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Health and Human Services Committee
February 01, 2018

[LB787 LB903 LB1044]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 1, 2018, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1044, LB787, and LB903. Senators present: Merv Riepe, Chairperson; Steve Erdman, Vice Chairperson; Sue Crawford; Sara Howard; Mark Kolterman; Lou Ann Linehan; and Matt Williams. Senators absent: None.

SENATOR RIEPE: Good afternoon. This is the Health and Human Services Committee on a Thursday afternoon. I'm Merv Riepe. I'm the chairman of the Health and Human Services Committee, and my district is number 12, and that is Millard, Omaha, and Ralston. We're going to start off by self-introduction of our, not only our senators seated here on the Health and Human Services Committee, but I'm also asking our two staff people to introduce themselves. So Senator, would you start us off?

SENATOR KOLTERMAN: Sure. Senator Mark Kolterman from Seward...oops, that wasn't supposed to come on (laughter). I'm from Seward, York, and Polk Counties.

SENATOR ERDMAN: Steve Erdman, District 47.

KRISTEN STIFFLER: Kristen Stiffler, legal counsel.

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

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

SENATOR LINEHAN: Hi. Lou Ann Linehan, District 39, which is the western part of Douglas County.

TYLER MAHOOD: Tyler Mahood, committee clerk.

SENATOR RIEPE: Okay, thank you. We also have our wonderful pages sitting back here, and we appreciate all the good deeds that they do for us. I anticipate that Senator Howard will be joining us momentarily, and we'll have her self-introduce once we get a break. Today the bills will be taken up in the order that they're posted outside of the room, and the hearing is your

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opportunity, as the public, to participate in the legislative process. We afford you the opportunity to express your position on the proposed legislation before us. The committee members will come and go during the hearing, or they may, because they will have to introduce bills or testify on other bills in other committees. It's not an indication of their lack of support or encouragement for your particular bill; it's just the way that the process works. You'll also see that many are working on laptops or iPads, and that's simply our movement, slow but sure, into the 21st century. There are some rules of engagement that I would ask all of you to participate, and the first one would be, is to please silence, or turn off, your cell phones. Two, if you are going to testify, please move to the front chairs as it gets closer, so that we can move the process along and make sure that everyone that wants to testify will have an opportunity. The order of testimony is that the senator who is introducing the legislation will make that introduction and has no time limit. Following that senator will be proponents of the bill, and opponents will follow that, along with those that are testifying in a neutral capacity. And we will have then any letters that are...have come in to us; we'll have those read in. And then the introducing senator will have an opportunity to come back and testify. We ask you, when you do come to the witness table--that's what we'll call it--we'll ask you to give us your name, spell your name, and tell us the organization that you represent. The reason that we do that is we capture all of this in the records for posterity. We will also be working on a five-minute clock, which means there will be four minutes on the green light, one minute on the amber and then, when the red light goes on, we will ask you to try to draw together. If it...we're not going to abruptly cut you off, but we will try to...I might come back and say: Could you please wrap that up? But you also, if you're testifying, you will find sometimes that you will have a...someone that will ask you an inquisitive question, and then you'll be able to kind of finish your thought. It's not our intent to cut people off and we're especially sensitive to people...we have some people come here to testify that come for hours, and we'd like to be respectful of that, as well. If someone is testifying in front of you, try to be as...staying away from redundancy as we possibly can. If you will not be testifying at the microphone but you 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. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We'll ask you, too, when you come up to testify...we have orange sheets. We'll ask you to make sure you have one of those filled out, and that will go to one of the pages, who will then give that over to the clerk, over to Tyler. If you have some handouts, please, we will need ten copies. Those handouts can go to the committee members, not to the full audience. But if you need copies, our pages are wonderful at that, and they will make that happen. I would like to, before we begin our...I'd like to ask Senator Howard, if you would please, to self-introduce.

SENATOR HOWARD: Sure. I'm Senator Sara Howard. I represent District 9 in midtown Omaha.

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SENATOR RIEPE: Thank you very much. With that, we are prepared to start, and today's first bill up is...for hearing is LB1044 and Senator Krist. Welcome. [LB1044]

SENATOR KRIST: Thank you. Good afternoon, Senator Riepe, members of the Health and Human Services Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB1044. LB1044 aims to better assist children in situations of abuse and neglect. This bill states that, regardless of whether DHHS or law enforcement is investigating any allegations of child abuse or neglect, the department will provide the necessary and appropriate social services to protect and assist the child to preserve the family structure. This comes as a recommendation from the Office of the Inspector General, who will follow me with some detail, and I thank Julie for her hard work. This small change that LB1044 provides will have a huge impact, as it allows children, whose cases are being handled by law enforcement, the care and help of HHS when it is available and when it is needed. Let me stop there and just say that, with every piece of legislation and every act, we find that there are things that need to be tweaked, they need to be changed. And I think that you'll have some testimony behind me that will talk about some recommendations or amendments to the act itself. And I would ask you to consider those, as well, in terms of an amendment, if that's necessary or possible. With that I'll sit and ask...answer any questions you might have. [LB1044]

SENATOR RIEPE: Okay, thank you very much, Senator. Senator Erdman. [LB1044]

SENATOR ERDMAN: Thank you, Chairman Riepe. Thank you, Senator Krist, for bringing that. So it says here, "without regard to whether the department or law enforcement" or they are "investigating the allegation." How would they know that there has been inappropriate things happen, if they're not investigated? How do they figure that out? [LB1044]

SENATOR KRIST: The bill suggests that they'd be given services, whether they're being investigated... [LB1044]

SENATOR ERDMAN: Right, right. [LB1044]

SENATOR KRIST: ...by law enforcement or whether they're in the care of HHS...so out-of-home care or in-home. [LB1044]

SENATOR ERDMAN: So right now they're getting services only when they are... [LB1044]

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SENATOR KRIST: When a...yes. [LB1044]

SENATOR ERDMAN: Okay. [LB1044]

SENATOR KRIST: And Julie can talk to you about how that's happening right now. [LB1044]

SENATOR ERDMAN: All right. [LB1044]

SENATOR KRIST: It was a recommendation in the report for our IG and, to my dismay, it was not answered. It simply said that...nonconcur, I think, is what it said. [LB1044]

SENATOR ERDMAN: Okay. [LB1044]

SENATOR KRIST: So this is...this is well warranted and, given our extreme attention to these matters in the last few years, it is just as I said--a necessary tweak. [LB1044]

SENATOR ERDMAN: Thank you. [LB1044]

SENATOR KRIST: Thank you. [LB1044]

SENATOR RIEPE: Senator Howard. [LB1044]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you for visiting with us today, Senator Krist. We have a letter from the Child Advocacy Center, so I'd like to include it. Are you comfortable with an amendment like that? [LB1044]

SENATOR KRIST: Absolutely, and I think that...that's one of many. I think Voices also has some suggestions, in terms of amendments coming forward. So I'd ask the committee to look at those, in terms of upgrading the act to a proper level. [LB1044]

SENATOR HOWARD: Okay, thank you. [LB1044]

SENATOR KRIST: Thank you. [LB1044]

SENATOR RIEPE: Are there other questions? And I assume you'll stay for the closing?
[LB1044]

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SENATOR KRIST: Yes, sir. [LB1044]

SENATOR RIEPE: Okay. [LB1044]

SENATOR KRIST: Because I'll be here for the next one, too. [LB1044]

SENATOR RIEPE: Yes, sir. Thank you. [LB1044]

SENATOR KRIST: Thank you. [LB1044]

SENATOR RIEPE: We're going to take proponents at this time. Ms. Rogers, if you would state your name and spell it, please, and share... [LB1044]

JULIE ROGERS: (Exhibit 1) Thank you. Good afternoon, Senator Riepe and members of the Health and Human Services Committee. For the record, my name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as the Inspector General of Nebraska Child Welfare. The Office of the Inspector General of Nebraska Child Welfare, or OIG, provides an independent form of inquiry and review of the actions of individuals and agencies responsible for the care and protection of children in the Nebraska Child Welfare and Juvenile Justice systems. We carry out this charge through investigations into concerning incidents and allegations of wrongdoing and improper performance. In its investigations we identify recommendations for system improvement. LB1044 addresses a recommendation in one of our most recent reports. The bill is intended to ensure all child victims of abuse and neglect receive the services and assessment they need to be safe and well. In December, we released a summary report of an investigation into the sexual abuse of state wards, youth in adoptive or guardian homes, and youth in residential placement during a roughly three-year span, from July 2013 through October 2016...in your packets I've handed out, an excerpt of that summary that relates to this bill. A report included a review of an investigation into child sexual abuse allegations and recommendations on how to improve those investigations. Investigatory responsibilities in cases of child abuse and neglect are divided between DHHS and law enforcement, under Nebraska's current statute. Law enforcement is charged with investigating for the purpose of instituting juvenile or criminal court proceedings and taking immediate action to protect children. DHHS is required to both investigate for the purpose of assessing each report of child abuse or neglect, to determine the risk of harm to the child involved, and provide such social services as are necessary and appropriate under the circumstances, to protect and assist the child and to preserve the family. We found that, due to agency policy and practice, this division of responsibilities might not be working as intended, leaving some child sexual abuse allegations to never be investigated and leaving some children or families in need of services behind. I've also provided the committee a handout that outlines a simplified version of DHHS's current process for screening allegations it receives on the Child

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Abuse and Neglect Hotline. The screening process is used to determine whether or not a DHHS investigation is required. As you can see, for DHHS to investigate, a few conditions must be met: First, the allegation must meet the adopted definition of abuse or neglect. Second, the allegation must involve someone who currently has access to the child or is part of the child's household. If the allegation meets the definition of abuse, but the alleged perpetrator no longer has access to the child, the report is given to law enforcement. DHHS does not conduct any assessment or follow-up with the child victim or their family. In our report related to sexual abuse, in my office's judgment, their current policy and practice on reports referred to law enforcement does not meet the statutory requirement to assess for risk of harm and provide needed services. We recommended that DHHS update the current practice on reports referred to law enforcement, to meet current requirements and to better serve children and family. DHHS assured us that their current protocol fulfills their statutory obligations. I continue to believe that how DHHS approaches sexual abuse reports referred to law enforcement is inadequate to meet both legal requirements and the needs of child victims and families. We...in addition to the cases reviewed at our office, after our report was finalized we continued to see cases where a DHHS response to abuse allegations is needed, but none is provided because the report was referred to law enforcement only. For example, there have been cases of youth abused while placed in a facility. A staff member, for example, sexually abuses the youth and then is fired. Or another youth sexually abuses the youth and is removed from the placement. Since the alleged perpetrator no longer has access to the child, DHHS does not assess for, or provide services to those who are not already state wards. The victim does not receive any assessment from DHHS to see if services are needed to assist them in their recovery from the abuse. There is an example of a youth adopted from the Child Welfare System included in our report, who sexually abused not only his sibling, but over ten other children who no longer lived in his home. Some of these children had been foster children. Again, DHHS followed their policy in this case and did not follow up to see what services were needed for the victim. I also know another case that came to our attention this fall. A report was received by the Hotline that a child was sexually abusing a cousin who lived in a different. The report was referred law enforcement, but the case was not prosecuted. DHHS did not provide any assessment or services to either the cousin or the child who was the perpetrator, and seven months later the child perpetrator was found to be sexually abusing his three siblings. And I see my time is up, so I'm happy to answer any questions. [LB1044]

SENATOR RIEPE: And we may give you a...get a question here that will help you... [LB1044]

JULIE ROGERS: Okay. [LB1044]

SENATOR RIEPE: ...proceed on if you have some salient points that you really want to make up. Senator Crawford. [LB1044]

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SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you, Ms. Rogers, for being here today. I appreciate your work and the flowchart. I just want to make sure I understand one piece, and it follows up on the...what you were just discussing. [LB1044]

JULIE ROGERS: Um-hum. [LB1044]

SENATOR CRAWFORD: So you can elaborate on it a bit more. If it goes to law enforcement, and law enforcement doesn't move forward,... [LB1044]

JULIE ROGERS: Um-hum. [LB1044]

SENATOR CRAWFORD: ...is there any process to bring it back into the system, or is it just dropped off at that point? [LB1044]

JULIE ROGERS: It is brought back to DHHS's attention for the purpose...for the purposes of the Central Registry, to say that the allegation is unfounded because law enforcement has not...is declining to investigate or has found nothing. So they try and close the loop for...to say whether that perpetrator should be on the Central Registry or not. [LB1044]

SENATOR CRAWFORD: Okay. [LB1044]

JULIE ROGERS: But only for that purpose. [LB1044]

SENATOR CRAWFORD: So there's no follow-up in terms of needed services... [LB1044]

JULIE ROGERS: That's correct. [LB1044]

SENATOR CRAWFORD: ...if it goes through that direct...that direction. [LB1044]

JULIE ROGERS: Yes, if it only goes to law enforcement. Yes. [LB1044]

SENATOR CRAWFORD: Only goes to law enforcement. Thank you. [LB1044]

JULIE ROGERS: Um-hum. [LB1044]

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SENATOR RIEPE: Okay. Are there additional questions? Seeing none, thank you very much. [LB1044]

JULIE ROGERS: Thank you. [LB1044]

SENATOR RIEPE: Additional proponents, please. [LB1044]

SARAH HELVEY: Good afternoon. [LB1044]

SENATOR RIEPE: Welcome. [LB1044]

SARAH HELVEY: (Exhibit 2) Chairman Riepe and members of the Health and Human Services Committee, my name is Sarah Helvey. That's S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare program in Nebraska Appleseed. We support that LB1044 would address the recommendations of the Inspector General, for DHHS to assess for risk of harm and provide for reports of child sexual abuse referred for law enforcement investigation alone. We believe such assessments for risk of harm and need for services is within the duty of HHS, and we support that LB1044 would further clarify this in statute. We note, however, that the statute amended by LB1044 references situations involving alleged out-of-home abuse or neglect, and we believe HHS's obligation should extend more broadly. Specifically, the Strengthening Families Act Committee of the Nebraska Children's Commission recommended, in their 2017 report, that HHS should respond to reports of trafficking with an investigation within 24 hours, whether or not the alleged trafficker is a third-party perpetrator or a caregiver, and whether or not the alleged trafficker is living in the home. I want to note, for the record, that I serve as the cochair of the SFA Committee, but I am testifying today solely in my capacity on behalf of Nebraska Appleseed. Therefore, on behalf of Appleseed, we would respectfully offer for consideration that language be considered to broaden the scope of LB1044 to include similar circumstances. And in closing, we just want to thank Senator Krist and the committee, as well as the Inspector General, for your efforts on behalf of children in Nebraska, and I respectfully request that you vote to advance LB1044 out of committee. [LB1044]

SENATOR RIEPE: Okay. Let's see if we have some questions. Are there questions from committee members? Seeing none, thank you very much for coming today. [LB1044]

SARAH HELVEY: Thank you. [LB1044]

SENATOR RIEPE: Additional proponents. No one else speaking in support? Okay, let's go to any opponents, any in opposition. Seeing none, are there any in a neutral capacity? Seeing none,

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Tyler, let's go, while Senator Krist is coming back to the chair...let's go through any letters that you have, please. [LB1044]

TYLER MAHOOD: (Exhibit 3) All right. I have a letter from...signed by Ivy Svoboda of the Nebraska Alliance of Child Advocacy Centers, in neutral. [LB1044]

SENATOR RIEPE: And that's it? Okay. Senator Krist, welcome back for your closing remarks. [LB1044]

SENATOR KRIST: Thank you. Just a quick closing remark, and that is if you'll refer to the fiscal note, that it doesn't have one, which is a good thing. And I ask you to advance the bill, again with the amendment...consider the amendments that have been given to you, as well. Thank you. [LB1044]

SENATOR RIEPE: Okay. Are there...Senator Linehan. [LB1044]

SENATOR LINEHAN: Yeah, thank you. It's interesting because I was going to ask you that same question: How could...how could there be no fiscal note? [LB1044]

SENATOR KRIST: I said two rosaries (laughter) just before. [LB1044]

SENATOR LINEHAN: Ah, I didn't know that was the secret. [LB1044]

SENATOR WILLIAMS: Should have done three (laughter). [LB1044]

SENATOR KRIST: It leads into my next bill, but I honestly, I think they realize that it is a responsibility and that the workload, in terms of what needs to be done to protect our kids, is fundamentally important. And we have... [LB1044]

SENATOR LINEHAN: And they're not here against it, so... [LB1044]

SENATOR KRIST: Pardon? [LB1044]

SENATOR LINEHAN: They're not here testifying against it either. Okay. [LB1044]

SENATOR KRIST: And that's a good thing, too. [LB1044]

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SENATOR LINEHAN: Thank you very much. [LB1044]

SENATOR KRIST: You bet. [LB1044]

SENATOR RIEPE: Any other questions? Seeing none, thank you, sir. [LB1044]

SENATOR KRIST: You bet. [LB1044]

SENATOR RIEPE: And you can stay right in the chair... [LB1044]

SENATOR KRIST: Okay. [LB1044]

SENATOR RIEPE: ...because our next bill up is LB787, also Senator Krist. So you may proceed on, sir. [LB787]

SENATOR KRIST: (Exhibit 1) Again for the record, good afternoon, Senator Riepe and members of the Health and Human Services Committee. My name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. And I appear before you today in introduction and support of LB787. I'm going to read my prepared remarks and then I have several other items I'd like to bring to your attention. LB787 ensures those in religious orders and who have taken a vow, a lifetime vow of poverty, receive the proper medical care and assistance they deserve. For the purpose of the Medical Assistance Act, this bill defines patrimony as "any funds held on behalf of, but not available for expenditure by, a member." Let me repeat that again: "any funds held on behalf of, but not available for expenditure by, a member of a religious order who has taken a...vow of poverty." By clarifying what patrimony is, LB787 simplifies the enrollment process for a vulnerable population. Furthermore, LB787 states that DHHS will consider patrimony unavailable to the individual when determining a person's income eligibility for medical assistance. Patrimony funds are not able to be used for personal support and maintenance and, therefore, should not be a factor when deciding the eligibility. This small change is vital to making sure again that those folks who most need the aid in the Medical Assistance Act receive it. This book, I'm sure, is familiar to most of the lawyers in the room; but I think it's important that we go back to the fundamental principle of patrimony as it's defined in the Black's. Essentially--now the print is getting too small so I got to put some glasses on--patrimony as defined in "1. An estate inherited from one's father or other ancestors; legacy, or heritage. 2. Civil law. All of a person's assets and liabilities that are capable of monetary valuation and subject to execution for a creditor's benefit. 3. Patrimonium." You have that definition. I made you a copy of it right out of the book. Let me tell you a story. It's an 85-year-

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old nun who was eligible and certified for her services and a year later the department said, no, wait a minute. You're not eligible because you gave \$47,000 to that organization that you served 60 years ago. So the answer in the hearing was, when it was contested, have sister renounce her vows, spend down the money and then she'll be eligible. Renounce your vows. Besides that being guaranteed as a freedom of religion in the First and the Fourteenth Amendment to the Constitution, I think it's unconscionable that we should ask somebody who has served in that capacity for over 60 years who gave that money away 60 years ago to be asked to renounce her vows, spend down the money, and be eligible. The Black's Law Dictionary also applies to us. And Senator Kolterman will attest to, I'm sure, in Exec Session, there's a five-year look back. So anybody who is doing estate planning that doesn't want to spend your hard-earned money to be spent on you in your waning days in a retirement home can zero out your assets. That's the concept of patrimony. Now I bring it to your attention again. This nun gave this money away 60 years ago so it more than qualifies for that 5-year look back. I just find the whole situation intolerable. I am a practicing Catholic, have been my whole life. And for someone to suggest that at that point in her life, suffering from Alzheimer's, she should be asked to renounce her vows and pay down the \$47,000 so she can be, again, eligible for the services that she had enjoyed for a year in this act. I'll sit for any questions if you care to. I know there's some folks behind me that really want to talk to you. [LB787]

SENATOR RIEPE: Senator Kolterman. [LB787]

SENATOR KOLTERMAN: Thank you. Thank you, Senator Riepe. Thank you for bringing the bill, Senator Krist. Look at that fiscal note. You didn't come out quite as good on that one. You didn't say enough rosaries I guess. [LB787]

SENATOR KRIST: I guess not. [LB787]

SENATOR KOLTERMAN: How are they basing that fiscal note? [LB787]

SENATOR KRIST: I don't know. And I...let's just say that there are three orders...let's just say it's just the Catholic orders that I'm bringing to you. Three women...three women's orders of nuns and three men's, which are monks or whatever. I don't understand the fiscal note. I think that we've had many fiscal notes that have been interestingly concocted. But I think this is one of those...I don't want to say that people are intentionally trying to cut our overhead expenses in Medicaid and Medicare, but I don't know what other rationale there would be. [LB787]

SENATOR KOLTERMAN: Well, first of all...can I continue on? First of all, wouldn't...they would already be included in Medicaid because they're already taking the vow of poverty so we're not adding new people to this. [LB787]

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SENATOR KRIST: Correct. It's a finite base. [LB787]

SENATOR KOLTERMAN: So that would mean to me that there shouldn't be any fiscal note. [LB787]

SENATOR KRIST: One would think. Maybe they should have swapped the two fiscal notes as Senator Linehan brought up. I don't know. I did ask the question and they assured me that that's what they would have... [LB787]

SENATOR KOLTERMAN: And typically, you know, all these people, based on their incomes, would qualify for Medicaid if they so desire. [LB787]

SENATOR KRIST: Right. [LB787]

SENATOR KOLTERMAN: And some like the priests in the diocese have their own health insurance and own retirement. But I assume the convents don't have that type of privilege open to them. [LB787]

SENATOR KRIST: One of the representatives for the order will be up to talk to you, and you can certainly pose that question. [LB787]

SENATOR KOLTERMAN: Okay. [LB787]

SENATOR KRIST: Just the fact that the suggestion was made in the hearing, again, is to me unconscionable. [LB787]

SENATOR KOLTERMAN: Thank you. [LB787]

SENATOR KRIST: Thank you. [LB787]

SENATOR RIEPE: Senator Erdman. [LB787]

SENATOR ERDMAN: Thank you, Senator Riepe. So, Senator Krist, I see they say 305 people could be eligible I think they said. [LB787]

SENATOR KRIST: Um-hum. [LB787]

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SENATOR ERDMAN: Is that based on how many people they've turned down or where do they get that number? Are they just guessing at it or what? [LB787]

SENATOR KRIST: No. I think it's the number of people that they've considered for certification so they have the data to say that it would be five (sic) people. [LB787]

SENATOR ERDMAN: Okay. [LB787]

SENATOR RIEPE: Question? Senator Howard, go ahead and then I'll ask mine. [LB787]

SENATOR HOWARD: Actually, it piggybacks on what Senator Erdman was asking. So my understanding was that they were all already in the program and then in January they started...December or January they started sending them letters saying you're not actually... [LB787]

SENATOR KRIST: That's correct. [LB787]

SENATOR HOWARD: ...poor. You're going to come off the program but they're not off the program yet. They will be so. And so these funds have already been budgeted and expended for these individuals at this time. [LB787]

SENATOR KRIST: That would be my understanding. Having been on this committee a few years ago, that would be my understanding of the budget process for DHHS in this particular area. [LB787]

SENATOR HOWARD: Right. And they're already into the capitated payments for managed care companies, too, for the next fiscal year. Okay. All right. Thank you, Senator Krist. [LB787]

SENATOR KRIST: Thank you. [LB787]

SENATOR RIEPE: A question I have on this one is this is based on the individual sister in this case. But, for example, I think the Sisters of Mercy when the Immanuel thing was formed into Alegent, I think the Sisters of Mercy at least as an order received a cash settlement in that process. But it...so it's...but that wouldn't apply to the individual. [LB787]

SENATOR KRIST: That's right. [LB787]

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SENATOR RIEPE: That's the organization. So that would...still you're saying the individual sister, who does have a vow of poverty. [LB787]

SENATOR KRIST: All right. So entering the sisterhood, they would have had to have given away their worldly possessions. In this case, let's call it \$47,000, she did it 60 years ago. She's had no access to the money and they're saying that she is personally ineligible, not that the order itself is penalized in any way. [LB787]

SENATOR RIEPE: I also understand that, at least my experience with the good sisters was that while the sisters take a vow of poverty, the priests sometimes do not or often do not. [LB787]

SENATOR KRIST: Yeah. I was... [LB787]

SENATOR RIEPE: That I found interesting. [LB787]

SENATOR KRIST: In my research, there were three men and three women's orders that would qualify because of a vow of poverty. And I know that many of my priest friends in the diocese both have retirements and have healthcare systems and are able to keep their personal wealth to some extent. Most of them are very...they're great benefactors in terms of giving it out, but that's a whole different issue. [LB787]

SENATOR RIEPE: Senator Williams. [LB787]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Senator Krist. Help me through another fact situation. I just simply have no experience, with either yourself or somebody that might follow you, what if you do have the situation where somebody that has some property, let's not have this be your 85-year-old, somebody else and they take the vow of poverty, go through the process. And then at some point in time, for whatever reason, decide to leave the church or change their structure. Is there a possibility that they get that money back that they have given over at that point? [LB787]

SENATOR KRIST: I believe that it is order dependent and it's what contract you would have signed in terms of coming in and giving away and taking the vow. I do think that there are nuns and priests who leave the orders and I think it's dealt with differently in each one. But I think that question you could pose and the lady that will follow me... [LB787]

SENATOR WILLIAMS: I'd like to have some discussion... [LB787]

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SENATOR KRIST: Absolutely. [LB787]

SENATOR WILLIAMS: ...about that situation too. [LB787]

SENATOR KRIST: I will say that in two other cases that we cite, when I looked into it, California, for example, a nun who had been in the order for I think 35, 40 years was the last heir and she inherited this beautiful home and an estate and she, of course, passed it through. That can happen later on in life as well so it's not just initially when you become or you take your vows. It can happen throughout your life in the convent. [LB787]

SENATOR RIEPE: Is it true...this is most...this has to do with long-term care. This doesn't have to do with Medicaid in the Heritage Health managed care side of it. [LB787]

SENATOR KRIST: That's my understanding. [LB787]

SENATOR RIEPE: Okay, that's mine as well. Okay. Are there other questions? Thank you very much. [LB787]

SENATOR HOWARD: Actually, for point of clarification, the fiscal note from the department talks about managed care cap rates and the managed care for Heritage Health. [LB787]

SENATOR RIEPE: Oh, it did? Okay. [LB787]

SENATOR KRIST: Again, I think that you could ask that question of the lady that follows me. [LB787]

SENATOR HOWARD: Thank you. [LB787]

SENATOR RIEPE: Okay. Thank you very much. Are there proponents? [LB787]

LAURA REICKS: (Exhibit 2) Good afternoon, Chairperson Riepe and committee members. I'm Sister Laura Reicks, to spell it, L-a-u-r-a R-e-i-c-k-s. I'm the president of the Sisters of Mercy in the West Midwest Community, which is located in Omaha. I am happy to be here to talk about this particular LB787, because it does have a significant impact on our sisters. When patrimony is considered a resource of the member of the religious institute, that assumes that she has access to that money and is able to use it for her own well-being and her own care. As we have heard, patrimony really comes to the member of the religious community before she becomes avowed

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religious or if she inherits after she takes her vow of poverty. So patrimony does not include anything that would be given to her as a salary or stipend in her earnings. It's all what she would inherit. The church law, which is called canon law, is very clear about saying that money needs to remain to the ownership of that person, but she cannot have access to it. The only reason it is continued to be in her name is because in case you were ever to leave the community, we take simple vows of poverty, are able to give that money back to her. If you took a solemn vow of poverty, you could not give it back. It would be renounced immediately to the community. So there is a distinction in what type of vows you take and how access to that money would occur. But in any case, the sister is not able to access that money. She signs a cession paper. She cedes it over to management by the community. So when we talk about our own account of patrimony, what we are saying is that we are caring for the money that the sisters have inherited until it is accessed through her will. So when she dies, she can determine how that money is going to be used. Frequently it goes to a cause or a family member. Maybe half the time it comes to the community. So we don't have a vested interest in maintaining that money. It can go to however she wills it to go at the end of her life. We do take lifelong vows. Poverty is a vow that pertains in this particular situation. The church does mandate what certain rules and regulations we're able to follow. We as a religious order, I as president, could never access anybody's patrimony. I cannot go in and use it. If we were down to our last penny and couldn't pay the bills, I still could not access a sister's patrimony. It would be against church law and against my vow of poverty as well. When the sisters first began using the Medicaid program through the Medicaid waiver, it made a significant difference to what we were able to...how we were able to provide for the care of our members. We are always looking for what we need to do to be able to provide that support for members and we have done many things. We've had to sell property. We've had to do a lot of important things, look at our staffing and so on. So it was a very helpful opportunity for us when we did get into Medicaid and we appreciated that. And as you have heard, the denial of Medicaid for sisters who have been...taken a vow of poverty for over 60 years and have worked in church institutions or in nonprofit organizations where they have usually worked for far less than a just wage because of their commitment and belief in what they are doing, because of their call to ministry. Much of what we have done throughout our lives, you can look in our history books, when we did have any money, we put it back into the hospitals or the schools or whatever other ministries we were actively engaged in. So we found that when we got to our retirement years and we did not have a lot of young women entering the community after us, it became more of a challenge because then we realized we needed to put some of that money back into our own care. So we have the dual prong of operational ministry as well as care of our members. So whenever we come into any kind of a situation where we find opportunities to access resources that are going to help us continue our ministry so that we can put more money into the ministry and less into care of members, we look into that opportunity. So as you notice, we did send you an Exhibit A, copy of an Exhibit A which is the wording that the Social Security Administration uses in determining eligibility for Medicaid that patrimony is not included in that. However, as a 1634 state, that does not apply to your state. However, this LB787 would provide expressly that

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excluding patrimony from being considered as available resource would clarify that so that Nebraska would also be able to look at that patrimony as an uncountable resource. So by expressly clarifying the law, we anticipate that it will enable men and women religious in Nebraska to again receive the Nebraska Medicaid benefits that have been so important to their quality of life. So I thank you. And I would be happy to answer any questions that I can. [LB787]

SENATOR RIEPE: Thank you, Sister. I saw one over here. Senator Williams. [LB787]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Sister, for being here. You talked about when a change took place and your members became qualified for Medicare (sic--Medicaid). Do you remember when that happened? [LB787]

LAURA REICKS: We...just to be clear, our community extends from Detroit to California. So we have had sisters using Medicaid in several other states for many years. We started looking into Medicaid in Nebraska about two years ago because we realized that some of the care needs of our sisters were getting more extensive than they had been in the past. So we've actually been using Medicaid here about a year and a half. [LB787]

SENATOR WILLIAMS: So it's a relatively new situation. [LB787]

LAURA REICKS: Here in Nebraska, yes. [LB787]

SENATOR WILLIAMS: Okay. Next question is going to be a lot more difficult to answer. [LB787]

LAURA REICKS: Okay. [LB787]

SENATOR WILLIAMS: Maybe and maybe not at all. How long have you been a sister? [LB787]

LAURA REICKS: Forty-three years. [LB787]

SENATOR WILLIAMS: What would it mean to you if somebody asked you to renounce your vows? [LB787]

LAURA REICKS: Oh. [LB787]

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SENATOR WILLIAMS: I said it was going to be a hard question. [LB787]

LAURA REICKS: I'm sorry I... [LB787]

SENATOR WILLIAMS: I would suspect it would be one of the most difficult things, if not the most difficult thing, that you had ever been asked to do. [LB787]

LAURA REICKS: Yes. [LB787]

SENATOR WILLIAMS: Would you think it would be a fair thing to ask someone to do? [LB787]

LAURA REICKS: I don't think it would be any more fair than asking you to divorce your spouse who you've been married to for 43 years who you love dearly. [LB787]

SENATOR WILLIAMS: Great analogy. Thank you. [LB787]

SENATOR RIEPE: Okay. Let's see if we have any other questions. Senator Howard. [LB787]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you, Sister Laura, for visiting us today. I appreciate your prayers. I know I represent you so it's a real privilege for me. [LB787]

LAURA REICKS: Thank you. [LB787]

SENATOR HOWARD: I wanted to ask you, you mentioned that when the nuns have sort of this little set aside of money if they get a little bit of interest off of it they're allowed to use it for some type of cause. Do you know what they might use it for? [LB787]

LAURA REICKS: Yes. And it's very clearly stated that in the cession paper, that's c-e-s-s-i-o-n paper, the sister can designate the usage. It can never go to her own personal use, but it could be used for perhaps a ministry. So several of them might give it to Mercy High School or some other place where they've served for a number of years and they want to continue to support it. It could go to United Way or some charitable work. It could go to a family member. Sometimes they have a family member who is experiencing hardship so it could go to that person. But that would be about the only three categories. And the fourth one is it could go back to their patrimony. It can get put back into the principal. [LB787]

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SENATOR HOWARD: Okay. And then just by way of an example, is there anybody specific you'd like to tell us about who is losing her Medicaid because of what the state has chosen to do? [LB787]

LAURA REICKS: Well, the sister that Senator Krist mentioned is a very dedicated sister. She's about as big as a peanut. And she has worked with the Sudanese people for probably the last 10 or 15 years, these very tall people who come and dwarf her. But she has given them food and clothing and has made sure that funds have been available for their daughters to go to Mercy High School or to get their sons into a good Catholic education. So she has worked very hard. She raises money in ways that I wish our development people sometimes could emulate. So she has done great things for Omaha. [LB787]

SENATOR HOWARD: Thank you. [LB787]

SENATOR RIEPE: Are the number of sisters in your order...I know it's been declining. [LB787]

LAURA REICKS: Yes. [LB787]

SENATOR RIEPE: Is it still declining? This might be one area of instead of expanded Medicaid it might be shrinkage of Medicaid once it's approved. [LB787]

LAURA REICKS: Yes, that's definitely the case. We've done our projections to determine how many sisters we're going to have in the Omaha area and it steadily is diminishing. So we know for a fact and our median age is going up. Right now it's about 79. So we know as time goes on this number is going to go down. And I think that's pretty similar to the other orders in Nebraska as well. There might be a couple of newer ones with younger members, but many of them are coming from other countries and I'm not sure if they're qualified for Medicaid. [LB787]

SENATOR RIEPE: Okay. Are there other questions from the committee? Seeing none, I would ask you to give my regards to Marie Micheletto if you...you probably know Marie. [LB787]

LAURA REICKS: Oh, sure. I will do that. [LB787]

SENATOR RIEPE: Thank you very much. More proponents, please. [LB787]

REBECCA VANDENBOSCH: (Exhibit 3) Good afternoon, Chairperson Riepe and the members of the committee. My name is Rebecca VandenBosch, and that's R-e-b-e-c-c-a, last name is V-a-

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n-d-e-n-B-o-s-c-h, and I serve as the community finance officer for the Sisters of Mercy, which again Sister Laura spoke a little bit about. My capacity is to look at the projections and to look at long-term planning. I offer another viewpoint as a layperson who works with the sisters day to day. Some of the testimony that I had prepared has already been on record so I won't repeat that. But I do want to just comment that the Sisters of Mercy work with the National Religious Retirement Office which are the NRRO which is an organization, you know, that has been around for a while. But one of the main things that they do is that they help religious with planning purposes. And so every year we submit an application to the NRRO to determine eligibility for funding for grant as well as participate in understanding how funded we are for retirement. And the Sisters of Mercy, as with many other congregations, are significantly underfunded for retirement. And so because of this application process have looked to other ways to meet the needs for care into the future. And so using Medicaid, we've been enrolling across the United States, has been one of those ways to continue to plan for the long term and to support their members in their advanced age. Sister Laura also mentioned that we have 69 sisters here in Nebraska, but we extend from California to Detroit. And here in Nebraska this is the first time that patrimony has been a barrier to sisters receiving services. Here in Nebraska for the last year and a half, the sisters in our retired convent had utilized the Medicaid waiver program so there's been talk about long-term care or different services. And we've used that to supplement the services that they needed in the convent. Having these services to receive things for assistance with bathing, feeding, dressing, and other activities of daily living has prevented the sisters from actually needing to go into long-term care facilities and has allowed them to stay in their home, the convent where they've lived communally with the other sisters for, you know, upward...some as long as 80 years. And so by allowing...by being able to access those services they have been able to stay in their home, receive services and live with the sisters that they have vowed and professed their life with. For a population who's served the community for over 150 years, many times providing education, nursing, and other social services to the poor and vulnerable, the idea that they may be denied access to Medicaid services due to a lack of understanding about what patrimony is and that it's not available for a sister's individual personal use during their lifetime is heartbreaking for me. So we are here to say that LB787 does not change how Medicaid has been used in the past. It simply clarifies something that I think has become a misunderstanding within the department. So we really believe that providing this clarification is necessary and will be helpful to men and women religious across Nebraska. So thank you for your time. [LB787]

SENATOR RIEPE: Okay. Thank you. Let's see if we have some questions. I have a question. In looking at once a sister has certain assets, have you explored the idea of a trust that holds all of these assets? [LB787]

REBECCA VANDENBOSCH: So without getting into the details, when the sisters turn their money over to the community to administer, it is no longer in an account or any...they have no

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access to it. I think that was one misunderstanding with the department is that they said she can just walk into the bank and access those funds and that's not true. She is not a signer on that account. She has no access to it and no available. So in essence, it is in a trust under the administration of the order. [LB787]

SENATOR RIEPE: Okay, fair enough. Other questions? Senator Williams and then we'll go to Senator Linehan. [LB787]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Ms. VandenBosch. My question is a little different, but our testimony that we've heard so far has all been focused on how this is affecting the Sisters of Mercy and those people. As you have thought about this, is there a broader net out there that I'm not thinking about? Are there other groups? Are there other religious organizations, whatever, that we should be thinking about when we're looking at this topic? [LB787]

REBECCA VANDENBOSCH: You know, the way the law is written that it is for men and women religious, I think it narrows the focus of that. I think also...I'm not an expert in fiscal notes, but the 305 is extremely high, especially knowing many are already on the Medicaid program. So to answer your question, no, not that I know of. [LB787]

SENATOR WILLIAMS: As you have thought about that and understanding that we have lawyers that are more creative than other lawyers, would...in your mind, would it be possible for a creative lawyer to figure out a way to help people qualify for benefits under our Medicaid program by creating some new church, new order or something? Is that even a remote possibility? [LB787]

REBECCA VANDENBOSCH: I would never say never. [LB787]

SENATOR WILLIAMS: That's a good plan. [LB787]

REBECCA VANDENBOSCH: There are very creative people out there. I think there is a rigorous test through many different avenues of what qualifies for a church and that would be where that loophole would have to be closed. [LB787]

SENATOR WILLIAMS: Thank you. [LB787]

SENATOR RIEPE: Good question. Senator Linehan. [LB787]

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SENATOR LINEHAN: I just want...thank you, Mr. Chairman. Thank you for being here today. So I think you said something very key here, and I want you to repeat it and make sure I understood what you said. So in most cases, the sisters are staying in their homes. [LB787]

REBECCA VANDENBOSCH: Correct. We have a...sorry. [LB787]

SENATOR LINEHAN: No, that's okay. Go ahead, you explain. [LB787]

REBECCA VANDENBOSCH: I was just going to say we have a convent in Omaha where the majority...a retirement convent where the majority of the sisters live. I can promise you that they don't want to leave. As with many men and women lay folks, they don't want to leave their home. They would rather stay in a setting that provides them the spiritual and mental enrichment that they enjoy. Living at the convent, they have access to daily mass. That's something that even when they are no longer able to dress or bathe themselves can still fully participate in. And so being, again, an observer of that, that is fully enriching to allow them to stay in their home. [LB787]

SENATOR LINEHAN: And also it's considerably less expensive than if they were in a full 24-hour, 7-day-a-week care facility... [LB787]

REBECCA VANDENBOSCH: Considerably. [LB787]

SENATOR LINEHAN: ...which is where they would be if they weren't where they... [LB787]

REBECCA VANDENBOSCH: Right. [LB787]

SENATOR LINEHAN: Thank you very much. [LB787]

SENATOR RIEPE: Sister...Senator Howard. [LB787]

SENATOR HOWARD: He almost said Sister Howard (laughter). [LB787]

SENATOR RIEPE: I about called you Sister. You have an influence on us. [LB787]

REBECCA VANDENBOSCH: When you work for the sisters, you can get (inaudible). [LB787]

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SENATOR RIEPE: And she's a Lutheran, I think, or a Protestant. [LB787]

SENATOR HOWARD: I wanted to ask you of the 69, how many are on Medicaid? [LB787]

REBECCA VANDENBOSCH: So thank you for that question because currently we have 24 that we have attempted to enroll in Medicaid. We do...I think we have lost two sisters through death. Yesterday was actually the day that their Medicaid cases have closed so today is the first day, ironically, that their Medicaid services will no longer be provided for. We are going through the appeal process still, but it is a big day for that. [LB787]

SENATOR HOWARD: Thank you. Thank you for visiting us today. [LB787]

REBECCA VANDENBOSCH: Thank you. [LB787]

SENATOR RIEPE: Okay. And without the Medicaid, in the event the appeal isn't successful, then they go back to kind of a self-pay kind of...for the order? [LB787]

REBECCA VANDENBOSCH: Yes. They would continue. You know, in the past the sisters have cared for themselves and done things communally amongst themselves. We have staff, but ironically--I think I put that in the testimony--ironically as the sisters age and need more services, we need to cut back because of the cost of care. So the community has an obligation to care for its sisters, but that's becoming more and more of a challenge. [LB787]

SENATOR RIEPE: Senator Kolterman. [LB787]

SENATOR KOLTERMAN: Thank you, Senator Riepe. And thanks for your testimony today. Do the sisters qualify...do they get paid at all? Do they qualify for Social Security and Medicare at a certain age? [LB787]

REBECCA VANDENBOSCH: So the Sisters of Mercy West Midwest I can say, yes. However, the congregation or the order would have had to opt in to Social Security and, therefore, pay in to the Social Security program. Meeting 40 quarters is the minimum and there is some IRS revenue rulings that I can go into if you'd like but so, yes, they do participate in Social Security and that would be one item on the income when they submit the Medicaid application. [LB787]

SENATOR KOLTERMAN: But that's very limited obviously. Because if they take a vow of poverty, they're at, what, \$4,000 a year maybe? [LB787]

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REBECCA VANDENBOSCH: Right. Because they don't receive, again, going a little bit more into the IRS revenue ruling, because they don't receive a salary, the stipend goes to the community. The community is instructed to identify what their salary would be and pay into FICA as a percentage of that salary. The salary for IRS purposes is the amount of basically living stipend that they would otherwise receive. So it's typically...at or below the poverty line is typically the amount that you pay into Social Security for. So most of the Social Security that we receive is a minimum. [LB787]

SENATOR KOLTERMAN: And I assume...can I... [LB787]

SENATOR RIEPE: Keep going. [LB787]

SENATOR KOLTERMAN: I assume that that probably just goes into the order. [LB787]

REBECCA VANDENBOSCH: Um-hum. [LB787]

SENATOR KOLTERMAN: And then you spread that across the whole group. [LB787]

REBECCA VANDENBOSCH: Yeah. And so Sister Laura mentioned we have several buckets: caring for ministries, which I can promise you most of the sisters would prefer to care for the ministries and the people that are vulnerable, not realizing they also need to care for themselves. But then the operations and the care of the members so the money goes in there. And Sister Laura alluded to the idea that when there are a lot of new sisters coming into the order and that they were younger the cycle of putting it into the communal pot made a lot more sense because there was new revenue coming in through stipends from sisters. As the sisters age, imagine finding out at the age of 80, which is our average age of our sisters, that you're significantly underfunded for your retirement and how you make adjustments at that point in your life. [LB787]

SENATOR KOLTERMAN: Thank you. [LB787]

SENATOR RIEPE: You had talked about...and I know the Sisters of Mercy was out of the Detroit province, and the Omaha, and is it different in Michigan than it is in Nebraska? [LB787]

REBECCA VANDENBOSCH: In terms of... [LB787]

SENATOR RIEPE: Eligibility for state Medicaid. [LB787]

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REBECCA VANDENBOSCH: You know, I did not bring...Sister Laura alluded to the idea that a 1634 state has the reciprocity with the Social Security Administration and that patrimony, as identified in Exhibit A, is specifically mentioned in Social Security Administration's operations manual. Thirty-four states, and I believe Michigan is one of those, have adopted the Social Security Administration's manual as the guidelines for Medicaid. There are seven states, of which Nebraska is not one of them, where that operations manual is not identified, which, again, is the reason we need this clarification in the statute and would prefer that. [LB787]

SENATOR RIEPE: Okay. Are there other questions from the committee members? Seeing none, thank you very much. We appreciate you being here. Additional proponents, please. Seeing none, are there any speaking in opposition? Seeing none, is there anyone speaking as a neutral, in a neutral capacity? Seeing none, Tyler, do we have any... [LB787]

TYLER MAHOOD: I do not have any letters. [LB787]

SENATOR RIEPE: Okay. Senator Krist, we invite you to close if you'd like, with your Black (sic--Black's) book Bible. [LB787]

SENATOR KRIST: There you go. I should have gone to law school. Folks, you're all going to be here next year. This bill may not come out before the additional hearings that the sisters will have. Putting this on your radar screen. I believe that somebody needs to pick this one up next year if nothing happens to it this year. But I think that, as a committee, your jurisdiction is the Department of Health and Human Services, and a little pressure is never a bad thing coming from the senators in terms of what could come in the future and what is happening right now to these sisters and to other religious in the state of Nebraska. So with that, I thank you for listening. [LB787]

SENATOR RIEPE: I think Senator Kolterman has a question. [LB787]

SENATOR KOLTERMAN: I have a question, Senator Krist. So this is just a technical change that could obviously turn this whole thing around. Are there other...are you talking about their appeals process now or? [LB787]

SENATOR KRIST: Right. [LB787]

SENATOR KOLTERMAN: When you say that there's other things that they're going to have hearings on... [LB787]

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SENATOR KRIST: No, this is on this subject matter. [LB787]

SENATOR KOLTERMAN: Okay. [LB787]

SENATOR KRIST: So they're still not...the door is not completely slammed shut with the Department of Health and Human Services. So as they go through any additional appeal process that they would have, this hearing will help in terms of applying pressure. But what I'm asking, I guess, is that all you as well, if you believe in it. [LB787]

SENATOR KOLTERMAN: If this bill were to pass through the Legislature and we approve this bill, would that take care of the problem? [LB787]

SENATOR KRIST: It would. It would. It would put us in the category of, as Sister said and Becky... [LB787]

SENATOR KOLTERMAN: With the other states. [LB787]

SENATOR KRIST: ...it would put us in the state of other states that recognize patrimony and are using that standard of Social Security to administer the programs. [LB787]

SENATOR RIEPE: Okay. Senator Erdman. [LB787]

SENATOR ERDMAN: Thank you, Senator Riepe. Senator Krist, that brings to mind if...and Senator Kolterman made a comment about if they change the policy or if they relax their standards, some of those people may change. And over time if they do it right, next year, the year after may revert back to the same thing we're talking about today. So if we change the statute, they won't be able to do that. So it may be very important that we do this irregardless of what they decide to do. [LB787]

SENATOR KRIST: You know... [LB787]

SENATOR ERDMAN: And this issue could come up down the road and we'd have to address it again. [LB787]

SENATOR KRIST: That is an interesting point because those of you who know me well know that I have attempted to negotiate on issues and have pulled a bill or I've gone through the bill and not asked for it to come out of committee with the assurance or the handshake that

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something is going to happen and be taken care of. That's only as good as the person is who is still interpreting or opining the way that we've agreed. So you're right on the money. [LB787]

SENATOR ERDMAN: Okay. Thank you. [LB787]

SENATOR RIEPE: Okay. Additional questions? Seeing none, thank you very much for your presentation. [LB787]

SENATOR KRIST: Thank you. [LB787]

SENATOR RIEPE: And with that, I declare LB787 has had a full and fair hearing, so that concludes this hearing for today. Our next bill up is LB903 and that's Senator Linehan. [LB787 LB903]

SENATOR LINEHAN: Thank you, Senator. Oops. Good afternoon, Senator Riepe and members of the Health and Human Services Committee. My name is Senator Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n. I'm introducing LB903 on behalf of the Department of Health and Human Services. The intent of this bill is to provide a technical change to the state statute to bring them in line with federal requirements for the Long-Term Care Ombudsman's program, as well as clarifying requirements for matching dollars. I am not an expert on this issue, so what I would like to do is give interim director Rocky Thompson a chance to explain it more fully. The way I understand it, it's very...it's basically "wordsmithing" that we have to do to be in compliance with the federal government and, if we're not in compliance, we stand the chance of losing around \$8 million in federal grant programs which we certainly would not want to do. So with that, I can take questions. [LB903]

SENATOR RIEPE: Okay. Are there questions initially? Seeing none, we assume that you'll be around for closing. [LB903]

SENATOR LINEHAN: I will. Thank you. [LB903]

SENATOR RIEPE: Thank you very much. [LB903]

SENATOR LINEHAN: Um-hum. [LB903]

SENATOR RIEPE: Proponents. Director Thompson, if you would give us your name and spell it, of course, for the record. [LB903]

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Health and Human Services Committee
February 01, 2018

ROCKY THOMPSON: (Exhibit 1) Of course. Good afternoon, Chairman Riepe and members of the Health and Human Services Committee. My name is Thomas Rocky Thompson, T-h-o-m-a-s R-o-c-k-y T-h-o-m-p-s-o-n, and I serve as the interim director of the Division of Medicaid and Long Term Care in the Department of Health and Human Services. I'm here to testify in support of LB903. Thank you, Senator Linehan, for introducing this bill. LB903 will bring Nebraska statutes in line with federal changes for the Long-Term Care Ombudsman program and will make a technical change to statutes governing the State Unit on Aging. The Long-Term Care Ombudsman provides individual representation of residents in congregate living facilities, such as nursing homes and assisted living. They represent the residents' wishes in dealing with the facility they reside in, family disputes, or other issues. The Long-Term Care Ombudsman program resides in the DHHS under the State Unit on Aging; however, it has autonomy from DHHS. In order for the State Unit on Aging to receive federal grants, the state must also have a Long-Term Care Ombudsman program in place. The Long-Term Care Ombudsman program has oversight and control of their own office and programs. New federal regulations for the Long-Term Care Ombudsman program were finalized and effective as of July of 2016, which requires updates to a number of state statutes. All states with a Long-term Care Ombudsman program are under compliance plans until these statutory changes and corresponding regulation changes are implemented. These compliance plans require states to update all statutes and regulations which apply to the Long-Term Care Ombudsman program. Per the Administration for Community Living, the federal oversight organization, by agreeing to accept grant awards for the State Unit on Aging, a state must carry out the Long-Term Care Ombudsman program in compliance with these federal regulations. Failure to comply could lead to a loss or withholding of around \$8 million in federal grants for the State Unit on Aging and the Long-Term Care Ombudsman program. This legislation will not change how the program is administered, and the program is still subject to state and federal regulations. Proposed changes to the statute include using the word "office" instead of "department" when referring to the Long-Term Care Ombudsman program. This delineates...this separates the Ombudsman as a state agency, in this case from DHHS. Statute changes also include references to the Long-Term Care Ombudsman's interaction with Adult Protective Services. Additionally, language is included about auxiliary aids and services for communication, and clarification is made regarding access to Long-Term Care Ombudsman case files as the federal regulations enhances the file safety and protection. LB903 will bring Nebraska statutes in line with federal definitions and requirements regarding matching dollars for the State Unit on Aging. Fees, under federal law, cannot be used to match, and that is currently listed in Revised Statute 81-2225. The agency has been in compliance with federal law by not allowing fees to be used for matching dollars; however, this bill will align our statutory language with federal law. For these reasons, the department supports LB903. We would appreciate your support. Any questions? [LB903]

SENATOR RIEPE: Thank you very much. Are there questions from the committee? Senator Williams, please. [LB903]

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SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Director, for being here. And it is in your testimony, but I'd like you to just emphasize again so that we clearly understand, or at least I clearly understand, what happens if we don't take this action. [LB903]

ROCKY THOMPSON: Thank you, Senator. You know, we're under the compliance plan right now, and if we're not in compliance with the new regulations that came into effect in July 2016, we are...could lose \$8 million in state funds. [LB903]

SENATOR WILLIAMS: Thank you. [LB903]

ROCKY THOMPSON: Thank you, Senator. [LB903]

SENATOR RIEPE: Okay. Other questions from the committee members? Seeing none, thank you very much for being here... [LB903]

ROCKY THOMPSON: Thank you, Chairman. [LB903]

SENATOR RIEPE: ...and sharing with us. [LB903]

ROCKY THOMPSON: And thank you, Senators. [LB903]

SENATOR RIEPE: And we'll go on with proponents, please. Are there additional proponents speaking in favor of? Okay. Are there any opponents? Seeing none, is there anyone who wants to speak in the neutral capacity? Seeing none, Tyler, do we have any letters? [LB903]

TYLER MAHOOD: I do not have any letters. [LB903]

SENATOR RIEPE: Senator Linehan, would you like to close? [LB903]

SENATOR LINEHAN: I think this demonstrates how much trust they have in me on the heavy lifting. We can either do this or lose \$8 million (laughter). So thank you. I...any questions? No questions? [LB903]

SENATOR RIEPE: Okay. Let's see if we have any questions? Any questions at all? Seeing none, thank you very much. [LB903]

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SENATOR LINEHAN: Thank you very much. [LB903]

SENATOR RIEPE: I declare that LB903 has had a full and fair hearing, and that will conclude this hearing. We are going to go into Executive Session, so we thank all of you for being here today. [LB903]