenditures. The Medicaid Intergovernmental Transfer Fund-- or the Medicaid Intergovernmental Transfer was a loophole in federal law that allowed states to overpay certain nursing facilities and then retain the amount of the federal overpayment. Nebraska was the second state to use this mechanism and in the beginning it provided over $40 million in revenue to the state that was used to convert nursing home beds to assisted living facilities. In the hearing on the bill, federal officials testified that they were in favor of Nebraska's bill because of the use of-- how we were using the funds and it was to decertify nursing home beds and allow for the assisted living option and under Medicaid. Congress eventually phased down then eliminated the loophole as most states started to take advantage of it. The balance in the fund as of June 30 of '18 was $25.9 million. This fund will soon be depleted. The Investment Council is actually directed to-- to deplete that fund and then we will eliminate it. And so then the sole source of revenue would be the top-- tobacco settlement and then the-- the amount that comes directly from cigarette tax. Since there wasn't any new source of revenue other than investments, that's why we did-- we directed the

Investment Council to do that. Twenty-six states-- this is about the Master Tobacco Settlement. Twenty-six states joined together in a lawsuit that resulted in the Master Tobacco Settlement Agreement. The basis of the settlement was that states paid more into the Medicaid program for tobacco-related illnesses because of the marketing of tobacco products. The funds come to the state unrestricted, so Nebraska is the only one that kind of uniquely has designated those funds for healthcare. Every state that is part of the agreement is free to do whatever they-- they would like with the-- with the revenue. As part of the agreement there is a formula for distribution of the funds which includes tobacco sales in the state and requires the state to enforce provisions relating to the nonparticipating manufacturers. So one of the areas that we do fund is enforcement, both with the Department of Revenue and in the Attorney General's Office, so that we will continue to receive the funding because that enforcement is critically important. The annual revenue varies but is generally around $37 million. The balance in the fund as of June 30 of 2018 was $451.9 million. Now I'll give you a little history. Initially, only two activities were funded with the tobacco settlement funds, a healthcare grant program and $25 million was set aside for the state match of the children's health fund when it was first created. When the initial $25

million for CHIP was depleted, the Legislature then started picking up the balance with State General Funds, but we also continue a certain level of payments from the Health Care Cash Fund. The health care grant program provided funding for three year-- for a three-year period and the funding was solely-- solely from the earnings from the tobacco settlement. After it became apparent that the annual earnings would be substantial and they would continue to grow over time, legislators decided a better use of the funds would be to change the policy to funding long-term programs. Now there's one former senator, Jim Jensen, led the passage of LB692 which created the Health Care Cash Fund, and that was in 2001. There was a lot of pent-up demand in the healthcare area in the early 2000s when the fund was created. Nat-- nat-- Nebraska was consistently 48th or 49th in public health funding. Behavioral health providers had not had a rate increase for five-- for five to six years. Other areas, such as aid to the developmentally disabled, emergency protective services, respite care, and substance abuse treatment, were also considered to have needs that great-- greatly exceeded resources. The new revenue source was also an opportunity to-- to advance biomedical research. And independent from the creation of the Health Care Cash Fund, Senator Bohlke had introduced a bill, which passed, which provided for $7

million a year for three years for tobacco prevention. With the economic downturn that occurred after 9/11 in 2001, the tobacco prevention funding was substantially reduced. You have before you in the report that is passed out, on page 4, a list of the programs that receive current funding and those since the inception. There is also a longer sheet that has a year-by-year history of-- of what-- what has been funded out of the Health Care Cash Fund. From the original activities and programs, more were-- were added. These include funding for the Poison Control Center when other revenue sources declined, for Parkinson's disease research, the state match for Medicaid, smoking cessation, and stem cell research as a-- in addition to aid to the federally qualified health centers and gambling assistance. Gambling assistance funding was only intended to be for two years until a constitutional amendment was passed, but the amendment failed and so we continue to fund the program out of the Health Care Cash Fund. And there have been uses over time that are just one-time or time-limited funding, and I provided some examples. Sometimes we've used it for studies such as for meth amphetamine-- amphetamine treatment, behavioral health rate study, and for Medicaid reform. And currently, and it will expire at the end of this year, we're funding research for medical can-- cannabis at the University of Nebraska Medical

Center. We funded a Behavioral Health Commission. There were also some capital construction projects. Two were at the Regional Centers, one in Corrections, and another at UNMC. There was a program to fund autism treatment through Medicaid which required federal approval, which we received, and also a federal match. But the funding from the pri-- private match never materialized, so none of the-- the funding, which was a million a year for five-- for four years, was ever spent. In tight budget times, the fund has been used to balance the budget. In 2004, $3.6 million was used to reduce the amount of General Funds for the state Medicaid match. Those funds were then restored the next year. In the current biennium, we are using $2 million a year that is being transferred into the General Fund, so there is another transfer coming in June of this year. A one-time transfer was made to supplement a settle-- settlement that the state made with the Joseph Sloop [SIC] Trust Fund. And this was a settlement with a gentleman that was placed at Beatrice, even though he wasn't developmentally disabled, and the-- he-- he was outliving the amount that was placed in the trust, and so there was a one-time transfer and I-- I think that actually was transferred directly from the tobacco settlement money. In my tracking of the Health Care Cash Fund it didn't show up, but I remember that we didn't make that pay-- that one-time payment.

Once again, due to tight General Fund budget, the Health Care Cash Fund just last year was used to temporarily fund some A bills. LB439 required additional funding for part-time nursing home surveyor and LB793 continued the aged and disabled resource centers beyond a pilot, and both of those were funded for two years with the Health Care Cash Fund. The Appropriations Committee preliminary recommendation converts those costs now to the General Fund, so it truly was only temporary. I also included a handout that shows the current bills that are either-- that either have been introduced or have a proposed amendment that would either use-- fund an appropriation from the Health Care Cash Fund or, in one case, LB10-- LB710 would add revenue. And if you have any questions, I would be happy to answer them.

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

WILLIAMS: Thank you, Chairwoman Howard. Thank you, Liz, for being here. I wanted to go back to where you started with the Investment Council's concern about the depletion of the funds, and then the-- and this is the part I-- I don't know that I understand. The $25 million, I believe you said that it is being phased down. When-- when-- does that play into the Investment Council's recommendation or is that--

LIZ HRUSKA: It's a wash.

WILLIAMS: That's-- OK.

LIZ HRUSKA: For a long time we've had both of the funding sources, but I think it was in 2004 we no longer received new revenue to the intergovernmental transfer fund other than investment funds. So the Investment Council is charged with the decision to make the transfer, so they-- they generally do like a-- a proportionate transfer depending on what's in the fund. But there-- the really isn't a reason to keep the intergovernmental transfer fund because the earnings that they would get, one, if we deplete the fund, then the amount that we would otherwise be taking out will stay in the tobacco settlement. So it-- it just washes out because they're-- they're investing the funds identically. So there really isn't any difference. They-- I think they-- they keep track of them separately but they kind of look at them as-- as a single fund when they're investing, so--

WILLIAMS: So we're still in the period where the latest recommendation from the Investment Council or-- or their concern is that we are in this area of depletion.

LIZ HRUSKA: Right--

WILLIAMS: Yeah.

LIZ HRUSKA: --f we want to sustain it into perpetuity, which was the original intent. I've had discussions with the investment officer and he's like, should we continue to invest as though that is happening, because we see new additional money being depleted even though they are saying it's not sustainable, and I can't really provide him any guidance because ultimately the Legislature has control of the expenditures of those funds. So--

WILLIAMS: And we recognize we go through cycles and we've been in a-- a low interest rate cycle for at least ten years now, so, I mean, it's an unusually lengthy period of time with that.

LIZ HRUSKA: Well, they-- and they actually invested, so the fund is actually pretty healthy because the investment, and some of it is in a more stable, interest-bearing-- but much of it is invested and so now that's actually kept the fund healthier than--

WILLIAMS: Right.

LIZ HRUSKA: --what you have otherwise expected. But how long will that go on? You know, there are cycles in the market.

HOWARD: Other questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Ms. Hruska, for coming here today. You started out by talking about-- we call this the Health Care Cash Fund. It's not a trust fund; it's a distributive fund. And coming from the nonprofit world where a lot of those things, funds set up by donors, are our trust funds. And so I understand the importance of protecting that trust fund. Is this-- and I don't know if this is a question necessarily for you to answer, but is it possible for the Legislature as a body to shift that and make it a trust fund, protect those dollars?

LIZ HRUSKA: The Legislature could do that. The funds are totally controlled by the Legislature, so if you would want to do that and make-- make it much stricter-- and it's-- the Health Care Cash Fund doesn't have that constraint. It's the Medicaid intergovernmental transfer fund and the tobacco settlement. Those are both called trust funds.

CAVANAUGH: OK.

LIZ HRUSKA: And we had talked to Senator Jen-- Jensen about that, that they truly aren't a trust fund where, you know, you would have a document that says it can only be used for this purpose. But-- but he liked calling it a trust fund, but the definition really would be a distributive fund where you don't directly appropriate but distribute the money elsewhere. But,

yes, the Legislature could-- could put a tighter control on it. Now the statute does say it will be used for healthcare-related activities. It has some other constraints, but those aren't as tight as if it was a trust.

CAVANAUGH: I have one more question. So you have this list of expenditures and revenue that are proposed this session. If we were to enact all of these expenditures, then where would we be at?

LIZ HRUSKA: There would still be money in the fund but it shortens the life of the fund and long term, at some point, a future Legislature would have to start making decisions whether or not to end programs or pick up the fund from General Funds or find another source of revenue. It--

CAVANAUGH: And I see that we've already done that with the $25 million for CHIP.

LIZ HRUSKA: Correct.

CAVANAUGH: We're already picking that up in the General Fund.

LIZ HRUSKA: Right, and that-- we knew-- the Legislature knew when they-- they set aside the $25 million that eventually it was going to go away, and the Legislature did make that decision

to-- to convert a portion of that to the General Fund. But there's enough to-- in the Health Care Cash Fund-- there's $25 million in the Health Care Cash Fund now, or I guess that was as of [INAUDIBLE] It was like-- I don't have it before me. It's like $61 or $62 million.

CAVANAUGH: Oh, four-- I'm, sorry yes, 400. So I have a lot of questions. I'll probably just have to come talk to you. Sorry.

LIZ HRUSKA: Anytime.

HOWARD: Are there other questions? So when we think about the current programs that are receiving services or receiving funds through the Health Care Cash Fund, who are our-- what are our biggest outlays from the Health Care Cash Fund? What does "biomedical research" mean and where is that going?

LIZ HRUSKA: It's in statute. It goes to four entities: UNMC, UNL, Boys Town, and Creighton. And there is a distribution formula for the biomedical research.

HOWARD: And then if all of these are in statute, if the Health Care Cash Fund goes away, if they're in statute as funded by the Health Care Cash Fund, then we're no longer obligated to pay for them?

LIZ HRUSKA: The only program that's in the health-- that is statutory is the biomedical research. Everything else is appropriated.

HOWARD: And then can you give us a little background on the behavioral health rate increase, because we've heard a lot about rates from providers.

LIZ HRUSKA: As I said, when this cash fund was conceived, that-- and we were going to change it from these short-term grants, which would have-- would not have been a good public policy to do, to having longer term, sustainable programs, there was-- there was a lot of pent-up demand and one was behavioral health rates had not been increased since like six years before. So we had two years of rate increases that we used in Medicaid and Child Welfare and the Division of Behavioral Health. But we didn't continue to grow that, so the second year of that rate increase then just became a funding source. So there was I think $10.1 million that was kind of almost like a catch-up amount. And then beyond that, the-- the General Fund has picked up the increases beyond that, like utilization increases or any other provider rate increases. So, I mean, I think it was probably necessary because-- at that time because those providers really

were very stressed at the time, but it was only a one-time influx of cash for that purpose.

HOWARD: And then when-- when the Investment Council talked about how we're depleting the fund, how long do we have until it goes away if we leave it at-- at the-- at the items that we're already taking out of it?

LIZ HRUSKA: It's-- it's probably about ten years or less, but they evaluate that every year and because we've had some fairly good returns of late, that-- that end time tends to fluctuate a little bit more. I think, you know, from when they do a report to the next report, it hasn't-- end close-- gotten any closer because the returns have been good.

HOWARD: OK. Thank you. Are there any other questions? Senator Cavanaugh.

CAVANAUGH: Sorry. You stimulated a question for me. The biomedical research line is in-- in-- statutory, so that would not go away. But I see that we have items 2 and 3, which are the Attorney General tobacco settlement enforcement and the revenue auditor tobacco enforce-- settlement enforcement. So if the fund were to go away, we wouldn't have that enforcement?

LIZ HRUSKA: Right. Right.

CAVANAUGH: OK. Thank you.

LIZ HRUSKA: I mean, as long as we get the tobacco settlement, which actually-- I-- let me correct that. The tobacco settlement money will come into the state in perpetuity.

CAVANAUGH: Sure.

LIZ HRUSKA: That is how-- so there is no end date for that, so that would be ongoing. The Investment Council is projecting expenditures versus revenue. So we are now expending about $62 million a year. But the tobacco settlement, the revenue in is about $37 million, and then from that we would still get some earnings, so you would just be falling short. So the fund isn't going to go down to zero.

CAVANAUGH: The budgets will just become smaller and smaller.

LIZ HRUSKA: Right.

CAVANAUGH: And are they designated currently-- like how are they-- things that are funded through the tobacco fund, is it a percentage of the fund? Is it a penny of the tax? How is it distributed?

LIZ HRUSKA: It's a flat amount. It's $1,250,000. And the reason it's that amount-- I'm not an expert on the cigarette tax. There

were capital construc-- similar to capital construction items. I don't know if the-- they were-- meet that definition but they were projects, both in Lincoln and Omaha and I think some state buildings. And as those projects got built and expired, Senator Nordquist had a bill. So he had multiple provisions in the bill. I-- it wasn't my bill. And kind of the residual after he funded some other things was this $1.25 million. And so that's just a flat transfer, but that's how that amount was arrived at. It was to capture what was available at the end of some projects that freed up some funding.

CAVANAUGH: Thank you.

HOWARD: All right. Senator Williams.

WILLIAMS: Thank you. Some things that we have the opportunity to spend money on actually over time are like an investment and reduce future costs in other areas. But that would never be calculated back into this fund, would it?

LIZ HRUSKA: No, it wouldn't.

WILLIAMS: So even though if we spent--

LIZ HRUSKA: Right.

WILLIAMS: --$15 million on pancreatic cancer research and we found the cure and did that-- yeah.

LIZ HRUSKA: Right. So if that would create some kind of new-- a new revenue source--

WILLIAMS: Somewhere else that wouldn't--

LIZ HRUSKA: Right. Or many of these--

WILLIAMS: Or--

LIZ HRUSKA: --healthcare programs hopefully offset future healthcare cost that the state would-- would pick up, but they would be saved in whatever those programs are that--

WILLIAMS: Right.

LIZ HRUSKA: --that's calculated into those programs.

WILLIAMS: Right.

LIZ HRUSKA: So this fund does not see it.

HOWARD: Any other questions? Seeing none, thank you for briefing us today.

LIZ HRUSKA: Thank you.

HOWARD: We appreciate it. And the committee will begin in about four minutes-- three minutes.

[BREAK]

HOWARD: [RECORDER MALFUNCTION] Services Committee. My name is Senator Sara Howard and I represent the 9th Legislative District in Omaha and I serve as Chair of the HHS Committee. I'd like to invite the members of the committee to introduce themselves starting on my right with Senator Walz.

WALZ: Hi. I'm Senator Lynne Walz. I represent Legislative District 15 which is Dodge County.

ARCH: John Arch, District 14, Sarpy County.

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

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

HOWARD: Also assisting the committee is our legal counsel, Jennifer Carter, and our committee clerk, Sherry Shaffer, and our committee pages, Maddy and Erika. Erika is with us. A few notes about our policies and procedures. Please turn off or 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 the room. On each of the tables near the doors to the hearing room you will find green testifier sheets. If you are planning to testify today, please fill one out and hand it to Sherry when you come up to testify. If you are not testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. Also I would note, if you are not testifying but have written testimony to submit, the Legislature's policy is that all letters for the record must be received by the committee by 5:00 p.m. the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask, if you do have any handouts, that you please bring ten copies and hand them to a 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 end your testimony and we'll ask you to wrap up your final thoughts. When you come up to testify, please begin by saying your name clearly into the microphone and please spelled 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 an 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 LB244, Senator Erdman's bill to provide for mobile massage therapy establishments. Welcome, Senator Erdman.

ERDMAN: Thank you, Senator Howard. It is great to be here in the HHS Committee room. I've spent some time here before. It's the first time I've been back since-- since then, Senator Williams. Thank you for letting me have the opportunity to introduce LB244 today. LB244 is an idea that came to me from Jean Thunker. Jean is here today. She's a massage therapist from one of my communities in-- in my district. She's from Paxton. Paxton is in Keith County. Paxton has a population of about 523 people. Paxton's population is not large enough to support a massage therapist business on its own there and Jean has clients that drive to Paxton, or she could pick up her equipment and drive to their distance if she was permitted to, sometimes more than 100 miles. So what has happened over a period of time in rural Nebraska is the ag economy has turned down. And I'm sure that

Jean will share with you some of her clients that used to come to her for massage therapy could no longer afford to come because of the ag economy and the situation we have in rural Nebraska. So this would allow her to have an opportunity to extend her service to other areas of more population, North Platte or some of those other situations. So we tried this. We've introduced this before. We've had some situations come up and we've tried to figure out how best to do this. And so I'm back here today to ask you to help her be able to do what she needs to do to sustain her business even though it has been difficult in Paxton. So the Nebraska Statute 38-7-- 1707 limits massage therapy to brick-and-mortar establishments. Traveling to brick-and-mortar establishments sometimes is difficult, as I mentioned in my comments. The rural area climates-- clients may be spread out over a large geographic area and that's what she finds to be the case now. And some clients-- clients experience pain or discomfort, a muscle spasm traveling a large distance to the therapy. So the commonsense approach would be that the therapist could travel to the client, and that's what LB244 does. The bill allows for a self-contained, self-supporting, enclosed mobile unit with at least 44 square feet of floor space for each single practitioner. The bill also requires the mobile unit to contain all the same sanitary requirements of the

Massage Therapy Practice Act, including a functional sink, a toilet, and an adequate supply of clean water and an adequate storage of that wastewater. LB244 allows a massage therapist to take his or her business to where clients live, whether it be at work, study or at play. LB244 massage therapy-- the massage therapist bill is to offer a service at a variety of outdoor events, including some of the following: cultural events such as the Czech Festival in Wilber; fairs such as the State Fair or county fairs in your area, in your district; festivals such as the AppleJack Festival in Nebraska City; Nebraska football games, including Cornhusker football games at Memorial Stadium; historical celebrations such as the one we have in Scottsbluff and Gering called Oregon Trail Days; holiday celebrations such as St. Patrick's Day in O'Neill; large Fourth of July picnics and parades that are held in our-- in our districts yearly. So this is an opportunity for a massage therapist to take their business to the place where the people are. LB244 would allow massage therapists to bring their relaxing ambience to their clients. The relaxing ambience is different-- is difficult to achieve when you go to someone's home to set up a massage therapy station there. The bill would shift the ambience control back to massage therapist, where it belongs, and the massage therapist could provide the dark rooms, the soft music, and the

aroma necessary for people to relax and enjoy their massage. So that is my opening statements. I will try to answer questions you may have. Jean is here today to answer some of those technical questions that I don't know how to answer, but she will be able to explain to you what she'd like to do and the equipment that she is in the process of putting together to do such a thing. Other people who do certain things have been offered the opportunity to do mobile massage or mobile-- not mobile massage, but other things "mobilly," and we're just asking for her to be included in that group. So I would try to answer any questions you may have.

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

WALZ: Thank you, Senator Erdman, for coming today. I just-- I'm trying to clarify something. So can-- can you go to people's homes currently and you're just looking to go to events?

ERDMAN: My under--

WALZ: Because right now you can go to homes and--

ERDMAN: Right. My understanding is, yes, you can go to the home-- to a home and set up a facility there or do massage therapy in their home. You can, but it is an opportunity for her to do more

than one client. If she did it in every home, she'd have to set up again in the next home.

WALZ: OK.

ERDMAN: So this is an opportunity to have people to come to where she is.

WALZ: OK, at events. And then you said you had tried this before. What-- what was some of the opposition about?

ERDMAN: I don't know that we really had opposition. I think we just didn't get it put together in a way that made sense to get it through the committee. And I don't-- I don't know that there was a lot-- lot of opposition. Some of it was, I think, when they first started, they were under the impression-- some were under the impression we were going to do this in the back of a horse trailer. And I think we needed to define what we're going to do and how we're going to do that. And I think that-- that will be what Jean will explain to you today.

WALZ: OK.

ERDMAN: I think some of that was just a misunderstanding of how we're going to do it and what facility are we going to do this

in. But it's quite obvious that she's thought this through and she understands what is needed.

WALZ: All right.

HOWARD: Other questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Howard. Thank you, Senator Erdman. Just kind of looking through some of our committee notes here and it says that it will be performed when the unit is not moving but parked safely and legally where clients are present. And just-- I don't-- I'm not familiar with the mobile massage therapy, but I know we have issues with mobile food trucks. So how-- how can they be parked legally? Is this-- is-- are there going to be, I guess, certain stipulations for where they're parked or how they're parked within the bill, or is it just as long as it's a vehicle parked legally, it's fine?

ERDMAN: They-- they-- they cannot do this on the-- on the move. They have to be parked somewhere legally so--

CAVANAUGH: So they can be parked residentially, in a residential--

ERDMAN: I-- I think they can be parked residentially if they have-- and if it's proper parking.

CAVANAUGH: OK.

ERDMAN: And-- and I think they'll be able to park like at the-- the festivities, like I mentioned in my opening statements. But they can't do this while they're-- while they're driving. This has got to be-- they got to be stationary.

CAVANAUGH: Can they park in just like a parking lot of a store, not necessarily a massage therapist--

ERDMAN: I would assume that that would be the case that if they get permission from the landowner.

CAVANAUGH: OK.

ERDMAN: But you can ask Jean that. She will have an answer for you on that, but I believe it's true.

CAVANAUGH: OK. Thank you.

HOWARD: Any other questions? Seeing none, Senator Erdman, will you be staying to close?

ERDMAN: I would-- I would enjoy it.

HOWARD: Wonderful. Thank you.

ERDMAN: Thank you.

HOWARD: Our first proponent testifier for LB244. Good afternoon.

JEAN THUNKER: Good afternoon. My name is Jean Thunker. Do I need to spell?

HOWARD: Yes, please.

JEAN THUNKER: J-e-a-n T-h-u-n-k-e-r. I'm from Paxton, Nebraska, and I do massages in Paxton and I also-- my main shop is in Ogallala. I thank you for allowing me to speak today. I am trying to get a mobile massage going because I have clients that drive anywhere from one to two hours away. I would like to be able to take it to them because of the economy and the ag situation that's going on. They-- 95 percent of my business is people with health issues and I need to be more mobile, more flexible to get to them because they're taking off work, they're driving one to two hours away, means they spend a whole afternoon trying to get to me to do a massage and go home. So I want to be able to make a route and go around Ogallala, do different routes around and have-- every other week take a different route and go to different towns and stay there for a day or two, go to the next town and do them. That way, they can come to me and then get home; they can go to work; they can go-- if they've got to go pick up their kids, whatever. I've got elderly people that can't come and drive, and so this way I'd be

more flexible. The family can bring them to me and I can work on them. I want to work out of a toy hauler, which I gave you a flyer, in the toy hauler. It's-- it's a room in the back to where I can have my personal room, have a massage room, and I'll also have a half bath in the back. I've already checked out on a washer and dryer to put in there because where I'm going to set up will have to be set up to where I have electricity in parks or different hook-up trailers, courts. I will be mobile to where if I have to, like if I go to Chappell, there is no hookup, so I've got my unit. I can use my power unit and my generators and then go home that night and wash because I won't have access to electricity to use my washer and dryer. So I've been pursuing this all last summer when we tried to work on this last year and I spent the whole summer trying to, thinking I could go mobile, and I actually had to stop because I didn't want to lose my license. But I went through the whole summer figuring out what all it took to get to be mobile and to be on the road, and my people out there are actually waiting for me to go mobile. My business has went down tremendously. I don't know how much longer I'm going to be able to go. In fact, if this doesn't go through, I will probably be shutting my doors because I have stripped into my savings, I have taken away money from my land to get this, to keep my doors open. And my clients don't want me

to quit, so I don't know where to go, what to do. And I offer a lot of services that people don't offer, lymphedema. I work on cancer patients. I-- I've got doctors from Denver and Omaha that send people to me and because they know that I do what they're asking me to do. A lot of it is stress, and I'm seeing more and more of that all the time, and now I'm working on children. So I go clients from anywhere from two weeks to 94-year-olds. So I have a wide-- a wide variety of people. The majority of my clients I've been losing because of moving, because of work out there, agriculture, and then some of them has been elderly people that's passed away. So my clientele has been dropping. You guys have any questions?

HOWARD: Thank you. Are there questions?

JEAN THUNKER: I can fill you in.

HOWARD: Senator Arch.

JEAN THUNKER: Yes.

ARCH: This wouldn't be covered in the bill, but-- but do you-- do you anticipate any permitting, zoning, local issues with the city? I mean, as this would be a business that would roll up, plug in, and-- and you would conduct business there, do you-- do you anticipate--

JEAN THUNKER: I have no issues. I've talked to the surrounding towns and they're just waiting for me to come.

ARCH: OK.

JEAN THUNKER: They're telling me where I can park. They're actually even wanting me to go out to Sutherland Reservoir and park because they would like to have-- have me out there just to get away from the town, and being around water and stuff is relaxing.

ARCH: OK.

JEAN THUNKER: So there's two doctors in Chappell that I'm looking to go into. They're out of Sterling and they're out of-- Sterling, Colorado, and Sidney, and I was just told here this week their drugstore is-- is going to have to close if she doesn't find another place to move. That's hard on them because there's elderly people and there's two doctors there with no drugstore. So we have a huge factor going on and I've been told, too, this week we've got two businesses that are looking about closing if-- in the next six months if things don't turn around in Ogallala. And I'm going to be the third one because I won't be able to stay there. I just can't afford my-- the rent is not bad. It's the overhead. I can't afford it. With me being in my

mobile unit, I can afford it because I'm paying myself, I'm not paying everybody else, and I can get my service to them quicker.

ARCH: Thank you.

JEAN THUNKER: Um-hum.

HOWARD: Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here today.

JEAN THUNKER: Thanks.

CAVANAUGH: So I appreciate how thoughtful this is. And when you were talking about the water and the washer and dryer, I started looking and that is actually included in. So--

JEAN THUNKER: Yes, it's all included.

CAVANAUGH: --not only would you do it, but that would happen moving forward, which is terrific. Will you foresee any issues with-- if you have-- I'm guessing that you probably have some Medicaid clients.

JEAN THUNKER: I-- I--

CAVANAUGH: Would there be any issues with reimbursement if it was administered through mobile?

JEAN THUNKER: I cannot do Medicare.

CAVANAUGH: Oh, you cannot.

JEAN THUNKER: I cannot. I'm too small and the turnover to get the money is just too long.

CAVANAUGH: Sure. Do you have any clients that you bill health insurance through?

JEAN THUNKER: No.

CAVANAUGH: OK. So that--

JEAN THUNKER: It's pretty much--

CAVANAUGH: So there wouldn't be any issues with that.

JEAN THUNKER: And I'm getting more and more of that all the time, me wanting to do it, and I just-- I said, I'm too small, I can't. The turnover is too long for them to be paid, for me to get the money.

CAVANAUGH: Sure. I was just curious if going mobile would impact that reimbursement but--

JEAN THUNKER: Yeah.

CAVANAUGH: --it sounds like not an issue for your business.

JEAN THUNKER: They-- I've tried and I've tried different angles and I just tell them that they have to call their own insurance company and ask. And I know there's some states that do take the massage.

CAVANAUGH: And one more question. And just reading through the bill, I'm not seeing anywhere where it would-- I-- I'll-- more concise question. What made you realize that you needed this piece of legislation in order to administer in the mobile unit? Is it explicitly said that it has to be in a brick-and-mortar, massage therapy? I'm getting a head nod.

JEAN THUNKER: Oh, I put that for re-- yes. Yes, because when I was going through it there was quite a conflict on that--

CAVANAUGH: OK.

JEAN THUNKER: --because the unit I'm going to be pulling is going to be 44 foot. It's going to be hooked to a pickup so it's going to be a long rig. I cannot go down a one-way street. I mean, for what they're telling me, I don't want to be parked beside another massage therapist. Most massage therapists that I know of are in a smaller location. It's hard to get to their spot anyway. The parking is tough. That's in cities and I don't need to be in cities. I need to be in towns that are 10, 20, 30

miles away so that I can park and they can come to me, because I-- I have NEBRASKAland coming up. Well, the states do massages for rodeo contestants, so if I want to go to the fairgrounds, I can park there. But I don't need to be parking beside another massage therapist in a town. I need to be out so that I can accommodate agriculture and the people that need to come. And I want to be more flexible because once this comes to bill, if there's three or four of us that want to go to, say, State Fair, we can pull up there but we need to be beside each other, not a football field apart from each other. We need to be beside each other so we can work with each other--

CAVANAUGH: Sure.

JEAN THUNKER: --because we all offer different techniques and different things. That's--

CAVANAUGH: Thank you.

HOWARD: Senator Williams.

WILLIAMS: Thank you, Chairperson Howard. And thank you, Ms. Thunker, for being back again this year.

JEAN THUNKER: Thanks.

WILLIAMS: A couple of questions just to have some dialogue about this. Do you have other massage therapists that have been talking to you about their willingness and desire to do this same kind of process?

JEAN THUNKER: No, I haven't. A lot of it boils down to, you know, you want to do it but you don't want to go through the legal papers, you don't want to go through the legal process of doing it. Once I get going, I'm-- it's going to follow through because out there people drive a long ways away to go somewhere and once it goes through, I don't see an issue with anything because all I'm trying to do is get us up to the 20th century. I have so many people that go through Ogallala and they'll stop at my shop and say, you guys are 10 and 20 years behind time, why don't you get current? And that's the remark-- that's the remark I get from people coming through, traveling through and stopping and getting massages. And I'm just trying to because all the states around us are going mobile except us. And there's four states-- Wyoming, Vermont, Kansas, and Missouri-- that have no regulations. So technically I could take my unit right now and go to my son's in Wyoming and do massages. And I want to go to my daughter in Illinois. Yes, I will get a license in Illinois. But when I go to her place, she has family members that want me to give massage and I have nowhere to work, I'm not legal. But

this way when I have my unit, I can take and go off and do what I need to do and I can still make a living.

WILLIAMS: One of the other things I wanted to throw out, and I don't know if we'll hear any of this testimony today, but if we do I want you to have a chance to respond to it while you're still sitting here--

JEAN THUNKER: OK.

WILLIAMS: --and can. Before, we had testimony from other professionals in the massage therapy field that they had worked very hard over many years to build up the reputation of massage as a-- a form of treatment, not just a backroom activity--

JEAN THUNKER: Yes.

WILLIAMS: --that was like that. And there was a concern on their part about the image, I'll say, of a mobile facility versus a brick-and-mortar facility, especially one that might be pulled up to a sporting event. We've all heard about some things that may or may not happen at sporting events, state fairs, gatherings like that. So anticipating that there may be some testimony, because there was some before on this bill along those lines, I'd like to just get your reaction to that from a massage therapist in a rural area of western Nebraska.

JEAN THUNKER: Yes, I've thought about that, and, yes, I will be careful where we pull up, where we're going to park. I've talked to the towns. They're cautious about what I'm going to do. Technically right now I'm getting phone calls already. They call me up-- do you offer more than massages? I'm already getting that and I'm in a brick-and-mortar. And I've got people that's traveling through and they'll call me up and ask me and I'm like, sorry, and then I click up on them. I mean I get it now, so if I'm there and I have a sign out and they come up, you know, I can-- we're business enough you know by looking at and the questions they're going to ask that-- no. But I am going to be very careful where I'm going, and that was when my husband was concerned was my safety and I said that's where I'm checking the towns out and what I'm doing and--

WILLIAMS: So you would have no concern about the level of professionalism that you would be able to offer if you were doing this?

JEAN THUNKER: Um-hum, yeah. Yeah.

WILLIAMS: Thank you.

HOWARD: Senator Hansen.

B. HANSEN: Thank you. Does this preclude you from doing any different types of techniques of massage therapy such as hot stones or cupping or Graston Technique or anything like that? So this would fall under the Massage Act, which I'm assuming you can pretty much perform any kind of technique in this mobile unit?

JEAN THUNKER: If you-- um-hum, yeah--

B. HANSEN: OK. I didn't know for sure.

JEAN THUNKER: --if you have room for it, uh-huh.

B. HANSEN: OK. I figured. I just--

JEAN THUNKER: Yeah.

B. HANSEN: --didn't know for sure. I-- I kind of missed part of the--

JEAN THUNKER: Yeah--

B. HANSEN: --beginning part of this, so I want to make sure that--

JEAN THUNKER: --because some of us, you know, we do cupping and stoning and, no, I don't. The ones that-- these are the ones I do: the regular massage, the Swedish; I do lymphedema, which

nobody out there knows how to do lymphedema; I do cancer, I work on several people with cancer; infant, I work on a lot-- several infants, massaging trigger points, neuro-- neuromuscular ones. And that would probably be 90 percent of my people is neural treatments.

B. HANSEN: OK.

JEAN THUNKER: So, yeah, if you chose to do stone, then you've got to have electricity to keep your stones hot and keep them warm and-- and-- but that's the biggest thing is where I want to park is I want to be able to have electricity so that I can run and stay there overnight and be able to offer two days' service there and give-- give them what they're asking for, for-- if I have to work at 7:00 at night, I can, if they're having to get off work. I mean I've already had one guy coming tomorrow night; he's driving 60 miles at 4:30 tomorrow night just to come get a massage because he's getting off work. So that's where I want to be able to offer that and-- but I limit myself. And that was the other thing. My business was so slow this year that I couldn't even go do my CEU classes, my continuing education class, because I didn't have the facilities-- money to do it, and that is-- I'm working on craniosacral therapy. And I'm getting lots of good reports and response on it. But I couldn't do-- I

couldn't do it this year because the income was too low. And I need to educate and I need to do more and they're asking for more.

B. HANSEN: Thank you.

HOWARD: Other questions? Senator Murman.

MURMAN: Thanks for coming in. I assume that as a massage therapist your licensure would be the same as any other massage therapist in the state. The only difference would be you're mobile so some regulations on, you know, parking and-- and the-- that pertain directly to the mobile unit.

JEAN THUNKER: Yeah.

MURMAN: So--

JEAN THUNKER: That would be-- because basically I don't see any different. Just being in a mobile unit and being in a building, there's not going to be any difference except I'm taking my business to them and I'm parking it in a safe spot. I asked-- I actually asked one of the hospitals if I could park in their parking lot to make it easier for some of their clients. And they basically said they couldn't do anything until it-- until it got to be a law, until it was passed, so I basically was

turned down. Because out west, I don't know if you guys have it here, but out in our country we have a lot of mobile units. We have trailers coming in to do scans. They park at the hospital. They go to all over. We have mobile units that come up to the hospital all the time and will set up and do screening and scans and X-rays. And chiropractors are even going mobile. So I'm just trying to bring us up to times so that we can offer more to our people and they don't have to travel so far. And I'm just going to do the same as what I did in my room.

MURMAN: Very good. Thank you.

JEAN THUNKER: Um-hum.

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

JEAN THUNKER: Thank you.

HOWARD: Our next proponent testifier for LB244. Good afternoon.

STEVE CARPER: Hello. My name is Steve Carper, S-t-e-v-e C-a-r-p-e-r, and I am here representing the Nebraska Massage Therapy Board in support of LB244. First I'd like to thank Senator Erdman and the committee for hearing our concerns with last year's bill and making the appropriate adjustments to the bill.

You know, the content of this bill will enable the board to hold all massage establishments, whether it be a brick -and-mortar or a mobile massage, to the same standard which will, again, keep all therapists accountable to ensure the safety of the public. And it's kind of short and sweet. That's all I really wanted to say but I'm open to answer any questions that you guys might have as well.

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

CAVANAUGH: Thank you. Thank you for being here. Could you speak to what the concerns were in previous years?

STEVE CARPER: Last year's bill just didn't have-- it didn't allow the board to have any type of regulatory oversight on a mobile establishment. So with this bill, there's a lot more detail. Jean mentioned about the number of square foot, you know, having running water, a bathroom accessible, that sort of stuff. You know, none of those details were in it last year. So this bill just has more meat to it which in-- again, allows us to be able to regulate and-- and hold-- hold mobile massage establishments to the same standard.

CAVANAUGH: I don't know how closely you-- you've looked at the bill--

STEVE CARPER: Um-hum.

CAVANAUGH: But I do see on the final page of it, page g, line 21, it changes a "shall" to a "may," "The department may adapt and promulgate rules and regulations" if it is deemed necessary. Currently it "shall." Is there any concern over that?

STEVE CARPER: No. Uh-uh. No, we really don't have any concern over that.

CAVANAUGH: OK. Thank you.

STEVE CARPER: Um-hum.

HOWARD: Other questions? Senator Arch.

ARCH: Thank you for coming today.

STEVE CARPER: Yes.

ARCH: Are-- are you-- are-- are the facilities currently inspected or is it strictly the-- the licensure of-- of the therapist that regulates this?

STEVE CARPER: With initial establishment license, the owner, the massage therapist, has to fill out a self-report, so that's sent in with all the requirements, you know, checking off that they have everything that's needed. We do, do inspections, and

they're usually like just unannounced inspections just to make sure that-- that they are doing what they're saying they're doing. I know with talking with the board and with our administrative person that there are a lot of budgetary issues where-- and we just don't have enough inspectors to be able to go out on a regular basis. So it's kind of, you know, just random inspections here and there. I know typically if there is a complaint filed, then investigation follows that.

ARCH: Thank you.

STEVE CARPER: Um-hum.

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

STEVE CARPER: All right. Thank you.

HOWARD: Our next proponent testifier for LB244. Good afternoon.

VYANNE ZINK: Good afternoon. My name is V-y-a-n-n-e Z-i-n-k, V-y-a-n-n-e Z-i-n-k. I'm a licensed massage therapist. I own my own massage establishment here in Lincoln. I'm a member of the American Massage Therapy Association and am a volunteer on the Nebraska chapter's government relations committee. And this is going to be pretty brief. On behalf of the Nebraska AMTA we want

to state our strong support for LB244. This is a very well-thought-out and well-crafted bill. Senator Erdman has really listened to our concerns and requests over the years and this bill is the result. In addition to clarifying terms and definitions, this bill also provides a solid framework for what is allowed and acceptable. It protects the safety of both the massage therapist and the public. The guidelines for what is considered a mobile establishment, where they're-- where it can be used, how ownership is handled, everything down to the required square footage, shows a lot of thought and consideration. The only thing left to say is a very sincere thank-you to Senator Erdman for his work on this bill. We fully support this bill and hope it moves forward. Thank you.

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

VYANNE ZINK: Thank you.

HOWARD: Our next proponent testifier for LB244. Good afternoon.

NICOLE FOX: Good afternoon, Chairwoman Howard and members of HHS Committee. Nicole Fox, N-i-c-o-l-e F-o-x, and I'm director of government relations for the Platte Institute, here today to testify in support of LB244. Thank you for the opportunity to

discuss entrepreneurship in our state. Innovation occurs when potential problems or opportunities are identified and solutions to improve upon or take advantage of those problems and opportunities are developed. Successful entrepreneurs take that innovation-- take that innovation and come up with a business model that can be marketed to the public to fill a need. A legislative priority of the Platte Institute is to support policies that promote current and would-be entrepreneurs as we feel this helps grow Nebraska's economy. The Platte Institute knows Jean's story. In fact, she was in contact with us a couple of years ago when she was looking to have a bill like this introduced and we definitely support what she is trying to do to re-expand her business. Professionals in many personal care service industries have identified a need for the delivery of those services in a mobile fashion. Their clientele includes those who are homebound due to disability, recovery from illness, or due to advanced age, those who do not have reliable transportation, those who live in nursing facilities, and those with a schedule or lifestyle that make it difficult to travel to a tradition-- to a traditional brick-and-mortar establishment. Mobile delivery of personal care services is allowed in several states across the country. In fact, last year the Legislature passed legislation allowing the mobile delivery of cosmetology

and nail services. Owners of mobile businesses can tap into a whole new client market, expand consumer choices, and increase their income-earning potential. Mobile business owners can offer more flexibility in the hours they schedule services and this can be appealing to customers. Mobile businesses require far less capital, allowing greater ease for a new entrepreneur to pursue starting their own business or expand a currently established business. Current Nebraska Statute defines a massage therapy establishment as any duly licensed place in which a massage therapist practices his or her professional massage therapy. LB244 clarifies the definition of what constitutes a massage therapy establishment so that individuals wanting to be able to deliver massage therapy services from a mobile unit such as a trailer or RV are able to do so. LB244 would allow this new delivery service model while requiring owners to meet reasonable requirements that address both health and safety concerns, just like brick-and-mortar salons are currently required to do. The Platte Institute views LB244 as a win for both entrepreneurs like Jean and consumers, and it will help grow Nebraska's economy. I ask that you advance LB244 out of committee and with that, I'm happy to take any questions.

HOWARD: Thank you. Are there questions? May I ask, it sounds like there was a prohibition on-- it sounds like massage therapists were required to be in a brick-and-mortar facility.

NICOLE FOX: Um-hum.

HOWARD: Why not just strike "brick and mortar"? Why add this sort of regulatory framework in statute?

NICOLE FOX: That is a good-- I might deter [SIC] that maybe to Senator Erdman. I mean, if you guys feel that that would be appropriate, I know he's been more in-- you know, as far as working the language of the bill, kind of leave that up to him. We-- we support the concept, essentially, but we didn't work with Senator Erdman on drafting the language.

HOWARD: OK. Perfect.

NICOLE FOX: Yeah.

HOWARD: Any other questions? Seeing none, thank you for being here.

NICOLE FOX: All right. Thank you.

HOWARD: Our next proponent testier for LB244. We do have one letter for the record, Lora VanEtten, representing herself. Is

there anyone wishing to testify in opposition to LB244? Is there anyone wishing to testify in a neutral capacity? Seeing none, Senator Erdman, you're welcome to close.

ERDMAN: Thank you, Senator Howard. Senator Howard, your question was asked, why don't we just strike "brick and mortar." We basically attempted that in the past but it wasn't sufficient for the definitions and the information that was needed to make it so that it could be analyzed and reviewed. And I appreciate those who came today to talk about what we've done over the past to make this bill what it needs to be. And they give me the credit, but in reality I just listened to what they had to say and what was important to them. And even an old dog like me can learn new tricks, and so I appreciate what they've done to try to streamline this and make it so that it's understandable and applicable and enforceable, and I think that's what they've done. And, Senator Cavanaugh, I think the reason that-- I think you asked that question-- my hearing aids don't work real well when you speak softly, but I think you asked why did she need to do this, and because the brick-and-mortar situation was the reason she had to have mobile massage because she couldn't do it if she didn't have that, that designation. And there are other groups that use mobile facilities. I think chiropractors are one, and also hair salons can do the same thing, so it's not

like she's the only one asking to do that. But-- but I appreciate the testimony of those who have come today. But we've been working on this awhile trying to get it so it's right, so it makes it makes sense, and I believe we have done that and I appreciate the opportunity to present this. I would think this may be a candidate for the consent calendar. That's just a suggestion. Thank you.

HOWARD: Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Senator Howard. I will tried to speak less softly.

ERDMAN: OK.

CAVANAUGH: Appreciate that. My children don't think I speak softly. [LAUGH]

ERDMAN: OK.

CAVANAUGH: On the last page I had asked about the "may" to a "shall" and I don't-- its line 21 on page 6. I just always when I see one little change like that, I never quite know instantly what the implications are, and I didn't know if there was a reason, if you could share.

ERDMAN: What line are you on, Senator?

CAVANAUGH: Line 21, "The department may adopt and promulgate" instead of "shall adopt and promulgate."

ERDMAN: And I don't-- I don't know why that's like that.

CAVANAUGH: OK.

ERDMAN: I'm sorry I don't but--

CAVANAUGH: We can talk about it further later.

ERDMAN: Yeah.

CAVANAUGH: I just-- it stuck out to me as a-- a change at the bottom.

ERDMAN: But she will have to adhere to all the-- all the rules that--

CAVANAUGH: Sure.

ERDMAN: --other massage therapists adhere to, licensing and everything else. So it's an opportunity for-- for Jean and others and-- and-- to make a difference, and I think Ms. Fox explained the opportunity financially for them to move and be located where there's more people. We are getting to be, in our-- my district, we're getting to be less and less and we have to think outside the box and try to create new ways to do what we

always have done in the past and-- and we keep losing people. And the last census I seen, we've lost in rural Nebraska about 52,000 people and that's a pretty significant loss. And so it'll continue to be that way and we need to make sure that we can provide the services needed in a different way. And this is an opportunity for her to do that. Thank you.

HOWARD: Senator Cavanaugh.

CAVANAUGH: I'll give Senator Williams the credit for me having this question. It came to mind about the large events that-- especially like rodeos and things like that--

ERDMAN: Yes, ma'am.

CAVANAUGH: --which I understand the-- the need and also the opportunity. But I'm from Omaha and we have a huge problem with our large sporting events with human trafficking being on the rise. And just kind of reading through this, I don't see anything that way take into account some sort of security measure if it's-- if that sort of event were taking place, would you consider an amendment that would put into place that you have to get a license to practice at-- at an event like that for however many days the event is? We had a similar bill for tattoo artists for conventions where you get a temporary license to

practice at an arena or something like that to make sure that human trafficking is being monitored strictly.

ERDMAN: And as you know, and-- and I'm sure you'll agree and I feel the same way, human trafficking is against law.

CAVANAUGH: Yes.

ERDMAN: Human trafficking is-- is a tragedy and it needs to stop. I-- I don't know that-- I don't know. We'll have to talk about that but I just--

CAVANAUGH: Just something to think about.

ERDMAN: Yeah. I'm not one that's in favor of a lot of regulations and we sometimes tend to spend a lot of time regulating things and sometimes we just let people do their business but--

CAVANAUGH: Well, I see that it's--

ERDMAN: I-- I understand your concern.

CAVANAUGH: It's regulated. I guess just looking for a mechanism to ensure some sort-- we can talk about it further.

ERDMAN: OK. Thank you.

HOWARD: Other questions? Senator Erdman, just to go back to Senator Cavanaugh's question on the "may" to "shall," the-- essentially-- and this may have been a drafting error. I'm not sure if it was your intention. But essentially you're making optional all the rules and regulations related to massage therapy entirely, and I'm pretty sure that wasn't your intention, but I just wanted to make sure.

ERDMAN: No, that wasn't my intention.

HOWARD: So-- OK.

ERDMAN: Are you assuming that that does that?

HOWARD: Yeah, it's-- it's everything in the Massage Therapy Practice Act. And we can circle back with that as well.

ERDMAN: I don't know why they changed that. That didn't-- I hadn't seen that.

HOWARD: OK.

ERDMAN: I'll do some research.

HOWARD: And maybe it was a drafting error as well? OK.

ERDMAN: I'll get back to you. I can get back to you on that.

HOWARD: OK. Perfect. Thank you.

ERDMAN: Thank you. I appreciate it.

HOWARD: All right. Any other questions? Seeing none--

ERDMAN: Thank you.

HOWARD: --thank you, Senator Erdman. This will close the hearing for LB244 and we will open the hearing for LB499, Senator Morfeld's bill to provide requirements for services by psychologists. Welcome, Senator Morfeld.

MORFELD: Hello. Senator Howard, members of the Health and Human Services Committee, it's great to see other committees still going on here, so-- I know what that feels like in Education and Judiciary. But my name is Adam Morfeld and that's A-d-a-m M-o-r-f, as in "Frank, -e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB499. LB499, introduced on behalf of the Nebraska Psychological Association, puts a version of the American Psychological Association Ethical Principles of Psychologists and Code of Conduct, as adopted by the Psychology Licensing Board-- Board, in statute. Further, the bill sets out definitions on the professional role of psychologists including, but not limited to, practicing outside the psychologist's scope of competence and making referrals when

unable to provide care. This bill is a new approach to attempt to resolve a 12-year standoff by the Department of Health and Human Services and the Nebraska Psychological Association as they wait-- await updates to their regulations. I have a handout that explains the history of the impasse over the last 12-- past 12 years. I also have an amendment on behalf of the master-level mental health practitioners that adds them to the bill. Keep one for myself here too. There we go. Perfect. As some of you are aware, several religious organizations have focused their opposition to gender identity and sexual orientation to behavioral health provider regulations. Two licensing boards, the psychological-- the Psychology Licensing Board and the Mental Health Practice Board have stood strong in protecting their respective ethical codes as a part of their regulations that do not discriminate between different individuals. The stalemate has continued over the past 12 years and have focused primarily on how these religious organizations, primarily the Nebraska Catholic Conference, believe that providers should not have to refer their patients to other providers but rather just indicate that they will not serve them. In delivering mental health services, this is not an appropriate way to handle patients who would very likely be vulnerable time in their lives. To the psychologists' credit, this past year they have

been meeting with the Catholic Conference to discuss the stalemate and have come up with some alternative referral language which is included in LB499. Although there was no final agreement on the language between the two groups, the conversations I hear were productive. However, there appears to be a bigger problem. The Department of Health and Human Services, along with the Nebraska Catholic Conference, does not want the profession's ethical codes in the regulations. Dr. Williams, the former Chief Medical Officer, made that declaration last year at a Board of Psychology meeting that the department would not allow psychology regulations to advance as long as sexual orientation and gender identity are listed in sections of the psychology ethics code. It is time for the impasse to end and for-- LB499 is the vehicle to end it. It is critical for all healthcare professions to follow ethical considerations when serving Nebraskans, many at their most vulnerable. I urge your favorable consideration of this bill and the amendment. There will be several testifiers following me that will speak more specifically on what has occurred over the last 12 years.

HOWARD: Thank you. Are there questions? Seeing none, Senator Morfeld, will you be staying close?

MORFELD: Yes, I'd love to stay to close.

HOWARD: Rather spend time with us than in Judiciary?

MORFELD: I--

HOWARD: I understand.

MORFELD: --won't comment on that. Thank you.

HOWARD: All right. Our first proponent testifier for LB499. Good afternoon.

LORI WALL: Good afternoon. My name is Dr. Lori, L-o-r-i, Wall, W-a-l-l, and I'm representing the Nebraska Psychological Association, NPA. I value your time immensely and I'm very appreciative of the opportunity to offer testimony today. My goal in talking to you today is straightforward. I am asking for your support and ensuring that psychologists in the state of Nebraska are directed to practice within our most current national code of ethics. I've been practicing as a clinical psychologist for over 20 years in the state of Nebraska. My colleagues and I often discuss the challenge of conducting a skilled and compassionate therapy hour in the proverbial 45-minute window. In the spirit of a parallel challenge today, I will attempt to convey the most pertinent points of a nearly 11-

year-long marathon of effort to achieve the right to employ our up-to-date national code of ethics, all within the span of the next few minutes. My psychology public service has involved two primary avenues. The first one was through the Board of Psychology for the maximum allowed ten years. Primary roles included protecting the public and ensuring that we have current best-practice regulations. Secondly, I now serve as the NPA chairperson focusing on the advancement of the practice of psychology in our state. From nearly the beginning of my tenure on the Board of Psychology, we worked on updating regulations for the state of Nebraska as a matter of progressing with current issues such as advancing record-keeping practices and embracing the most up-to-date national code of ethics, given that we were then operating under the 1992 version, and in fact still are, as far as our ethical code. Quick math, the ethics code Nebraska psychologists are now obligated to follow? Twenty-seven years old. Stepping back, during the spring of 2009, the Board of Psychology was told by DHHS administration that revised draft regulations were sent to the Nebraska Catholic Conference, or NCC, for a special review and that our updated regulations draft would not be progressing unless and until we compromised with the NCC, which as far as I have been informed is an unprecedented requirement for regulations advancement to defer

to a special interest group. The NCC wanted a conscience-clause language inserted into our psychology regulations at that time. The point is moot given even the 1992 ethics code supports practitioners removing themselves from a clinical relationship if a psychologist has a conflict of interest. I have provided a time-line document for your review dating from fall of 2008 through March of 2019 reflecting psychologists' intense and persisting efforts to resolve concerns. We have met with DHHS leadership, ethical and compassionate psychologists who are Catholic practitioners, and NCC staff many times. In fact, I have personally committed several hours of my time with CSS and NCC staff just within the past few months to try to resolve this issue through channels other than taxing the valuable resources required via the statute approach, to no avail. Moving forward now, I direct your attention to the Nebraska Board of Mental Health and Board of Psychology minutes from the summer of 2018 wherein DH-- then-DHHS Director of Public Health and Chief Medical Officer Dr. Williams said that the current administration "will not move the regulations forward if they contain the words 'sexual orientation' or 'gender identity,'" which reflect only a few words listed in the ethics code "Unfair Discrimination" section among thousands of words that are included in the most updated 20-page national document that is

our ethical code. The licensing regulations boards reviewed their options to include: take the words out; (2) possible statutory change; (3) do nothing; or (4) wait for a Supreme Court decision. During today's testimony you may hear about referral language concerns, discrimination, implications that our national ethics code somehow oppresses religious freedom, and other issues that seem complicated. As it happens, those issues are not especially pertinent to today's conversation. What we are asking is that psychologists are allowed to progress with following our current national code of ethics. We asked for your support in favor of LB499. The documents I have shared with you today include the 11-year time-line history of our efforts to advance Nebraska regulations, including optimizing access to current national ethics code, copies of minutes from the Board of Psychology and Mental Health Licensing Boards from 2018 team which reflect Dr. Williams' commentary that our national ethics code will not be adopted through regulations, and finally, a strong letter of support for LB499 from our current NPA President, Dr. Marti, who historically worked at Catholic Social Services and continues to enjoy collegial friendships with CSS staff. I thank you for your time and I value your thoughtful consideration of supporting the advancement of practice for Nebraska psychologists.

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

CAVANAUGH: Thank you. Thank you for being here--

LORI WALL: You're welcome.

CAVANAUGH: --and for your testimony and for this great overview of the history of this piece of legislation. I'm-- I'm just a little confused, or a lot confused. So the argument or the issue is-- I guess I don't understand what the Catholic Conference is opposed to as far as the code of ethics.

LORI WALL: Our current code of ethics, in fact, the 92 ethics that we're following, the 27-year-old ones that are in regulation now, do include the words "sexual orientation" already. The newest code, which is 2016-2017, with amendments, includes both sexual orientation and gender identity in the nondiscrimination sections of the ethics code, and that's the barrier to having our ethics go forward through the regulations process.

CAVANAUGH: And am I correct in assuming that there's also a national code of ethics?

LORI WALL: Yes, which is the nat-- which is the code we are asking to embrace. So psychologists currently follow the

national code of ethics from 1992. We'd very simply like to be able to follow the most recent code of ethics, which is now 2016-2017.

CAVANAUGH: So it's not the standard to automatically integrate in the national code of ethics as those are adopted nationally?

LORI WALL: That's correct. My understanding is that there is some constitutional law barrier that you can't ahead of time affirm that you will embrace the most current code of ethics because you haven't seen it yet. So--

CAVANAUGH: OK.

LORI WALL: --it's a process to get there.

CAVANAUGH: OK. Thank you.

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

LORI WALL: Thank you. Appreciate your time.

HOWARD: Our next proponent. Good afternoon.

TERRY WERNER: Good afternoon, Chairperson Howard and the HHS Committee. My name is Terry Werner, T-e-r-r-y W-e-r-n-e-r, and I'm the executive director for the Nebraska chapter of the

National Association of Social Workers. I want to thank Senator Morfeld for bringing the bill but for also amending the bill to include licensed mental health practitioners. And as Senator Morfeld stated in his opening statement, that this is because we cannot get our regulations passed. This all began in 2007 when Senator Phil Erdman, myself, and a professional lobbyist hammered out a bill to bring independent licensure to mental health practitioners. With independent licensure it allowed social workers with certain criteria to diagnose and treat major mental illnesses. This was a very important bill to us and-- and it did pass, and then in 2008 the board updated the regulations. It went to public hearing in July of 2008. And at that time, the social work profession, mental health-- or the marriage and family therapists, the professional counselors, and the Psychological Association, probably representing 99.9 percent of the mental health therapists in the state, we all spoke in support of the regulations. And as many people have said, there was opposition from several religious organizations. No profession-- no profession should be held to standards that violate their own code of ethics and current proposed regulations of the mental health-- of our governing board-- the current proposed regulations said is now being reviewed by HHS does exactly that. And we have social work members on that board

and I said that we as an association would have to continue to oppose those regulations because they violate our code of ethics. One very, very important point that I think needs to be made here is that this does not mean any clinician would be forced to work with a client if that client's sexual orientation or anything else would violate their moral or religious convictions. In fact, in our code of ethics, it talks a lot about competency and competency says-- in our code of ethics was tell the therapist that not only should they not provide those services if they are not competent, they must not provide those services if they are not competent. So if they are not competent in marriage counseling, if they are not competent in working with transgender clients, if they are not competent in working with gay and lesbian clients, they must not provide those services. It would be an absolute violation of our code of ethics. However, it would go on to say you must provide a credible referral, and by credible referral that would mean you don't send somebody who's gay to a reparative therapist and such as that. This is really, when you think about it, a life-and-death situation. If you had a client-- a therapist had a client who came in for depression and eventually, as they build up trust, they came out and said, I think I'm a woman living-- or I'm a man living in a woman's body, and the therapist all of a

sudden said, no, I can't no long-- cannot work with you, this violates my moral and religious convictions, here's a phone book, find yourself a-- which is what our proposed regulations now say, here's a phone book, find yourself a new therapist because that violates my religious and moral conviction. That person may be suicidal. I mean this is really a very serious issue. And to go on for this amount of time, since 2008, is an atrocity that we cannot get our-- our regulations through. Also, as part of our code of ethics, we talk about self-determination. Self-determination means to the therapist that it is not about them, it is not about the therapist. It is about the client. It is about what is best for the client and-- and that is really critical. If it starts to become about you, then you should not be a-- should not be a social worker, should not be a therapist, because it is not about you. It is about what is best for the client. And I see the light is on. So all I would say is I ask for your favorable consideration in both the amendment as well as the underlying bill. And I'd be happy answer any questions.

HOWARD: Thank you. Senator Arch.

ARCH: Thank you. And this is just a question of clarification.

TERRY WERNER: Sure.

ARCH: So you're a social worker.

TERRY WERNER: I am.

ARCH: And we've heard from psychologists.

TERRY WERNER: Correct.

ARCH: So is it the same code of ethics for all mental health practice?

TERRY WERNER: That's a really good question. It is not. So in our code-- in our board, our governing board, unfortunately-- in my opinion, we'd like to have our own board like a psychologists do. We-- we were thrown together with all the master's-level professions. So our amendment will say that if you are a social worker, licensed as a social worker, you would abide by the NASW, National Association of Social Work, code of ethics. Marriage and family therapist would have their own. Professional counselors would have their own. And then there are a group of people, master's-level therapists out there who would have to choose one.

ARCH: So but-- but you're here testifying with regards to the psychology code of ethics.

TERRY WERNER: Well, the amendment that Senator Morfeld is bringing will also include the licensed mental health practitioners--

ARCH: OK, so--

TERRY WERNER: --which include [INAUDIBLE] social--

ARCH: Then that would be all licensed mental health practitioners, psychologists, master's level, all--

TERRY WERNER: Correct. Correct.

ARCH: --relating to their particular code of ethics.

TERRY WERNER: No, relating to the public's safety and well-being of the people we serve.

ARCH: Right, but the adoption of-- it wouldn't be the adoption of one code of ethics for that entire group. They would relate to their own particular code of ethics

TERRY WERNER: That's correct. That's correct.

ARCH: Thank you.

HOWARD: Senator Cavanaugh.

CAVANAUGH: Thank you. Thank you for being here today. To your knowledge, are there any psychologists practicing that also believe in Christian Science?

TERRY WERNER: Oh, well, I don't know about psychologists.

CAVANAUGH: Or--

TERRY WERNER: I'm a social worker.

CAVANAUGH: Or perhaps even Jehovah Witness or--

TERRY WERNER: Well, I-- I'm-- I'm guessing that you could find--

CAVANAUGH: --or Scientologist?

TERRY WERNER: --a therapist that would, you know, subscribe to all sorts of different philosophies.

CAVANAUGH: So my question is kind of leading towards, without this amendment, people of those faith backgrounds, if they had a patient who was presenting with, say, schizophrenia, something that really, most likely, would need medications to be treated and it's against their religion to suggest such a thing, they wouldn't have to do anything for that patient right now.

TERRY WERNER: Well, our code of ethics would say that you have to-- if that was-- first off, master's-level clinicians cannot prescribe-- prescribe.

CAVANAUGH: Right.

TERRY WERNER: OK.

CAVANAUGH: It wouldn't be a diagnosis; it would be that it's presenting.

TERRY WERNER: It-- right. And so if that became something that they felt was necessary, I think that the proper thing to do would be to tell them that and-- and-- and provide them with a cred-- credible--

CAVANAUGH: But they wouldn't be required to if it violates their religious beliefs.

TERRY WERNER: They would be required to provide a referral, yes, they would.

CAVANAUGH: Currently?

TERRY WERNER: No. I mean actually I-- maybe there's some practicing therapist behind me that can answer that better.

CAVANAUGH: OK.

TERRY WERNER: But our code of ethics will say that if something violates your moral and religious convictions, that you do not have to work with the client but you do have to provide them with a credible and quality referral.

CAVANAUGH: All right. Thank you.

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

TERRY WERNER: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

MARY FRAN FLOOD: Good afternoon. Good afternoon, Senator Howard and committee members. My name is Mary Fran Flood, M-a-r-y, another word, F-r-a-n, and my last name is Flood, F-l-o-o-d. I'm a psychologist and I'm licensed to practice in Nebraska. I'm also a professional member of the Nebraska Board of Psychology and I'm reading this statement for you today as a representative of the Board of Psychology. I'm also willing to answer questions either as a practicing psychologist or as a member of the board. First of all, I do want to thank you for considering the opinions of the professional members and the public members of the board. At its regular meeting on March 15, 2019, the board voted unanimously to support LB499 which adopts the American

Psychological Association's, the APA's, Ethical Principles for Psychologists and Code of Conduct. As you know, Nebraska law charges the board with protecting the health, safety, and welfare of the public, and ensuring the efficient, adequate, and safe practice of psychology. I want to assure you that all of the Psychology Board members take seriously our responsibilities to Nebraskans. We're well aware that our duty is to protect their health and well-being, not to focus on the special interests of psychologists, any special interests. The ethics code is vital to our ability to fulfill these obligations. We need the code to do our job. It is the foundation of ethical practice for psychologists. It gives us as a board a fair basis for disciplinary actions. It establishes principles that we hold in common with other healthcare professions, such as benefiting our patients and avoiding harm, being honest and truthful, exercising precautions to protect the public from discrimination, and respecting the dignity and worth of all people. Adopting the ethics code will assure Nebraskans that when they need psychological care, they will receive it in a way that is consistent with these principles. I want to note, as-- as other witnesses have, that the ethics code-- the psychology ethics code never coerces psychologists to provide services outside their competence. In fact, the code prohibits us from

offering services in areas where our lack of knowledge or training or expertise, our own personal problems or conflicts of interest interfere with competent practice. And also, as you've heard, statutory adoption of the ethics code has become necessary because the Board of Psychology has proposed revisions to update the regulations since 2009 and efforts to adopt those proposals have been thwarted for the last 10, 11 years. This limits Nebraska's ability to recruit and retrain [SIC] behavioral health professionals who are really needed in this state, particularly in the 88 of our 93 counties that are currently designated shortage areas and the 32 counties with no behavioral health providers. Therefore, the Board of Psychology urges you to move this-- move LB499 forward. We urge the Legislature to adopt it, including the adoption of the APA ethics code. Thank you for listening. I'm open to any questions.

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

CAVANAUGH: Thank you. Thank you for your testimony today.

MARY FRAN FLOOD: You're welcome.

CAVANAUGH: I think you heard my previous question and I wondered if maybe you could speak to that, if you know of any psychologists that practice in the state or even nationally that

perhaps don't believe in prescribing medications and might see a patient that clearly presents with a condition that would need that referral.

MARY FRAN FLOOD: Right, and I-- I don't personally know practitioners in Nebraska who-- who are members of those particular groups that you mentioned.

CAVANAUGH: OK.

MARY FRAN FLOOD: The question about medication I think is-- becomes a little bit confusing because psychologists in Nebraska now do not prescribe either.

CAVANAUGH: Sure.

MARY FRAN FLOOD: We don't have prescribing privileges.

CAVANAUGH: But you might have a patient who you-- you can see requires in your opinion--

MARY FRAN FLOOD: Yes.

CAVANAUGH: --and you would refer them to another-- to a doctor that would prescribe.

MARY FRAN FLOOD: Yes.

CAVANAUGH: So current-- under this current way that the law-- or the code of ethics is, you would not be required by your code of ethics to refer that patient to a doctor that could prescribe.

MARY FRAN FLOOD: And-- and what I would say-- and I don't believe I can speak-- I want to-- because-- I don't believe I can speak for the Board of Psychology on this because I don't-- I haven't discussed it with them. But from my position as a practicing psychologist, and as a matter of fact I-- I taught the ethics course at the university last semester, so my position, my reading of the-- of the code says you would be required to refer because that's the standard of practice in your hypothetical.

CAVANAUGH: Even if it's a conflict for your religious beliefs?

MARY FRAN FLOOD: That is correct.

CAVANAUGH: Thank you.

MARY FRAN FLOOD: You have to-- yes, you have to assure care for your-- that's my reading.

HOWARD: All right. Any other questions? Senator Murman.

MURMAN: Thanks for coming in. How do you determine the gender of a person that comes in for counseling?

MARY FRAN FLOOD: Typically, ask them how they identify.

MURMAN: OK. If they identify one way one session and then come in the next session and identify a different way, how do you handle that situation?

MARY FRAN FLOOD: I personally would talk with them about what-- what occurred in making the difference from time to time--

MURMAN: OK. Thank you very much.

MARY FRAN FLOOD: --because I-- I think that would probably be relevant.

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

MARY FRAN FLOOD: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

DANIEL ULLMAN: Hello. I'm Dr. Daniel Altman, D-a-n-i-e-l U-l-l-m-a-n, and the context to why I'm here is I used to serve on the licensing board, so I came in this as an individual. In fact, I was serving on a licensing board in 2008, which is relevant to the issue before you. I've been licensed in Nebraska since 1988. During my time here, I've trained many psychology graduate

students at UNL and arranged continuing competency training for licensed psychologists and early career psychologists that included six workshop hours on ethical practice every other year. I earned my doctorate in clinical psychology at UNL where I was introduced to using the American Psychological Association ethical code via the coursework and through the supervised practicum. All these experiences have taught me the critical importance of utilizing a professional ethical code when faced with a myriad of ethical dilemmas that occur throughout one's professional career. Using an ethical code not only helps protect the public but also serves as a guide for psychologists in making clinical decisions. If a psychologist uses the professional ethical code, he or she is on firm ground when faced with a complaint on his or her license. When I was on the licensing board, I was one of the complaint screeners and-- and people would ask me, what do you recommend when I get in these sticky situations? I say, get the ethical code, consult with your colleagues, if you have policies at your agency, look at those and consider all those things, be proactive, not just reactive. The importance of holding licensed healthcare-- the importance of holding licensed healthcare providers to professional code of conduct is illustrated by the statutes and regulations of Nebraska and surrounding states, so I've provided

this information as attachments. A South Dakota statute requires its psychology licensing board to adopt a code of conduct, mentioning by name the current code of ethics of the American Psychological Association. Missouri statute also names the American Psychological Association as a foundation of the state's ethical principles and rules of conduct for psychologists. Wyoming and Iowa psychology licensing regulations have adopted the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association. Moreover, Nebraska physicians are required by state regulations to follow their professional code of conduct, as referenced below, when defining unprofessional conduct, and you can see the reference there, a departure from or failure to conform to the ethics of the medical profession, which ethics are found in the American Medical Association's Code of Medical Ethics-- Ethics and Opinions. The standard of practice is to utilize a professional code of conduct based on general principles such as beneficence and nonmaleficence, benefit the public, take care to do no harm. It is also customary for the licensing board to determine when to adopt the most recent published code of ethics. In what I attached, page 2 is the statutory regulatory language from surrounding states, and then page 3 is where I pulled out from the regulations for Nebraska physicians and list is-- list the

American Medical Association's Code of Medical Ethics and Opinions. It just so happened that serving on the Psychology Licensing Board was Dr. Christy Rentmeester. She was then at Creighton, bioethicist, expert in it, and she sent a letter of testimony. She is currently the managing editor of the AMA Journal of Ethics. So I-- I refer you to her letter-- letter on this matter. I hope you support LB499. Thank you for your time.

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

B. HANSEN: Thank you, Chairwoman Howard. Thank you for coming. Maybe I'm just confused about this bill. What are the big changes between 2007 until-- to now in the code of ethics?

DANIEL ULLMAN: Well, we're operating under the 1992 code currently, so we wanted to update it. There was a huge change with the next revision of the APA code of ethics and-- in 2002. In fact, if you go on the Web site and you look at the columns, '92, 2002, huge changes that are very important. There's many things that have happened in the last 27 years: electronic medical records, telehealth, privacy and confidentiality, so critical. So they fine-tune those over the years but we are way backwards with '92. So these other states have updated them and-- well, they can continue to update them.

B. HANSEN: It just sounds like we're concentrating on-- at least that's what I've heard so far from testimony, from letters, from what Senator Morfeld, like some of the big changes that we were concentrating on is the topic of-- and maybe it's-- maybe it's just because of the conflict of the bill with other entities-- of gender identity and sexual orientation. Sexual orientation was already in there, right, from my understanding? You can't be discriminated based on that, you know.

DANIEL ULLMAN: It's in the '92-- it's in the '92 version.

B. HANSEN: OK, that was the '92. OK, so now we're adding in gender identity, or that's at least what the-- the-- the APA has in their-- the national?

DANIEL ULLMAN: It's been added in, yes, Senator.

B. HANSEN: OK. So that's what we're looking to follow, and that's kind of one of the differences that we would add in to this-- to it currently.

DANIEL ULLMAN: Um-hum, except I would say, Senator, that a code of conduct is not just those specific terms. There's principles, as I said before: beneficence, nonmaleficence, respecting people's dignity, justice. So when I get questions about, well, my particular situation doesn't seem to fit 3.02, I say, go to

the principles. And that is very helpful. That is what we-- I think we like about the APA ethical code is that it's a-- it's a living, breathing document. So if you're discriminating against people over gender identity, I think it's re-- I mean that would be helpful to use a more current code. But still the heart-- the beating heart of this thing is very similar. I screen-- I screen lots of complaints. I've never seen any complaint over this. This has been-- I've been kind of wondering about is like nobody said, well, I didn't get an adequate referral or there's been some issue regarding that. It's usually about family law, custody, these kinds of things, losing-- losing their liberties to some psychologist's testimony. So it almost seems like a solution in search of a problem. It seemed like some people were coming and saying, we need some protections. Protection from what? If you follow the ethical code, you make-- take due care not to harm people, there's not a problem. I hope that makes--

B. HANSEN: I-- I think it does. I think I'm just-- and I'm pretty sure maybe we'll wind up hearing about opposition testimony that--

DANIEL ULLMAN: Right.

B. HANSEN: I'm just trying to maybe get your opinion now, though, on the forefront, so--

DANIEL ULLMAN: Yes, thank you.

B. HANSEN: And this is maybe a little bit of what Senator Cavanaugh was talking about, too, is like, what is some of the opposition?

DANIEL ULLMAN: Right.

B. HANSEN: What's some of the issues with updating the code of ethics, maybe, why haven't we done it before?

DANIEL ULLMAN: Yes.

B. HANSEN: Because in my personal opinion, I believe we should not discriminate if somebody is looking for help, just--

DANIEL ULLMAN: Right.

B. HANSEN: --no matter what. I mean it sounds like I'm-- now what I am against is, you know, making a law that might then force somebody else to do something that they don't want to do based on religious liberties.

DANIEL ULLMAN: Um-hum.

B. HANSEN: But also I think everybody should need help.

DANIEL ULLMAN: Right.

B. HANSEN: And so if we're already at the capacity that someone can already refer somebody adequately if it is against their religious belief, I'm just trying to see where all this fits in, where the conflict is at. Again, I'll probably hear some of this again, I'm sure--

DANIEL ULLMAN: Right.

B. HANSEN: --a little bit right down the road. I'm just trying to get your opinion right now. I'm trying to get all my ducks in a row so when we make a decision what we're going to do, I can at least hear your opinion first on this, too, so I'm--

DANIEL ULLMAN: Yeah. Thank you. I-- I appreciate that.

B. HANSEN: --I think you're kind of squared away. Thank you.

DANIEL ULLMAN: The-- the one thing I would add is that being a licensed psychologist is a privilege, it's not a right. Being a licensed healthcare professional is a privilege, not a right, and it's a balancing act here, and I appreciate you mentioning it is a balancing act. I think the AMA, when you read their ethical opinions, addressed this very well. I was quite impressed with Christy Rentmeester. She's very articulate and very adept at answering. If she was here, she would do a beautiful job.

B. HANSEN: She's the one who wrote that letter, I think, right?

DANIEL ULLMAN: Right, right. And that was just-- we got lucky. And she is a public member serving and everybody on there serves-- they're not making an income or anything on this. She was a volunteer, so.

B. HANSEN: Thank you.

DANIEL ULLMAN: Thank you.

HOWARD: All right. Any other questions?

DANIEL ULLMAN: Thank you.

HOWARD: Seeing none, thank you for your testimony today. Our next proponent testifier for LB499. Seeing none, we have two letters for the record, Christy Rentmeester, representing herself, and Danielle Conrad of the ACLU of Nebraska. Is there anyone wishing to testify in opposition to LB499?

DARRELL KLEIN: Good afternoon, Chairwoman Howard and members of the Health and Human Services Committee. My name is Darrell Klein, D-a-r-r-e-l-l K-l-e-i-n, and I am deputy director of the Division of Public Health for the Department of Health and Human Services. And I'm here to testify in opposition to LB499. I am testifying to the bill. I haven't seen any of the-- the

amendments that's-- that have been referenced. And I-- I guess I would start out by saying, Senator Hansen, I think you encapsulated the issue very well in the last question you just asked. This bill defines a code of conduct for psychology as a version of the American Psychological Association Ethical Principles of Psychologists and Code of Conduct as adapted-- adopted, excuse me, by the Board of Psychology. The bill also prohibits a psychologist from accepting a professional role that is outside of the psychologist's scope of competence or when the psychologist has a conflict of interest that could adversely affect the services provided and the psychologist shall decline to provide services in a manner consistent with the code of conduct. Finally, the bill requires the psychologist to make a professional referral when he or she is unable to provide a professional service with an established patient. Section 1 of the bill defines the code of conduct as a version of the APA Ethical Principles, and adoption is achieved through regulations. Nebraska Revised Statute 38-126 states that the board may adopt rules and regulation to specify acts in addition to those already set out in 38-179 that constitute unprofessional conduct, and the department shall promulgate and enforce such rules and regulations. Some of these comments here are technical a little bit. I'll get to some of the more

philosophical things as well. Section 2 of the bill applies the code of conduct to psychologists and supervisees and in effect the bill would impose a statutory requirement to follow a version of the APA's principles and code with no certainty which version the board may adopt. The department is also concerned that the APA's Code of Conduct includes protected classifications that are not identified under federal law and, therefore, adopting this code would not be in compliance with current law. The seven protected classes under federal law are age, disability, national origin, race or color, religion, sex, and familial status. Section 2 at line 11 requires any supervisee shall conduct professional activities in conformance with the APA Code of Conduct adopted by the board, and the department's concern here is that psychologists may supervise not only psychologists but also other license holders such as mental health practitioners and alcohol and drug counselors. This language would hold those individuals to a code of conduct that is not within their professional license area. Section 2 at line 15 prohibits a psychologist from accepting a professional role that is outside the psychologist's scope of competence. I'll note that Nebraska Revised Statute 38-178 sets grounds for disciplines for professionals under the UCA, which includes practice of the profession with gross incompetence or gross

negligence and also in a pattern of incompetent or negligent conduct. The bill would be setting a different and stricter standard in statute for psychologists with no guidance from existing professional discipline case law. I'm going to skip over the next session-- section. It's rather technical and so is the next one. And I will note that since 2008 this issue has been the subject of multiple discussions, as you've heard earlier. Some stakeholders believe a referral should only be done by directing a client or patient to specific credential holders. Others from faith-based organizations believe the additional language should be added to include a list or directory of credential holders who may be able to provide professional assistance. The agency has been working with stakeholders, including the mental health practice areas, on this topic and we have language that I believe has been found to be acceptable to all of those parties. And the agency is adopting this language in regulations and will hold a hearing for public comment. That language is attached to my testimony for your convenience. And I will be happy to answer any questions, but I thought I would point out that the language right now in the-- that we would propose be dealt with in regulations prohibits discrimination and does require a referral. I believe that the-- the issues that we're talking

about here in the Code of Conduct of the APA are addressed by these provisions and it achieves the protection of making sure that services are provided to the folks who need them without imposing a requirement on a professional to essentially go against their conscience. So with that, I'll answer any questions.

HOWARD: Thank you, Mr. Klein. And before we get started, were you able to share these concerns with Senator Morfeld prior to the hearing?

DARRELL KLEIN: No, not specifically. I'm not sure how widely disseminated this language is. This is the result of-- of a lot of the stakeholders' things, but, no, I did not have the opportunity to directly share it with the senator.

HOWARD: Any of your concerns, not the language, but your concerns?

DARRELL KLEIN: Right, I'm-- my apologies. We're dealing with a lot of things at the same time right now. I was not able to do that.

HOWARD: I believe it. Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Howard, and thank you, Deputy Director Klein. So your-- you've outlined quite a bit here and from what-- the history we were given, I can only assume that Senator Morfeld is surprised by the amount of opposition that you're bringing, because it doesn't sound like this was the opposition in previous years. Has this been the opposition every year?

DARRELL KLEIN: I think that-- that the discussion back and forth with the stakeholders has centered around a recognition that folks may not be competent to practice based upon factors beyond their training, maybe held by-- by religious beliefs, and then what sort of subsequent action generally focused on referral needs to be required. So those concepts are definitely in this bill. The-- the comments that I made were based upon the language just contained in the bill so it may be different than the philosophical discussions that have-- that have been held.

CAVANAUGH: So when did you come to these issues?

DARRELL KLEIN: In reviewing the bill.

CAVANAUGH: When? Today?

DARRELL KLEIN: Previous.

CAVANAUGH: Yesterday? Last week?

DARRELL KLEIN: No, it was probably--

CAVANAUGH: Sometime after January 22?

DARRELL KLEIN: --probably a couple of weeks ago. I was-- I-- I didn't operate in a vacuum. I'm aware of the department's previous-- not directly responsible, but I've been aware of the department's work with the stakeholders and the issues involved. I won't say by both sides because I don't know if there are two sides, but I-- I've been aware of the issues.

CAVANAUGH: So I see from the date on here that this bill became public on January 22--

DARRELL KLEIN: Right.

CAVANAUGH: --which was quite a bit of time ago--

DARRELL KLEIN: Yeah.

CAVANAUGH: --in the world that we all are operating in. And two-- over two months later we're receiving this documentation of-- of the issues and hearing from you that Senator Morfeld was-- this was not brought to his attention.

DARRELL KLEIN: Yeah.

CAVANAUGH: I have a great deal of concern about that because this is a bill that's been brought up several years. This is a professional group that wants to update their code of ethics. And everyone that's been testifying so far in the history that we've been given has been on a specific issue, and you're now throwing in some additional issues, which is of course more than your prerogative to do. But I'm really concerned, and I hope you can speak to this, as to why your department would not be working more closely and diligently with Senator Morfeld and his staff to make sure that these issues can be addressed today, because your time is valuable, so is everyone in this room's time. And we are coming to the end of our hearings, and to not have that opportunity is-- is frustrating.

DARRELL KLEIN: The-- the department's past involvement has largely been focused on regulation, promulgation, so the-- the work with the stakeholders has been to try to come to common ground, as we were able to do with the mental health practice. And that is the department's proposal. Now the-- the timing, the-- the department has a process when we consider bills and generally-- I shouldn't speak for the legislative folks, but my observation is we generally deal with-- with the legislation in the order that it's set for committee hearing so that the resources and the analysis kind of flow along with the calendar.

So, yes, the-- the bill has been out for a while. That is my belief, that is my supposition as to the timing. I-- I can't categorically say that a bill hasn't come up because I haven't followed it that closely. But the prior work, we've generally been working with the professions because it's been in the regulation adoption arena. So that's why this would be a little bit different in terms-- particularly some of the technical comments in here, we're-- we're dealing with specific language that is proposed to be written into statute, so we bring these things up. In the reg adoption process, we get to write the language and then give it to other people to respond. So that's why there would be a distinction between what we might have done in the past and-- and then what we're doing with this bill.

CAVANAUGH: Well, it-- it just-- it seems that these are new issues that you're bringing forward very late in the process. And I just would ask that that be given consideration as to your-- your process and how you're handling interacting with the Legislature and a senator bringing a bill and a professional organization that it doesn't appear that you've had conversations with them either about your concerns.

DARRELL KLEIN: What-- most of the technical comments in this are-- are observations for your consideration on the law. I

don't think the-- the proposed language that we're showing from the mental health area regulations, that is-- that is not new. That-- that's language that is a result of the stakeholder back-and-forth between-- with those groups, and we believe it is a solution. We believe it's a solution that will allow practitioners to-- I believe in the actual code-- I believe the statement is called appropriate referral. And so I think that the main sticking point has been what is appropriate, and the solution that we're proposing to do in the regulations would require that a psychologist not discriminate against people and would require that a referral be made, and we attempt to set out what is appropriate, which could be to a specific practitioner or to a list or-- or roster. Speaking for myself, as a lawyer, and I have been in private practice, if someone would have come to me for a capital murder defense, I am allowed within my scope of practice by virtue of my license to engage in that representation. I would have said I am not competent. I really would not know who in my profession would be competent other than looking at the headlines. And-- and as a side note, gathering headlines isn't necessarily an indication of competence either. So I would probably have made a referral to the Bar Association for those attorneys who hold themselves out as competent and specialized in that area.

CAVANAUGH: But that is a referral.

DARRELL KLEIN: It is a referral, and-- and so we in our proposed resolution are also requiring referrals, so we're not really bringing up anything new.

CAVANAUGH: I just have one more question. In coming up with these suggested statute changes or code of conduct changes, did you consult with any members of the Nebraska Psychological Association?

DARRELL KLEIN: I did not personally. I know that the department has engaged with-- with the association and the board in the past.

CAVANAUGH: In the last two months in regards to this specific bill and this specific recommendation?

DARRELL KLEIN: I don't know for the-- for the program staff. I personally did not.

CAVANAUGH: Could you find out if anybody within the association was contacted to discuss these changes--

DARRELL KLEIN: I can do that.

CAVANAUGH: --because this has been a large-- call it a group project of a lot of different entities, and I feel like you're showing up late to class.

DARRELL KLEIN: We're-- we're delivering what we believe is a solution that we've come up with I believe before the bill was introduced.

CAVANAUGH: OK. Thank you.

HOWARD: Other questions? Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you, Dr. Klein, for being here, and thank you for your work on attempting to find a solution here. Can you let us know who the stakeholder group was that you were dealing with on this?

DARRELL KLEIN: I believe that-- yeah, I-- you know what, I'll get you the specifics. It would be better than me just talking about it. I know that-- that the board has been involved and the association has been involved too. But I can-- I can do better than that and I will get that to the committee.

WILLIAMS: In particular, I'd like to know if any of those testifying either in-- in support or opposition today are included on that list of stakeholders.

DARRELL KLEIN: Well, I believe we've heard from the board and-- but for persons-- you know, I-- I can find that. It's-- it'll be-- probably be a fairly lengthy list if you want individuals involved over the course of the years. But if you're interested more in the entities, that should be-- OK. Thank you.

WILLIAMS: Thank you.

HOWARD: Senator Cavanaugh.

CAVANAUGH: Could we also have that list broken out by who's been involved since this bill was introduced in January?

DARRELL KLEIN: Yeah, and that will be-- I-- I-- I took yours to be-- over the last two months to mean--

CAVANAUGH: Yes.

DARRELL KLEIN: --since the bill was introduced, yes.

CAVANAUGH: Thank you.

HOWARD: Have we started the rules promulgation process for the language that you've given us?

DARRELL KLEIN: This language, I-- I believe that for the-- for the mental health practice, the promulgation is-- it's been in-- in-- it was started a long time ago. I think you're probably

asking have you kicked it off again recently, so I'll get back to you on that too.

HOWARD: OK--

DARRELL KLEIN: Yeah.

HOWARD: --because I noticed your-- the statute that you're referring to has a "may" adopt rules and regulations--

DARRELL KLEIN: Yeah.

HOWARD: --as opposed to a "shall."

DARRELL KLEIN: Yeah, yeah, be--

HOWARD: Did we you remove your "shall" or was it always a "may"?

DARRELL KLEIN: I think that that probably-- probably would have been a fairly recent thing. The-- the concept behind the "may" and "shall"-- just to let you know, as a side note, I don't know why, I don't know how, but I got the top score in administrative law in my class at Creighton University Law School in 1982 and have then been practicing administrative law since then. I don't know if that makes me an expert or not, but we had a number of-- have had a number of statutes in the past that say the department shall adopt rules and regulations and then the

statutes themselves are fairly prescriptive. So our rules and regulations have-- have been repetitive. We're basically saying, wow, we don't really see anything to add, but we're required by law to do this. So one of the tenets of administrative law is you flesh out pieces that need to be there to-- to carry out the intent and the purposes of the law. So the-- the change from "shall" to "may" is to give us the authority to do it when it's necessary and not to require it when it isn't necessary. So it's really nothing more than that. A regulation is something that you intend to or may need to enforce on people, and so that's the distinction. If the statute has it, boy, it's going to be enforced. If there's something else that furthers the statutory scheme and grant that isn't addressed in statute, then you can flesh it out.

HOWARD: So a "may" doesn't make these regulations optional for you to promulgate?

DARRELL KLEIN: The-- the boards have under this statute-- there's-- there's a list of things at 38-178 that if you violate can get your-- your credential in trouble. And one of the lists is refers-- sorry. One of the subsets refers to 38-179 which is a listing of unprofessional conduct, so you-- you've got a whole bunch of stuff that can get you in trouble if you go astray of

it. Then you have a list of things that is defined by statute as unprofessional conduct. And then back here at 126 it says the boards may add to that list of unprofessional conduct. So the professional board basically has that power. If there are additional things that aren't covered in the statutes that they need set out as unprofessional conduct, that's the statute that gives them the permission, if you will, to set those out. Goes to a public hearing. Public comment can come in. And-- and then once it goes through the stages of reg adoption, it has the same force of law as the statute would.

HOWARD: So the "may" here means that you don't have to promulgate any regulations?

DARRELL KLEIN: If there was-- and again, this-- this statute is part of the Uniform Credentialing Act. So if there was a profession or occupation covered by the Uniform Credentialing Act and they looked at 78-- or 38-178 and 38 -179 and they said that has us covered, then that-- that board would not have to adopt regulations. If they saw something specific to their profession, they would have the authority to do so.

HOWARD: Any other questions? All right. Seeing none, thank you, Mr. Klein.

DARRELL KLEIN: Thank you.

HOWARD: Our next opponent testifier. Good afternoon.

TOM VENZOR: Good afternoon, Madam Chair and members of the Health and Human Services Committee. My name is Tom Venzor, T-o-m V-e-n-o-r. I'm the executive director of the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic church by engaging, educating, and empowering public officials, Catholic laity, and the general public. And I'm here today to express opposition to LB499 on behalf of the conference. I'm going to-- my testimony is a little bit longer than five minutes so I'm going to skip around. I'm going to skip some paragraphs here and there, so I don't mean to throw you off but just so you're aware of that. LB499 is a problematic attempt at resolving a decade-long stalemate to update the code of conduct for the practice of psychology. It's a solution in search of a problem and this problem being the undercutting of mental healthcare professionals who hold particular views of marriage and human sexuality which inhibits-- which inhibits their freedom to serve those who present with mental healthcare issues. The NCC has consistently held that a private association clearly has the ability to hold their private membership to whatever standards they deem important to their profession.

However, no private association has the right to impose these same standards through statutory law or regulation, at least not without first considering other public policy, legal, or constitutional concerns. Skipping to the next page, third paragraph for you. Section 2, subsection (4) raises grave concerns, and-- and I would argue that this is the crux of the concern, raises grave con-- concerns about ambiguity as to the meaning of "a professional referral." The concept of-- concept and meaning of referral has over the years been the core issue at the Board of Psychology, and I would mention, as well, the Board of Mental Health Practice. In a situation where a psychologist cannot provide a service requested by a client, such as same-sex relationship counselling or gender transition therapy, the question is what standard of referral is required of the psychologist or mental healthcare practitioner. We have long argued that in such a circumstance the practitioner must have at the least the ability to provide for an indirect general referral as opposed to a specific referral to a particular provider or providers. Without such a general referral standard, psychologists who cannot participate in a service they believe in their professional judgment is not in the best interest of the client's welfare and contrary to the practitioners sincerely held moral or religious beliefs are left in dire straits. First,

they will be at the whim of a disciplinary body which may or may not deem their referral to be professional based on the circumstances. This unnecessarily places a practitioner in ethical and legal limbo and violates the norms of predictability the law should strive to achieve. Second, if a referral standard is imposed by the government, the practitioner will be left with the decision to violate their conscience or leave the profession simply because they cannot provide a certain type of referral under very narrow circumstances, for example, again, furthering a same-sex relationship counselling situation or gender transition therapy. In a recent survey of nearly 3,000 members of faith-based medical associations, 91 percent of those responding said they would rather stop practicing medicine altogether than be forced-- to be forced to violate their conscience. Further, similar laws in other states which advance sexual orientation and gender identity nondiscrimination laws, which LB499 is attempting to do, have forcibly closed the doors of Catholic Social Services service providers in Michigan, Illinois, Massachusetts, San Francisco, and Washington, D.C. These closings all tell a story. When you enact-- enact laws that outlaw providers from exercising their traditional beliefs about marriage and human sexuality and use government coercion and sanctions to enforce a particular orthodoxy regarding these

matters, you effectively force professional and competent providers out of service and reduce access to care for those who most need it. Organizations like the Immaculate Heart Counseling Center of Catholic Social Services of the Diocese of Lincoln seek to serve those who are all-- who are most vulnerable and face difficult psychological realities. CSS has served thousands of patients and providers-- has served thousands of patients and providers and provides extensive pro bono services to low-income and working-class families. But advancing legislation like LB499 fundamentally undermines the freedom of their professional and competent-- of these professional and competent psychologists to serve those most in need. When our state already faces serious shortfalls in the area of mental healthcare, LB499 fails to be a prudent course of public policy. And to assure I don't send the wrong message, even if there were no shortfall of mental healthcare providers, LB499 would still fail as a prudent public policy as it doesn't adequately protect the public welfare by ensuring that the concerns and interests of faith-based psychologists are adequately met. For these reasons the Nebraska Catholic Conference respectfully encourages you to indefinitely postpone LB499. Thank you for your time and consideration.

HOWARD: Thank you. Are there questions?

CAVANAUGH: Thank you, Chairwoman. Thank you, Mr. Venzor, for being here today. Big day for you-- you've brought some of my constituents to the Capitol. Thank you for that.

TOM VENZOR: You're welcome.

CAVANAUGH: You-- you mentioned the Immaculate Heart Counseling Center for Catholic Social Services. Have they contacted you that they're-- they're experiencing problems with referring patients currently?

TOM VENZOR: Well, so-- yeah, so just to be clear in terms of how the NCC represents Immaculate Heart Counseling Center, so we represent the interests of the three dioceses, not just sort of in-- on the social issues but also sort of institutionally the concerns that they would have for their particular institution. So Immaculate Heart Counseling Center is sort of a social service of Catholic Social Services which would be sort of the equivalent of the Catholic Charities in the Archdiocese of Omaha. So they have not, you know, raised any issues, you know, that they have a-- that they have faced current problems of-- of referral issues. And to be clear, just so it's understood-- and we've had to hash this out, you know, over-- over the years to be clear, and since there's a number of newer senators on the committee, I think it's important to address again, is that

Catholic Social Services in their account-- their psychologists, their mental healthcare practitioners, you know, they're going to serve anybody under any number of circumstances. So, you know, if somebody comes in and they're same-sex attracted or dealing with gender identity issues but they're presenting with, you know, schizophrenia, bipolar disorder, they're presenting with depression, you know, suicidal ideation, they're going to be able to serve them on any number of those things, you know, to the level of their competence-- competence, like any, I think, other normal psychologist or mental healthcare provider. Really, the concern has been, from them and from other faith-based practitioners, is that if you get into a situation where you might be providing services to an established patient and all of a sudden that patient wants to talk about same-sex relationship enhancement therapy or maybe-- maybe they're dealing with some sort of a relationship issue or they want to further that-- that-- that relationship or they want to further, you know, a gender identity transition therapy that they're going through medically, that would be a scenario in which, you know, our psychologists would not-- for (A) they wouldn't think of the professional-- in their professional judgment it's in the best interest of that client. But secondarily, they would, you know, hold, you know, a certain moral and religious belief about

the nature of marriage and the nature of human sexuality, which from the perspective of the Catholic Church is very clearly delineated. And so in those circumstances they wouldn't be able to assist them in providing-- you know, furthering, you know, that relationship or that, you know, gender identity transition. And I think you've heard it here before. Not only would they not be able to provide that service, but in addition they're, you know, very unlikely to know who the go-to person on that would be. So again, our concern has always been that there's a-- when you 're-- when you're defining-- when you're establishing a term like "appropriate referral" the next question becomes, well, what does that mean? And if it's contingent on the circumstances, the next question is, well, who gets-- who's the arbiter and who gets to decide, sort of, did you provide an appropriate referral or not. I just-- let me finish this-- sorry. I don't mean to ramble but--

HOWARD: Actually it's senator's question--

TOM VENZOR: Oh, I'm-- I was just trying to finish a thought.

CAVANAUGH: Well, I-- I think you--

TOM VENZOR: But fair enough, yeah.

CAVANAUGH: I think you've thoroughly answered it. We heard from a previous testifier sitting behind you that when you-- you have to have a referral for any number of things, whether it's gender identity or anything else--

TOM VENZOR: Sure, um-hum.

CAVANAUGH: --consult with your colleagues, consult with the association. No one is expecting any one psychologist to know the appropriate person for everything that a patient might walk through that door with. That's why you would consult with other professionals. You don't have to make that referral right there in that moment. You can revisit it. So to-- back to your testimony about the issue with the referral process, in reading over Senator Morfeld's amendment here, I'll just read this sentence to you. "When such a licensee or certificate holder is unable to provide a professional service with an established patient, the person shall make a professional referral, taking into consideration the patient's condition, needs, abilities, and circumstances, in a manner that protects the safety of the patient and the public." Now your problem, you've stated, was that it's too specific and not general enough?

TOM VENZOR: So--

CAVANAUGH: But it seems pretty general and allows for a person to use their professional judgment and their ability to talk to other professionals in order to make an appropriate referral. That would be my interpretation of that. Are you hearing from Catholic psychologists within your community, your constituency, that this is problematic for them?

TOM VENZOR: Yeah, so-- yeah, great question. So really a lot of what you just said, I mean, we would largely agree with you. I mean the-- the concept of--

CAVANAUGH: My-- my question was, are you hearing from practitioners--

TOM VENZOR: Yes, the answer is yes because--

CAVANAUGH: --that this-- that this specifically is problematic for them to consult with their colleagues on a referral?

TOM VENZOR: So, you know, I think-- here's-- so let me-- I'm trying to gather my thoughts.

CAVANAUGH: Do you have-- do you have any people in your constituency who have a problem with connecting with other people in their profession to find appropriate referrals for whatever their patients need?

TOM VENZOR: So in a lot of circumstances what I've heard from our practitioners, and-- and even other practitioners that, you know, would disagree with us on this issue, is they may not know who the exact go-to people are on any number of issues. Perhaps they are--

CAVANAUGH: Right.

TOM VENZOR: --in the area of geriatric psychological care and they don't know who the best juvenile psychologists are. In the-- - in the--

CAVANAUGH: But they're-- they're a counselling service center, so there-- I'm assuming there's more than one person there that works at the-- like would take--

TOM VENZOR: But like-- like at CSS?

CAVANAUGH: At Immaculate and-- yeah.

TOM VENZOR: Yeah. There would be a--

CAVANAUGH: More than one?

TOM VENZOR: --team. Yeah, sure, uh-huh.

CAVANAUGH: And they-- they went to school with other people?

TOM VENZOR: Sure, yep, um-hum.

CAVANAUGH: So they would probably know those people.

TOM VENZOR: Yeah.

CAVANAUGH: And they participate in the board. So I just-- I'm-- I'm confused and I'm looking for clarification from you about the people that you represent, the psychologists that you represent, what the problem is, because it seems very comprehensive and thoughtful and considerate of the patient, of the practitioner, of the profession, what we're talking about here, and I just-- I'm-- what you're saying is the problem, I'm not hearing from you directly that you're hearing that from the people that work. The Catholic psychologists, are they saying, we can't refer people, we don't know how, we don't have access, we don't have colleagues in the field that can help us refer people?

TOM VENZOR: They're not saying that. They're saying that in a situation-- in a situation with a service that they themselves would not provide, a same-sex marriage relationship enhancement therapy--

CAVANAUGH: How about a divorce therapy?

TOM VENZOR: Yeah, I mean, that could be-- that could be a part of it.

CAVANAUGH: So if a-- if a heterosexual comes up and says, we want to get a divorce, we want to be counseled through, that through the process, we have children and we want to be counseled on how to separate for our family, and the psychologist does not agree with that at Immaculate Heart Counseling Center, what do they do?

TOM VENZOR: Yes so that's a good-- yeah, good question. I've never asked them specifically on the divorce situation, so I don't want to-- but I can-- I can touch base with them and get some more feedback on that particular circumstance. So I don't want to speak out of turn. But again, the issue would be is in a situation with a service that they themselves cannot provide, morally and ethically, and--

CAVANAUGH: Such as divorce counseling.

TOM VENZOR: Yeah, any number of-- yeah, number of issues. Here, we're talking about these particular issues. We would have a--

CAVANAUGH: We're talking about all of the issues. Let's-- let's just be clear. We're talking about all of the issues and this is one of all of the issues. We're talking about--

TOM VENZOR: Yes, it is.

CAVANAUGH: ---the issue of the referral--

TOM VENZOR: Yeah.

CAVANAUGH: --when the service is something that they don't agree with. So how do they handle-- because this isn't the only thing that will come through a psychologist's door. Any Catholic or otherwise, whether you're nondenominational, maybe you have somebody who comes in and you're an atheist and you're an atheist psychologist and your patient needs religious counseling. Should the expectation be that they tell them there's no God or should the expectation be that they refer them to another colleague?

TOM VENZOR: So again, going back to the issue here--

CAVANAUGH: Well, could you answer that question?

TOM VENZOR: There wasn't a question. There was a comment.

CAVANAUGH: Yes, it-- no. Should the expectation be, if an atheist practitioner has a patient that comes in and needs some sort of religious counseling, says that I'm losing my faith because of something that happened, should the expectation be that the-- the psychologist says, well, there's no God, or

should the expectation be that the psychologist says, I am not equipped to counsel you on this, let me refer you? Which expectation would you have for that psychologist?

TOM VENZOR: Well, so our psychologists I think would be asking that patient-- I mean so (1) our psychologists, you know, are going to be--

CAVANAUGH: What is your expectation of the atheist psychologist, if you wouldn't mind answering?

TOM VENZOR: My-- so you're asking me now to speak on behalf of atheist psychologists?

CAVANAUGH: Your-- your expectation of them.

TOM VENZOR: Like in a scenario where they have a patient who's questioning their faith?

CAVANAUGH: Yes.

TOM VENZOR: I-- I don't know what my expectation of them would be. I mean I would assume a lot of psychologists would answer-- ask any number of questions to sort of ask sort of--

CAVANAUGH: But they're--

TOM VENZOR: --what the issue is and where it's coming from, its genesis, the-- the attendant circumstances surrounding that crisis of faith, etcetera.

CAVANAUGH: But would your expectation be if they did not feel that they could adequately help that person because of a conflict that they have, because of their belief system, would your expectation be that they counsel them in their belief system or that they counsel them to seek a referral?

TOM VENZOR: Well, in that situation, if the atheist psychologist wasn't competent to deal with the issue. We've never argued that mental health practitioners, psychologists should not have to do any referrals whatsoever. That's never been our position. We've--

CAVANAUGH: No, we're talking about religious-- religious beliefs and-- and this is a-- atheism-- atheism is a belief system.

TOM VENZOR: Right. So our position has never been that that counselor should not have to do any sort of referral.

CAVANAUGH: OK.

TOM VENZOR: Our argument has always been that the type of referral that needs to be allowed for needs to be broad enough

so that it could be either general-- so in other words, I think you heard earlier one example would be perhaps they send them to a clearinghouse that the-- I don't know, the Department Health and Human Services has or the-- or some psychological association has that, you know, lists, you know, providers in the area or something of that sort. And again--

CAVANAUGH: OK. I appreciate that. I think that we're taking-- I-- I'm taking up time that perhaps some of my colleagues have questions, so thank you.

TOM VENZOR: Sure, yeah.

HOWARD: Let's see if there are other questions. Senator Williams.

WILLIAMS: Thank you, Senator Howard. I do have one quick question. Thank you, Mr. Venzor, for being here. And Dr. Klein did present a potential proposal that had been talked about with stakeholders. Have you had a chance to see that?

TOM VENZOR: If-- if that's the-- and I haven't seen the one right in front of you, but if that's the proposal from the Board of Mental Health Practice, in its language dealing with their nondiscrimination provision and section on referral, if that's what that document is, which I'm not sure if it is--

WILLIAMS: I'm not sure if it is either. [LAUGH]

TOM VENZOR: OK. So let me-- let me-- let me say this. I would-- I'll at least say this. So with the Board of Mental Health Practice we have been able to reach language that from my understanding the Board of Mental Health Practice is amenable to. And the various associations associated with the board of mental health practice, while not-- from my understanding, not thrilled about that language, are acceptable to the language. And my understanding is it that that-- I know what that language says. I'll sort of paraphrase it here. But basically it retains the current nondiscrimination clause but then it has a provision, a-- a referral clause that essentially says if you cannot provide services for a client, then you must refer, and that referral may be a direct or an indirect type of referral. So in other words-- in other way-- in otherwise-- in other words, you could send them directly to a specific provider or you could send them to, you know, a list of-- a list of providers or a region of providers, etcetera. So it would allow for the psychologist to have broad discretion in-- in how they're going to refer. And again, my understanding is everybody has sort of been amenable to that compromise and it's one of those compromises I think everybody goes away a little bit, you know, not totally satisfied with because they haven't--

WILLIAMS: That's usually what a compromise is.

TOM VENZOR: Right, yeah, sure, um-hum.

WILLIAMS: I'm just interested in that because at the end of the day I'm interested in a fix and I'm interested in not having to be here next year and the next year and having people, in particular, clients not be served in-- in a way that we all might think they should be served regardless of our-- our personal beliefs in these issues. So thank you for being here. I would appreciate if you would take a look at that, be sure that what I'm looking at [INAUDIBLE]

TOM VENZOR: Sure, is the same thing we're talk-- yeah, yep, yep. And so-- and to add to that, you know, I think we've reached an agreement with the Board of Mental Health Practice on that language that I've discussed. We haven't been able to reach that sort of same agreement on the Board of Psychology side. I think they-- again, not to speak for them, but I think still the fundamental issue for them not only is that referral language but also having sexual orientation and gender identity in the nondiscrimination clause. And that's where there's I think a real-- a deeper impasse as well.

WILLIAMS: Thank you.

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

TOM VENZOR: Yeah. Thank you.

HOWARD: Our next opponent testifier.

KAREN BOWLING: Good afternoon, Chair Howard and members of the committee. My name is Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g, and I serve as the executive director of Nebraska Family Alliance and am testifying on their behalf. 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 faith leaders. We oppose LB499 with the following concerns. Our primary objection is Section 2(4). The proposed language is vague, notably "professional referral." The Psychology Board licenses and regulates professionals who serve in secular settings as well as those who work in agencies and private practice that are governed by values derived from faith traditions. Acknowledge and respecting both does not have to be mutually exclusive. In 2018, NFA received contact by eight licensed, credentialed mental health providers concerned about proposed code of conduct Psychology Board regulations spring proposed in LB891. That would have been last year under statute

38-3129. The proposed legislation before you, LB499, still does not adequately address their concerns about adverse consequences. These professionals recognize the sensitivity of the matter and acknowledge that freedom-of-conscience protections affirm the need to provide quality care to patients. Conscience protections does not create an affirmative right to do anything that your conscience is calling you to do. Rather, it protects licensed mental health practitioners against being forced to affirmatively act and participate in activities which violate conscience. Following the 2018 hearing on LB895, we worked in good faith to draft agreeable referral language with Dr. Williams, two members of the Mental Health Board, Tom Venzor of the Catholic Conference, and myself. The professional referral language proposed in LB489 does not reflect the agreed-upon language. And I don't know, Senator Williams. I'll--. I have the language that we-- that we agreed upon to see if it reflects what was given to you earlier today. If for any reason a credential holder is unable to provide therapeutic services to a client patient, the credential holder must refer the client or patient to other credential holders. This may be done by directing the client patient to specific credential holders or to list-- or a list or directory of credential holders who may be able to provide professional assistance. It also includes the

referral must be documented in the-- in the client's record. Second, our concern of LB491 [SIC] is Section 1. The language proposed does not appear to alter a psychologist's ethical obligation or conduct that already exists in regulations, so we're-- we're not certain why that Section 1 is there. And finally, our-- our concern, as mentioned, is on the conscience protection of faith-based providers. The U.S. Department of Health and Human Services have had concerns and such that in January of 2018, the U.S. HHS announced the formation of a new conscience and religious freedom division in the Office for Civil Rights due to ongoing concerns. The division has been established to restore federal enforcement of our nation's laws that protect the fundamental rights of conscience and religious freedom, including mental-- mental health practitioners. Licensed mental health practitioners understand the intersection between the scientific and faith communities. Psychology as a science and faith traditions as theological systems should respect their different methodology and philosophical viewpoints. Because of these concerns, we ask that the committee indefinitely postpone LB499. Thank you for your time and I would answer any questions you may have.

HOWARD: Are there questions? Senator Cavanaugh.

CAVANAUGH: I don't have to go first. Thank you, Chairwoman. Thank you, Ms. Bowling, for being here today. So would you mind giving us a little background information on your educational background?

KAREN BOWLING: Sir [SIC] my education is not in public policy. I actually-- my education, I have a dual education, double-- double major in interior design and then also I did a double major in history--

CAVANAUGH: OK, thank you.

KAREN BOWLING: --um-hum, and was a business owner for 25 years.

CAVANAUGH: Fantastic. So you're not asserting to be a mental health practitioner.

KAREN BOWLING: No, no, no.

CAVANAUGH: OK. So I'm-- I'm looking at your testimony and you said that in 2018 you met with Dr. Williams and two members from the Mental Health Board but it doesn't state who those are.

KAREN BOWLING: No, and I did that intentionally because I would need their permission, I feel like, for it to be on public record. But I would be glad to-- to get their names if that would assist you.

CAVANAUGH: That would, thank you, and then Mr. Venzor, who was just here before you, and yourself. And I heard from an earlier testifier, who is a mental health practitioner, concern over two religious advocacy groups being present in the discussion of their code of ethics. It does strike me as unusual. Have you ever participated in that way?

KAREN BOWLING: We were involved beginning about April, May after last session in order to see if we could find a solution, knowing that this-- this has been an ongoing problem. So if you're referring to those conversations, yes. Have I made public comment to the Board of Psychology? Yes, the first time I think that I brought up questions goes back to 2008.

CAVANAUGH: I-- I guess my question is more have you presented counsel to the Department of Health and Human Services on codes of conduct, codes of ethics in the past?

KAREN BOWLING: No, we've been invited into that conversation to see if we could come upon agreed language.

CAVANAUGH: OK. And then you said that the language proposed does not appear to alter the psychologists' ethical obligation. So then why are you opposing it?

KAREN BOWLING: Well, I don't understand why it's in the-- in the statute. That's already a disciplinary action in place.

CAVANAUGH: OK.

KAREN BOWLING: So are we doing duplicity?

CAVANAUGH: That would be a question for Senator Morfeld, but my guess would be to make it clear in state statute in regards to this. You've-- finally, you said the proposed language is vague, notably "professional referral." Professional referral-- and we do have people in this room and on this side of the table who work in the healthcare profession. I think it's a-- it's a vague term, but those within the profession understand. And sometimes we can get too prescribed in our language and giving our professionals who have gone through rigorous education the opportunity to consult with their colleagues without us prescribing it as legislators, I would-- I would assume that that's what professional referral means. If that is the intent, would you have an issue with that?

KAREN BOWLING: I would like to see a definition of what "professional referral" means because--

CAVANAUGH: So you are in conflict with Mr. Venzor who thinks that it's too-- this amendment is too prescribed. You think it is too broad.

KAREN BOWLING: That's-- I did not say I was in conflict. I said I would like to see a definition.

CAVANAUGH: OK. I'm saying you're in conflict because he says that it's too prescribed and you say that it's too broad. So we have opposing opposition. Thank you for that clarification. I might have another question but I will--

HOWARD: OK. Are there any other questions from the committee? Senator Murman.

MURMAN: Thanks for coming in. Would you agree that freedom of religion is very important to our-- in our constitution and Bill of Rights?

KAREN BOWLING: Yes sir.

MURMAN: Great, thank you very much. I agree.

HOWARD: Any other questions, Senator Cavanaugh?

CAVANAUGH: Thank you. Senator Murman gave me the time to find what my other question was. You list-- you stated eight

licensed, credentialed mental health providers. Are those providers psychologists?

KAREN BOWLING: Four-- no, five of them are; three of them are mental health.

CAVANAUGH: OK. And the-- those that are psychologists that expressed concern about the code of conduct, is there a reason that they did not come and testify as experts in opposition?

KAREN BOWLING: I did not reach out to them this year. I did last year and several of them actually submitted testimony.

CAVANAUGH: OK. Thank you.

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

KAREN BOWLING: Thank you.

HOWARD: Our next opponent testifier. Is there anyone wishing to testify in a neutral capacity? Senator Morfeld, you are welcome to close.

MORFELD: I thought for sure this was to be consent calendar. OK, where to start here? So I-- I think that there's a few different things and I-- and I wrote down some notes and I want to make sure I get a few different things on the record. You know-- ah,

where to start? OK. I won't read through all the notes but I'll-- I'll- I'll note a few things. First, we're putting the ethics code on the statute because we can't move forward on regulations because the administration is holding regulations hostage until we take out the ethics code. So that's why we're putting it into statute in the first place. And I think that one of the thing that-- things that LB499 focuses on is patients' needs versus protecting providers' conscience. And I think that that should really always be the focus. I'm not saying that if somebody doesn't feel as though they're qualified or that they can't be able to provide divorce therapy, or whatever the case may be, that they have to provide that. What I am saying is that if somebody comes to you with a mental health need that's severe enough-- put yourself in that position for a moment-- that's severe enough to need to go to a practitioner and then that person says, number one, I can't provide services for you, and maybe they tell you because of a moral opposition to who you are or what you're doing or whatever the case may be, or maybe they don't, can you imagine them doing that and then saying, and I'm also not going to get you to a qualified individual so good luck? Even as an attorney-- and I didn't graduate from Creighton Law. I graduated from UNL Law. But even as an attorney, that's something I wouldn't do as an attorney and-- and I don't

understand why we would allow somebody to do that, particularly in a situation like that, that's even more precarious. I would like to emphasize-- and I double checked. That's why I was kind of going back and forth a little bit because I didn't want to get things wrong on the record. I'd like to emphasize that no agreement has been met. Despite the comments that were made by Mr. Venzor and the other testifier, no agreement has been made with any of the associations that they said that there was made in terms of referral. There has been some work done. There's been some progress in some people's eyes, but no agreement has been made. So that's just not true. In terms of the Catholic Conference saying that all these groups had to forcibly close their doors, nobody forced them to close their doors. They decided to close their doors. The government didn't come in and close their doors in those other states. They decided to close their doors because they didn't want to provide services, because they felt as though referring somebody apparently in those states, which these are very common standards, somehow violated the religious freedom and conscience. I think that if we were talking about the Islamic Conference or something like that coming in and having opposition or moral opposition to our current codes and regs and the ones that are up to standard on the national level, we wouldn't be sitting here in a ten-year

stalemate. So that's the really unfortunate part about this is that we have a politically powerful religious group that's come in. They have some concerns about this. They don't want to see these ethical standards put in place, even though it really isn't going to be violating anybody's conscience just to refer somebody on to-- to get some help to somebody who's more qualified or more capable of doing that. And they're holding it hostage. I haven't heard from one psychologist or one mental health practitioner that they're in opposition to this, so I would love to sit down with some of their folks and actually talk to some of those folks and talk about how my referral language, which is actually pretty broad if you read it-- I think Senator Cavanaugh did a little bit on the record-- how that somehow violates their religious conscience or freedom. The other thing that's important is by not adopting these ethical standards simply because of the referral piece, it also has broader implications. I think this goes to Senator Hansen's point a little bit in the sense that some of the other ethical considerations that are in there are, for instance, things dealing with telehealth, record-keeping standards, and privacy management. It's because our current standards are 27 years old. So these are pretty important. I've talked to people at the university saying it's tough to attract researchers and other

folks because they look at our standards they go, why are your standards 27 years old? That puts off alarm bells in their mind as to what's going on, on the state level. It certainly would be great if the Department of Health and Human Services had contacted me before the hearing. I could have maybe talked through some of those, so it's hard for me to address all of their concerns, other than I think that while I did not graduate in the top of my administrative law class, I think that history has proven itself that the Department of Health and Human Services needs more "shalls" than "mays" in most cases. And even when there are "shalls," they have a hard time really complying with that. So that being said, colleagues, I think it's important that we advance this legislation, it's important that we get up to code and standard, and it's important that we provide a baseline of care regardless of people's religious or moral issues that they may deal with from time to time so people can get care.

HOWARD: Any questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Thank you, Senator, for your testimony and for bringing this bill. You struck on something in your closing that I hadn't zoned in on, telehealth, which we know that behavioral health is-- there's a shortage in Nebraska,

and there's certainly a shortage in the more rural parts of Nebraska. So we can't move forward with regulation until we adopt the code of ethics, is that correct? I think that's what you said, that the department won't regulate until we adopt the code of ethics.

MORFELD: So the-- my understanding, and this is just from talking to the advocates--

CAVANAUGH: Sure.

MORFELD: I have not been in direct conversation-- is that from the Governor's Office or the Governor himself has said that they will not adopt the ethical standard-- they do not want to adopt the ethical standards at all.

CAVANAUGH: OK.

MORFELD: And-- and they won't adopt these other ethical standards. I don't know if it's just because of the referral piece. I'm guessing, from what I'm hearing behind me, that sounds like that's the big-- that's the big-- that's the big problem here. But they won't also adopt these other pretty critical ethical standards for them to move forward with their profession and be in modern practice.

CAVANAUGH: So we don't have a code of ethics in Nebraska as it relates to telehealth, as we're trying to move into telehealth.

MORFELD: They could talk about it a little bit further behind me, but that's my understanding is that we don't have a code of ethics with a lot of these modern advancements, and that's problematic for the profession and it's problematic for recruiting people to the profession, to Nebraska.

CAVANAUGH: And is it your understanding that if we were to increase our behavioral health through telehealth, that we would be able to see some cost savings in our delivery of behavioral health?

MORFELD: I think this committee would probably know better than me, but I think that common sense would say yes. And I think that the other thing that I do know is that we have a hard time attracting mental health professionals to the state and retaining them here. And I think that when you're looking at a state and looking at where you want to practice professionally, if I came here and saw that the ethical standards for attorneys hadn't been updated for the past 27 years and I was looking at a firm and looking at other firms in other states, I'd be wondering what's going on.

CAVANAUGH: Thank you.

HOWARD: Any other questions? Seeing none, thank you, Senator Morfeld.

CAVANAUGH: Thank you.

HOWARD: And this will close the hearing for LB499. We will have an Executive Session but we're going to take a break until 4:00 and reconvene at 4:00.