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in terms of saying I wasn't going to testify. I do just want to make it clear, the statutory provisions that are being altered are permissive in nature. The certification of trust came from the Uniform Trust Committee for the Uniform Trust Code that was adopted a number of years ago. We do not have any objections to removing this particular provision from the permissive components of that legislation. However, I did want the committee to know that it is important for us to have that tax ID number. There are simply other mechanisms by which we will get that tax ID number at the time of opening the account. Many times attorneys don't want to share or have their client share much of the trust agreement with the bank, but there are certain particulars that are necessary for the bank to know who the trustee is, who the successor trustee is, and so forth as outlined in the certification of trust, so it does provide an important purpose. Be happy to address any questions. [LB1083]

SENATOR PIRSCH: Thank you. Have you received any feedback from attorneys at the bar association? Have they, to your knowledge, formed an opinion on this? [LB1083]

ROBERT HALLSTROM: I'm not sure whether...I would assume they'd be here today if they had any position on the bill. [LB1083]

SENATOR PIRSCH: Very good. Thank you. Any other questions? Seeing none, thank you. [LB1083]

ROBERT HALLSTROM: Thank you. [LB1083]

SENATOR PIRSCH: Are there any other individuals here to testify in a neutral capacity on LB1083? Seeing none, Senator Dierks has indicated that he would waive his closing. We will therefore...that will conclude the hearing on LB1083. We will move on to the second bill scheduled today, and that is LB813. Senator Gloor, you are the sponsoring senator, open at your leisure. [LB1083]

SENATOR GLOOR: Good afternoon. Thank you, Senator Pirsch, fellow senators, committee members. I'm Mike Gloor, G-l-o-o-r. I don't know if any of you have...actually, I think I know at least one of you have dental insurance. I don't. I did have dental insurance once upon a time through my organization. In fact, remember the day that I sat down with my human resources department and put together what we called dental insurance. However, that reminded me of the fact that...as well as this bill, when it was first presented to me to consider introducing, that what we call dental insurance really is not insurance. In fact, under Nebraska statute, we don't refer to dental coverage as insurance. The coverage is referred to in statute as prepaid dental services because it's what it actually is. It's not insurance as we defined it. They'll be another testifier who I know will elaborate on this a little bit further, but let me talk about that specific issue at least from my perspective. When you're talking about medical or health insurance, when you purchase that insurance all medical procedures that you receive get some kind of

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reduction in costs that's set forth in the EOB or Explanation of Benefits. When you've spent enough money to meet your deductible, \$500, \$1,000--I'm the lucky person that has a \$5,000 deductible, but at that point in time, the insurance company pays for all or a large portion of your expenses beyond that point. The policy protects you from catastrophic illness or major medical expenses that are out there. It also brings into play the theory of moral hazard which is that if you've got some skin in the game, if you're paying some of the cost, you're more likely to be a discriminating purchaser of those services. On the dental side, however, it is just the opposite. Only certain services receive a reduction in cost, and once you receive the cap for those services, there's no further coverage. In reality, you prepay for the right to receive a certain amount of dental services and certain types of service. There is no insurance as we traditionally define it involved. It's a use it or lose it scenario. There's no coverage or protection against a major dental emergency. More for dental care, surprises beyond that tightly defined group of services will be covered. The idea of prepaid dental services started back in the 1970s. Some of you will recall that, at that time, they also talked about vision services. That still exists, but there are also prepaid legal services. That does not exist, at least didn't survive as I know it. The benefit was provided to large employers to provide as part of their cafeteria benefit plans. Employees would pay a certain amount each month, and they would receive \$1,000 worth of dental services a year through a reduction in the cost of certain covered services. Under these prepaid dental policies, there are covered services such as teeth cleanings, fillings, crowns. Noncovered services are generally services such as implants or veneers. Nationally, however, there is a...let me transition here and say, the basis behind this bill gets behind what's happening nationally, and that is at least one insurer has attempted to require that dentists provide reduced rates on those noncovered services. The problem is that these services are by their very nature already outside the contract; they're not covered services. The insurer is trying to piggyback discounts for uncovered services onto a contract that relates only to specific covered services. If this practice is allowed, it will result ultimately in cost-shifting, and I cannot tell you, based upon my history in healthcare, how much I dislike cost-shifting. When services that are not covered and are not paid by either the plan or the insured, the dentist will end up making up that money someplace else. Ultimately, that dental practice will have to charge individuals with no...who have no dental coverage more to make up the difference. In Nebraska, many dental practices and the number of patients with dental coverages in those practices can be as high as 50 percent. That means that 50 percent of those people who are uncovered by that dental plan will end up paying that increased rate as it is cost shifted to them. This practice has not started yet in Nebraska. There is no dental plan I know of that is attempting to treat noncovered services as a covered service, but since it's happening in other parts of the United States, this bill is preemptive. It would ensure that we never get to that point. LB813 makes it clear that prepaid dental plans may not limit the fee charged for noncovered services. A similar bill was passed in Rhode Island. It's been introduced in several midwestern states this year, and I'm told that the dental insurance company who initiated this practice, at this point in time, does not object to

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this bill. We'll see. I appreciate your attention to the testimony that will follow. I hope that we can advance the bill to the floor, and I'd be happy to try and answer any questions, although there will be other testifiers. Thank you. [LB813]

SENATOR PIRSCH: Very good. Thank you, Senator Gloor. Are there any questions? Seeing none, we will...and you'd like to close, is that correct? [LB813]

SENATOR GLOOR: Briefly. [LB813]

SENATOR PIRSCH: Yeah. We will move on to proponents then of LB813 at this point. Is there anyone here to testify in favor of? Good afternoon. [LB813]

**CAROLYN TAGGART-BURNS:** Good afternoon, Senators. Excuse me, I have a three- and a one-year-old, and, of course, I have a cold from them. My name is Dr. Carolyn Taggart-Burns. My last name is spelled T-a-g-g-a-r-t-B-u-r-n-s. I want to thank you for allowing me to speak to you today. I'm a general dentist, practicing in southwest Omaha. I've been practicing for eight years, but I bought my practice two years ago, so I'm relatively new as a small business owner. I'm on the board of directors for the Nebraska Academy of General Dentistry as well as the board of trustees for the Nebraska Dental Association. I speak in favor of LB813. As Senator Gloor mentioned, dental insurance is more appropriately prepaid dental service plan. Insurance in the name inherently leave the person to believe that they will have help at their lowest time. It inherently leads a person to think that during a catastrophic event, that their coverage of their dental plan will support them. This is, like he explained, the model of medical insurance where after the deductible is met, that either a hundred percent or almost a hundred percent assists in that catastrophic event. A prepaid dental plan is more like a gift card or, as I was kind of thinking, the coupon card that the local high school football team sold me as a fundraiser because the football team is making a profit whether I use it or not. The companies or providers are agreeing to take a discount, and then it's like a gift card in that the prepaid dental plan gives you a set amount on that card, and when you reach that after that you have no...no more coverage is available. Typically, a prepaid dental plan costs the consumer about \$40 a month and you receive about \$1,000 annual coverage. Many of you already know that the annual maximum hasn't really increased much since the inception; \$1,000 was a normal coverage in the seventies as well. The \$1,000 that the insurance company provides is paid toward covered dental services based on their contractual rate, meaning that if a cleaning costs \$100 or if a dentist is charging \$100, for example, the contractual rate may be \$65. That \$65 is then the portion that's applied to the \$1,000 that year. If a patient has a traumatic fall or requires moderate to extensive restorative dental treatment, the patient will achieve the \$1,000 and then be responsible for any services above and beyond that \$1,000. Especially for trauma, the \$1,000 can be met and exceeded quite rapidly. Covered services like Senator Gloor explained, are usually the two general cleanings per year and some restorative procedures like fillings and crowns, also taking out teeth

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is usually covered as well as root canals. What is usually not covered is what we term posterior composites which is a tooth colored filling in the back of part of a mouth, implants, veneering, bleaching, night guards for grinding, or temporomandibular disorder. And within the past few years, I've also noticed that some of the prepaid dental plans are not even covering some of the crowns or fillings, you know, depending on that corporation's program. There will come a time when the cost-shifting will occur if the insurers are allowed to limit the amount of charges for noncovered services. The cost-shifting will likely go to the uninsured or to other insureds. That means that the prices that the uninsured will pay will likely increase in order to cover the noncovered contractual rates of other companies. The only people that cost shifting and limitations to noncovered services is hurting in the long run is my patient. I'm new to dentistry, but already I have three generations of families in my practice, and I work hard to develop the relationships with my patients because I care about them, their oral health and their overall health. The costs of the dentist remains relatively the same and constant, but having additional discounts leveraged on dentists will cause the costs to be shifted somewhere within the dental practice and usually just shared by the patients. Prepaid dental plans and insurance companies are as integral to a dental practice as patients and dentists. So we want to work together as not to push any part of that equation out. The weakest link is the patient because they don't have a say in a fee, and they don't have a say in a contractual rate per se, so we have to look forward to helping them and treating them fairly and comprehensively. Thank you for your time and consideration and a positive vote for LB813. [LB813]

SENATOR PIRSCH: Thank you very much for your testimony. Are there any questions based on this? Just a couple of quick ones. Can you tell me what percentage of your patients currently use this kind of...come in with one of these type of setups, prepaid dental service plans? [LB813]

CAROLYN TAGGART-BURNS: I can estimate mine is a...I'm a new dentist, and so I've signed up for a lot of plans, so mine is higher than the average. Mine is about 75 percent, 60 to 75 percent. [LB813]

SENATOR PIRSCH: That means 70...like three out of every four who come in are coming..are utilizing the prepaid...okay so... [LB813]

CAROLYN TAGGART-BURNS: With a prepaid dental plan of some form or fashion. [LB813]

SENATOR PIRSCH: Okay. [LB813]

CAROLYN TAGGART-BURNS: It's...a lot of corporations are actually getting unique and some of my prepaid dental plans are actually...here's \$500. Do what you want. After that, you're on your own instead of even doing any write-offs or anything like that, so

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there's a lot of unique plans actually out there, too. But I'd say mine is a little bit higher than the average. [LB813]

SENATOR PIRSCH: Okay. And secondly, do entities exist in the United States anywhere today, and these are not prepaid dental services, but entities who just say, we're fee negotiators? We don't actually provide dollar one, but we go and negotiate for a price from the consumer. You pay us X amount, and we negotiate down your whatever it is...medical or dental costs or... [LB813]

CAROLYN TAGGART-BURNS: Not to my knowledge, but some...maybe some of the other testifiers might have some knowledge of that. I don't have any knowledge of that. [LB813]

SENATOR PIRSCH: Okay. Thank you very much. Senator Langemeier had a question. [LB813]

SENATOR LANGEMEIER: Thank you, Vice Chairman Pirsch. Just out of curiosity, if a family of four...if I came to your dental office and we decide, okay, we're going to go to cleanings every six months, and you told me it's X bucks...can I send you a check today for 150 bucks a month, and would you accept it, and then my kids come in and do their cleanings on schedules? Can I prepay to you, I guess, is my question? [LB813]

CAROLYN TAGGART-BURNS: Like...yeah, yeah. In my office, yes. Yes, they can do that. In other offices, I think it's yes and no, depending on the financial arrangements and such, but yes, in my office we do that. We practice that. [LB813]

SENATOR LANGEMEIER: Then my second question is, is if something happens to me and I come in and get a root canal, can I make a payment schedule out with you after the fact? [LB813]

CAROLYN TAGGART-BURNS: Well, it depends, you know what I mean? Yes...yeah, depends on the circumstances. [LB813]

SENATOR LANGEMEIER: Depends on the client, I'm sure, some... [LB813]

CAROLYN TAGGART-BURNS: Really, it...you know, if it's an emergency being seen during the week or something like that, and I have support staff there, then normally they arrange that at that time. [LB813]

SENATOR LANGEMEIER: Okay. Thank you. [LB813]

CAROLYN TAGGART-BURNS: Thanks. [LB813]

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SENATOR PIRSCH: Seeing no other questions, I appreciate your testimony here today, and we'll move on to the next proponent testifier. Thank you. Good afternoon, Doctor. [LB813]

**KENNETH HERMSEN:** Good afternoon. Good afternoon, Senators, and thank you for the opportunity to come to testify before you in support of LB813. My name is Ken Hermsen, and Hermsen is spelled H-e-r-m-s-e-n. I'm a dentist. More specifically, I am an endodontist, a root canal specialist, and currently am the vice president of the Nebraska Dental Association. I graduated from dental school 35 years ago, and I have spent half of my professional life in full-time private practice and the other half in academics, so I've seen basically both sides of dental practice. The Nebraska Dental Association has brought forward LB813 to discontinue the practice of some dental insurance companies who are seeking to mandate fees for dental procedures that they don't cover. Simply put, dental insurance companies are amending their contracts or putting new contracts before dentists that set fees that the dentist can charge not only for the covered procedures but also for the procedures that they don't cover. As you've heard from my colleague and from Senator Gloor, dental insurance can more accurately be defined as prepaid dental services. The way it works is that the insurance companies market and sell these prepaid dental services typically to large groups such as city or state employees, teachers' organizations, businesses, corporations, universities, and other organizational units. Obviously, the insurance companies do not provide the service themselves. To provide the service, they recruit individual dentists from within the community who agree to become part of a group of providers. Sometimes this group is called preferred providers. You have heard my colleague describe covered and noncovered services. The insurance company dictates to their group of preferred providers and to the employees of the organization or our patients, what services are covered, and what fees the dental providers will receive for their services. Dictating the fees allowed for noncovered services is strictly a marketing tool by the insurance companies to make their dental product appear more appealing to the purchaser of the prepaid dental service. Well, you might ask, why don't dentists just decide as a group not to participate as providers in these prepaid dental services? Or if they already participate, why don't they decide as a group to band together to negotiate with the insurance company for higher fees or expanded services? The answer to that is that if they did that, the courts have decided that they would be in violation of antitrust laws. In short, we're simply prohibited by law from banning together to negotiate terms. Gentlemen, dentistry is truly healthcare that works. Dentists, over the years, have held cost increases to a minimum unlike other areas of healthcare that have seen enormous increases in costs. As an example of this, you may have noted that Senator Gloor mentioned that when dental insurance was first brought on the scene back in the early seventies, typically there was a \$50 deductible and \$1,000 maximum. Well, here we are 40 years later, and we still have \$1,000 maximum on services. The dentists function as the CEO, the CFO, and the COO of their small businesses, and they do everything possible to keep the costs of providing high quality dental care with state-of-the-art

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technology under control. But as with any small business, overhead costs continually grow and by having additional unnecessary discounts leveraged upon dentists, would only cause these costs to be passed on to all patients resulting in cost-shifting which has been mentioned. Insurers may say that this practice will reduce costs to the patient. In actuality, controlling the amount allowed to be charged on a noncovered service is not the way to reduce overall cost to the patients. Overhead costs of a dental office are generally fixed, and they must simply be passed on. They don't disappear. They don't evaporate. I think we all acknowledge the importance of good oral health. In 2000, the U.S. Surgeon General stated that you are not healthy without good oral health. The fact that millions of productive hours are lost each year due to oral health conditions helps prove the importance of oral health care. We further recognize that financing oral health is an important part of assuring access to care, and that insurers and prepaid dental service plans are an important part of the preventive and treatment process. However, the dentists of Nebraska should not be asked to back plans that force cost shifting to patients who are without prepaid dental services and to those patients that are insured by companies that do not participate in this practice. Thank you for allowing me to address you in the support of LB813. [LB813]

SENATOR PIRSCH: Thank you very much. Are there any questions for Dr. Hermsen? Seeing none, thank you for coming down today and testifying, Doctor, and we'll move on to the next proponent testifier. Good afternoon, Doctor. [LB813]

RICHARD FITZGERALD: Good afternoon, Senators. My name is Richard Fitzgerald, F-i-t-z-g-e-r-a-l-d. I'm a dentist practicing in Omaha, and I'm here to testify as a proponent for LB813 as a board member for Delta Dental of Nebraska. I'm one of two dentists that sit on the Delta Dental Board. Delta Dental has passed a unanimous motion at our last meeting in December, saying that we do not approve of mandating the cost of noncovered services, feeling it just isn't fair. And Delta Dental has historically been one of the large...I believe by far the largest dental service prepaid dental service provider in the state of Nebraska. We have 748 dentists that are providers with Delta Dental. Two or three years ago, two large Delta plans...California Michigan began to advance a proposition that since their main competitor, Met Life, applied the maximum allowance in billing prohibition in the net worth contracts to all services even those that were not covered, that they were somehow...that the two large Deltas were at somehow a disadvantage, and they managed to get a...they managed to get a motion through at the national Delta meeting, saying that we would go ahead and dictate the noncovered services that all the Deltas would. Delta of Nebraska and Delta of Minnesota fought against this, and we have received, until 2012, we are able to not be in part of one of these people that dictates this noncovered services. And we're hoping that by getting something done through legislatures across the country, as is being done in a lot of states right now, that we'll be able to keep a level playing field, and that we will be able to simply compete on a level by providing better services, better coverage, and not use this gimmickry, and so for that reason, the board of Delta Dental is in favor of LB813

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and trying to keep the marketplace open. Thank you very much for the opportunity.  
[LB813]

SENATOR PIRSCH: I think we have a question from Senator Pankonin. [LB813]

SENATOR PANKONIN: Thank you, Senator Pirsch. Doctor, thanks for being with us today and your testimony. Since you've been involved with this Delta Dental and seem to know somewhat about what's going on around the country, do you know how many legislatures have passed similar legislation? [LB813]

RICHARD FITZGERALD: It's on the dockets in a number. I know in Minnesota, it's on the docket. It's happening in Missouri, but I don't know how far. It's been approved last year in Rhode Island, but I really can't tell you, and I apologize because I should have that information. A number of places. For some reason, everybody has gotten excited about it this year, and we're speaking for Delta just because we just would like to keep...we would just like to keep our competition level, and we really feel that this is just unfair so for Delta, that's what we're in favor of. [LB813]

SENATOR PANKONIN: Thank you. [LB813]

RICHARD FITZGERALD: Thank you very much, Senator. Anybody else? [LB813]

SENATOR PIRSCH: You bet. Any other questions? Seeing none, thank you very much, Dr. Fitzgerald. [LB813]

RICHARD FITZGERALD: Thank you very much, Senator Pirsch. [LB813]

SENATOR PIRSCH: And we will move on to any other proponents. Any other proponents at this time? Seeing none, we'll move on to opponents. Is there anyone here to testify against LB813? Seeing none, we'll move on to those who wish to testify in a neutral capacity. Are there any? Good afternoon. [LB813]

JAN MCKENZIE: Senator Pirsch, members of the committee, for the record my name is Jan McKenzie spelled J-a-n M-c-K-e-n-z-i-e testifying on behalf of the Nebraska Insurance Federation in a neutral capacity on LB813. I've had an opportunity to express our concerns to Senator Gloor, so he's aware, and, for the record and our concerns are relative to anything in an attempt to restrict the creation of the preferred provider networks or ways that we work, and while it doesn't affect us as insurers, some of my insurers are in the prepaid dental business. And so while we don't specifically oppose the bill, we're concerned about things that might erode networking which keeps costs down for consumers, and also the issue of whether or not if we lose those kinds of incentives, especially for children to receive or consumers to receive dental care. I think you've heard in the last five to ten years that we're now seeing a pretty direct connect



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between dental care and healthcare, in particular, high blood pressure and some other kinds of issues. So those are the concerns we wanted to get on the record, and I would answer any questions. [LB813]

SENATOR PIRSCH: Thank you very much. Are there any questions? Seeing none, thank you for coming down here today and testifying. [LB813]

JAN MCKENZIE: Thank you. [LB813]

SENATOR PIRSCH: Are there other individuals wishing to testify in a neutral capacity with respect to LB813? Seeing none, Senator Gloor, if you'd like to close. [LB813]

SENATOR GLOOR: Thank you, Chairman Pirsch, and I appreciate the opportunity. A quick answer to Senator Pankonin's question, there are 16 states now that are considering this, and that my understanding is the reason this has become a big issue is because it's become an issue...it's starting to happen in states and is being identified as a cost shift, and as a result of that, states are now beginning to take a look at introducing legislation that would restrict this practice from happening. It would be easy to say, well, the easy answer to this and one of the testifiers addressed this would be, if you don't like it then don't sign the insurance contract. But the reality is that when an employer offers insurance to their employees, usually it's a major insurer in a community, and when you have large insurers in a community regardless of what size community...it may be a number of major insurers in a community. As a dentist, you certainly want to be able to continue providing services to those patients if they've been your patients, or attract those patients if you'd like to add to your practice in some way, shape, or form so you sign up and you become part of that insurance plan. And then out of the blue, you find out if you're going to continue that contract, which now you've built a large portion of your practice around, by the way, all these other services that aren't covered, you have to accept some sort of payment schedule that wasn't part of the deal to begin with. And, again, my aversion to cost-shifting is you'll find yourself as a provider of those services trapped into agreeing to that, but that cost shift means that everybody is not covered, and that includes the state of Nebraska through the limited amount that we pay for Medicaid, \$1,000, but still that makes that \$1,000 not go as far as it did when the shift has then been over to everybody not covered. So I think the state of Nebraska also has some skin in the game on this, and that's one of the reasons that I also thought it was appropriate to introduce this bill. With that, I'll end and be glad to answer any final questions if there are any. [LB813]

SENATOR PIRSCH: Super. Thank you, Senator Gloor. Are there any follow-up questions? Seeing none, we will conclude then our hearing on LB813... [LB813]

SENATOR GLOOR: Thank you. [LB813]