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Developmental Disabilities Special Investigative Committee  
August 12, 2010

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[LR11]

SENATOR LATHROP: Good afternoon. My name is Steve Lathrop. I'm the state senator from District 12 in the Omaha, Ralston area. I chair the LR11 Committee. Today we're here for the purpose of...for two purposes. One, we're going to get an update from, I think, Tammy Westfall with Mosaic. That will be brief, just to tell us where we're at in terms of the Governor had a plan to build some smaller ICF/MRs to accommodate some of the developmentally disabled in the state. And so we're going to get a little update from Tammy with respect to how that's going, how are we doing building those, and I don't expect that to take very long. But it's important for this committee because that's an important part of providing services to the developmentally disabled in the state of Nebraska, and certainly something that was endorsed by this committee in its report a year ago. We are also, today, going to take testimony and to have a hearing on the subject of...that relates to folks in northeast Nebraska whose services were formerly provided or are currently being provided by providers in Yankton and in Sioux City and who have received notice that that's no longer going to be the case as of October 30...October 23rd, I believe, is the date or August 30. I want to visit with you a little bit about the hearing process and how we're going to conduct the hearings today. I appreciate, because we've worked on these issues for two or three years now, I appreciate how strongly everybody in this room feels about where their son or daughter or brother or sister is going to receive services and what those services are going to look like. And I appreciate that you've come a long distance to attend this hearing and to participate in the hearing. I want to visit with you a little bit about how we're going to conduct those hearings and how we must conduct those hearings so that we get out of here in a reasonable hour and we don't end up having two days of testimony. Generally, in this committee, we have a light system and you will see on the table...well, there's the green light. Our committee clerk, Kate Wolfe, who is in my office, is going to run the lights. And how the light system is going to work today is when you testify, if you are to testify today, if you came here for that purpose, the green light will come on when you start. The yellow light will come on after four minutes and that means you've got one

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minute to wrap it up. Everybody is going to have an opportunity to speak for five minutes. Okay? It's not my intention to cut people off or to tell you that you shouldn't or can't testify, but there are many people who are similarly situated and if you've heard somebody express your sentiments and you feel like that's already been related to the committee, we're here to learn something from each of the witnesses so don't feel like you have to testify if somebody has already expressed your sentiment or explained your circumstance. Okay? And I don't mean that to be rude, only to suggest that if we have people come up one after the other all saying the same thing, then we're getting to a point where the testimony is duplicating itself and that is less productive than if we are making time for those who have something different to say than someone who has already testified. As far as that part of the hearing that's going to deal with the providers up in northeast Nebraska, we have some providers...I know I spoke with somebody from Goodwill Industries in Sioux City who is here to testify. I'd like to hear from some of the providers. I'd like to hear from some of the people who are using the services of those providers and if we can, in the process, you have to fill out a sheet, put your name and that information on it. Put it in the box so that Kate Wolfe, the committee clerk, can make sure that the record is clear, that your name is properly spelled. If we need to get ahold of you for some reason later on, we can do that without any difficulty. Because this is a hearing, we have to observe certain decorum here. There's not going to be any cell phones going off. If you have your phone, please turn it off or put it in the vibrate position so that we're not interrupted by that. There's no interrupting the hearing and as you...if you wish to testify, then fill in the front rows so that you're not coming from...crawling over somebody and working your way up here. If you want to testify, you can move to the front row as this process moves along. And with that, I'll take a moment to introduce those folks that are up here with me today. Senator Colby Coash is on my left, Senator Coash is from Lincoln, he also serves on the LR11 Committee, which means he is a member of this committee established by resolution; to my right is Doug Koebernick, he is my legislative assistant, has worked with me on many of the developmental disability issues that have been addressed by the LR11 Committee; to his right is Senator Abbie Cornett from Bellevue, who is also on this committee, and

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then, of course, to my far right is Senator Bob Giese from South Sioux City, who has been intimately involved in this issue and we've asked him to sit on the panel today to participate and to help facilitate this hearing. And with that, I...I will tell you that I have asked Jodi Fenner, who is the Director of Developmental Disabilities who is here today to testify last and I think that is going to be important because it will afford her an opportunity, I believe, to hear the concerns of the people from northeast Nebraska on this issue and then to talk to us about the decision of Health and Human Services, their rationale for the decision, and then maybe we can explore whether there isn't some opportunity for some solution and that's kind of the way we'll conduct the hearing. So with that, we will take the first person to testify. Good afternoon. []

TAMMY WESTFALL: Good afternoon. Good afternoon, Senator Lathrop and members of the committee. What I have provided for you is a layout of the home so you can see what it looks like. []

SENATOR LATHROP: I think we will start out with your name. []

TAMMY WESTFALL: I am so sorry. []

SENATOR LATHROP: And who you represent today. []

TAMMY WESTFALL: I am Tammy Westfall, T-a-m-m-y W-e-s-t-f-a-l-l, and I'm with Mosaic. []

SENATOR LATHROP: Okay, thank you Tammy. And thanks for being here and you're here today to give us a little bit of an update on... []

TAMMY WESTFALL: Right. []

SENATOR LATHROP: Tell us first of all how many ICF/MRs the state of Nebraska

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committed to build with Mosaic. []

TAMMY WESTFALL: There was a commitment for six. [LR11]

SENATOR LATHROP: Okay. And when was that commitment made? []

TAMMY WESTFALL: Back...the contract was signed on March 23, 2009. []

SENATOR LATHROP: And this was part of the Governor's initiative to provide additional placements for residential services for those with high medical needs and the developmentally disabled community. []

TAMMY WESTFALL: Correct. []

SENATOR LATHROP: And can you tell us where we're at in terms of the process? []

TAMMY WESTFALL: Yes. We have four of the eleven homes that are operational at this time. Two of the homes are intermediate care facilities. One of them is a medical support unit, and one is a center for developmentally disabled. We have moved in ten people of the twenty-four beds that are available out of those four homes. I know that the department has also supplied you with a whole breakdown of the expansion so I won't go into great detail with you. And then we have provided a sheet there for you to kind of see the layout of the homes, pretty much the design is all the same. Construction has begun on five of the other remaining eleven facilities, and the two that have progressed right now more rapidly is the two homes up in Norfolk. And one of those is an intermediate care facility and the other is a center for mental disabilities. As far as referrals, the ICF home in Omaha is completely filled. The ICF in Grand Island has two people living there now. There's a center for developmentally disabled in Omaha that has one person, and then the medical support unit has one person that's in Grand Island. We do have several referrals that we are in the process of screening. We

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have accepted some other individuals waiting for transition, meetings to be set for those, and final guardian approval. So that's... []

SENATOR LATHROP: Okay. You said that you have twenty-four beds and you've only filled ten of them. How long have you had twenty-four beds? []

TAMMY WESTFALL: Dates on those...well, the licensing on the ICF in Grand Island was on 6-15. The license we received on the Grand Island medical support unit was 7-29. The ICF in Omaha, the license was received on 7-15. And the CDD in Omaha, the license on that was received on 7-26. []

SENATOR LATHROP: So the completion or the licensing of these facilities that are already done has been fairly recent. []

TAMMY WESTFALL: Right. Now you...what we were able to do, Senator Lathrop, is we've been able to move three people into the homes prior to licensing because it's not then considered a center for developmentally disabled, so we did move people in. Our admissions...I can tell you when we first admitted people also. The first admission in Omaha was on May 7. And the first admission...that was in the ICF. The first admission into the CDD in Omaha was on April 7. First admission into the ICF in Grand Island was in June, and then the medical support unit in Grand Island was on August 2. []

SENATOR LATHROP: You expect to fill the remaining beds from the applicants that you have? []

TAMMY WESTFALL: Yes. []

SENATOR LATHROP: It's just a matter of getting through the screening process and make sure it's an appropriate placement. []

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TAMMY WESTFALL: Right. []

SENATOR LATHROP: And can you share, and I say this because I don't want to violate anybody's medical privilege, but are any of these folks people who were previously considered medically fragile and removed from BSDC? []

TAMMY WESTFALL: Yes. []

SENATOR LATHROP: And can you tell us the number of the ten, how many of those were...? []

TAMMY WESTFALL: Two of them, I believe, you could say were, they were moved from hospitals into or...from the hospital into the new facilities. []

SENATOR LATHROP: And were any of these folks who previously lived at BSDC? In other words, did you take any of these people and they transitioned out of BSDC into any one of these ten beds? []

TAMMY WESTFALL: Yes. []

SENATOR LATHROP: And how many did you...? []

TAMMY WESTFALL: It looks like five. []

SENATOR LATHROP: Okay. Senator Cornett. []

SENATOR CORNETT: You said that you are in the process of building a facility in Norfolk, correct? []

TAMMY WESTFALL: Two. []

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SENATOR CORNETT: Two. When is expected completion date? A licensing date. []

TAMMY WESTFALL: Licensing date? I would guess December 1 for licensing. []

SENATOR CORNETT: For licensing. When do you believe that you would be able to accept people into the facility? []

TAMMY WESTFALL: November. The process, just so you know, there's been a lot of delays in the process because there hasn't been intermediate care facilities built in several years. So we've ran into a lot of snags with State Fire Marshal, like safety code inspections, zoning, building permits. It's been on the ICF, it's been quite a few delays, so. []

SENATOR LATHROP: Okay. Are there any other questions for Tammy? We appreciate the update. That's very helpful and we're encouraged to see that we'll have more beds coming on line here pretty soon. And, hopefully, find placements for folks that are previously medically fragile as well as some of those who choose to leave BSDC. So I guess that's it. Thank you. []

TAMMY WESTFALL: Thank you. []

SENATOR LATHROP: Was there anyone else here who had any testimony with respect to Mosaic's building of these units? I see none. So with that, we will move to the primary subject of our hearing which is the decision by Health and Human Services to terminate the services of the providers in Yankton and in Sioux City. And the first person who cares to testify may...oh, I'm sorry. I guess we'll start with Senator Giese. []

SENATOR GIESE: Thank you, Senator Lathrop and members of the LR11 Committee. For the record, my name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative

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District which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. First, I would like to thank the committee for your thoughtfulness in...first of all, letting us have this hearing today. As state senators we all have unique crisis, you know, our perspective districts and this is something that I became aware of a couple of months ago and we have been working on it with the help of a lot of folks in the meantime. And so, but really basically it boils down to, I think, why we're here today is these decisions affect Nebraska lives, not only Nebraska lives but other peoples lives and at the end of the day we want to provide great services for all people. And I think this may require some fine tuning, so. But before I do that, Senator Lathrop, if I may, there's a lot of people in the room today that have come here, as you mentioned, traveled from a long distance, so if I could, could I have all of the people with Goodwill or ABS Services just stand and be recognized? If you would all stand? Thank you, thank you, Senator Lathrop, for indulging me that. So as you can see, it is a very serious issue and there are lots of folks with us today and will do a fine job of testifying. Let me just start by saying the communities of northeast Nebraska have a long history of having to go across state lines in order to access vital services. My own hometown of South Sioux City, a thriving community of more than 12,000 people, does not have a hospital. If you need medical care in Dakota County, the choice is between driving an hour to Norfolk or going across the river to Sioux City, Iowa. The same is true for many communities in Senator Dierks district, drive an hour or more for in-state services or go across the river to Yankton or Vermillion in South Dakota. So for residents of northeast Nebraska the decision that led to this hearing runs contrary to our everyday lives. For the developmentally disabled in northeast Nebraska, the shortage of quality services instate has created a situation where parents often have to drive more than 40 miles to get access to services. For decades many families have taken their loved ones to two outstanding facilities just across the state line, Goodwill Facilities in Sioux City, Iowa, and Ability Building Services in Yankton, South Dakota. This spring both facilities were informed by DHHS that the state would no longer provide pay for Nebraska residents to receive DD services outside of Nebraska, and that contracts with those providers would be allowed to expire. As families became aware of this pending change, my office was

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flooded with phone calls from people desperately seeking help as many individuals had been going to Goodwill or ABS for ten, fifteen, even twenty years. As a result of the decision not to renew contracts with Goodwill and ABS, at least 23 Nebraskans will be forced to switch providers, parents will have to drive their children longer distances to get access to services, and some families will be faced with the choice of either moving out of state or losing services altogether. The group of 23 individuals also does not include current public school students with developmental disabilities as virtually all of the local school districts either currently contract or have contracted in the past with one of these two facilities. Essentially the decision by DHHS means that Nebraska students who literally grew up at Goodwill or ABS will be forced to transfer to different facilities upon reaching the age of 21. DHHS has repeatedly claimed that they do not have the oversight authority or jurisdiction to regulate outside of Nebraska and, thus, cannot use federal dollars for out-of-state services. I believe this interpretation is not only wrong but that it ignores the need for the type of services offered at Goodwill and ABS in northeast Nebraska. Despite claims that federal regulations prohibit using federal dollars on out-of-state providers, no such prohibition exists according to the CMS regional office in Kansas City. State statute requires that DHHS only contract with providers that meet certification requirements, but DHHS writes its own certification requirements and recently began the process of rewriting their rules and regulations in the area of developmental disabilities. The rules could be rewritten to allow certification of facilities which meet comparable certification standards in other states and contracts with the providers could be easily drafted to grant DHHS the authority to inspect and investigate at the facilities as necessary. Despite requests from my office as early as June 24 to consider an option, it appears that no effort has been made by DHHS to consider any alternative solutions. What has become increasingly obvious to me is that DHHS chose to shut off services at Goodwill and ABS without a plan of what to do with these individuals currently using the facilities. DHHS notified the providers of their decision on March 31 but did not send letters to parents until several weeks ago. More importantly, NorthStar Services was not contacted about opening a facility in South Sioux City to fill the gap left by Goodwill until late June with the expectation that the facility would be up

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and running by the end of August. Simply opening a brand new DD facility in such a short timespan is difficult enough, but the greater challenge would be duplicating the many unique programs offered through Goodwill at their Sioux City facility. As for the families that have relied on ABS, they will likely be forced to drive as far as Bloomfield or even South Sioux City to access any services at all. This has led some parents who are here today to strongly consider moving to South Dakota rather than losing their quality services they have grown accustomed to at ABS. As it stands now, services for Nebraskans through Goodwill will terminate on August 30, and through ABS, will terminate on October 23. I believe that the decision to terminate contracts with these out-of-state providers was made without taking the needs of northeast Nebraskans into consideration and was made, in part, based on faulty assumptions on what was required to utilize federal Medicaid waiver dollars. While I am hopeful that DHHS will do the right thing and reinstate services through these providers, my office is prepared to draft legislation for next session that would restore access to these providers for Nebraska families. Again, this hearing should not be about Goodwill and ABS versus NorthStar or out-of-state providers versus in-state providers. It should be about vulnerable Nebraskans who desperately need quality services. I hope that the committee will listen to the families, providers, and educators who have made the long drive in from northeast Nebraska today, and consider the plight of these individuals who are being uprooted for what amounts to be a second home for many of them. Today is about them and the affect that this decision has had on their families. Thank you for your time and I would be happy to answer any questions. []

SENATOR LATHROP: Thank you, Senator Giese, for those opening remarks. I will introduce Senator Dierks who has joined us. Many of you know Senator Dierks from... []

SENATOR DIERKS: Past experiences. []

SENATOR LATHROP: ...past experiences. (Laughter) All of which I'm sure have been pleasant. He's a great advocate for northeast Nebraska and rural Nebraska. Thank you

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for the opening remarks. Any questions for Senator Giese? Seeing none. Cap, did you want to make any kind of an opening statement? []

SENATOR DIERKS: Well, very briefly. I've been involved with the situation since sometime in...I think we all got a notice of this probably in March or April, didn't we, I believe? And I didn't really get involved with it until one of my constituents up at Crofton got ahold of me. And so I did go with him up to visit the ABS plant in Yankton, which is, I'd call, a delightful facility that children seem to be well received and they seem to be getting a fine experience up there. When we...I met with Senator Giese and some of the health people in a special deal over in Senator Giese's office here about a month ago and so I...and I was under the impression we were going to have some resolve to the situation and I'm just interested now in hearing what the resolve is. Because I know it's...I know it's a big problem for those people and I know we have our own share of difficulties as far as financing is concerned, but...and what I need to know more about, I think, is how much of this decision is based on Medicaid or Medicare availability. I think that's probably some of the dictates we have to hear about. []

SENATOR LATHROP: Very good. Thank you for your opening remarks. Senator Giese apparently has some more opening remarks. []

SENATOR GIESE: Just one quick comment. Senator Dierks, our meeting when we left, I guess the resolve was that the answer was no. There would be...there's no compromise, nothing we could do, facility or the date is August 30 and October 23 and that's it. And so that's why we're here today. We've come to the Legislature. This is our, if you will, the next step in the process we believe to get the folks here and Senator Lathrop and committee were happy enough to entertain the hearing today. So that's why we're here. And so if...we weren't going to take the answer that we had before, so that's why we're here today. []

SENATOR LATHROP: Very good. And with that opening statement by Senators Giese

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and Dierks, we will take folks who care to testify. []

DEAN WILLIAMS: Good afternoon. My name is Dean Williams, I'm vice president of Mission Services with Goodwill Industries, Wall Street Mission administrative offices in Sioux City, Iowa. Nebraska has been a state for 143 years. Did you guys know that? (Laughter) Goodwill has been providing services to the people of Nebraska for 120 of those 143 years. I would say that's a pretty good track record. We have an incredible relationship with the people of Nebraska. We also serve folks in South Dakota and Minnesota and Iowa. We are not an Iowa agency. We are a quatrestate agency. We also support, as does Governor Heineman, the tristate Governor's task force where crossing the river, crossing state boundaries, working as one community in the tristate area, is very important. We think that the decisions that the Department of Human Services is currently making flies in the face of the tristate Governor's task force and certainly what Governor Heineman has been pushing since he's been involved with that. We hope that this is not about money. If it is about money, there's some very important information that we think you need to be aware of. In calendar year 2009 our agency, Goodwill, received \$190,000 for providing services to Nebraska clients. And that's a tidy sum, and we admit that. Be aware, though, that we paid in payroll and associated payroll taxes \$814,000 to Nebraska residents, \$65,000 to the Nebraska state coffers in sales tax, \$12,000 in property tax, and owned property valued at over \$4.1 million in Nebraska. If you do the simple math on that, that means that we infused the state of Nebraska more than \$700,000 than we received from the state. I would say that's a pretty good deal for the state. Now, again, I hope this is not about money. If it is about money, I think that's rather sad. But in balance we are providing more than what we are receiving in terms of dollars. It appears to us that the only population that cannot according to the Department of Health and Human Services cross state boundaries for services are people who are developmentally disabled between the ages of 21 and 65. We work with schools in northeast...is it northeast? I get my directions turned around. In that portion of Nebraska we provide services to youngsters who are developmentally disabled up through the age of 21. We currently are in negotiations with South Sioux

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City public schools to grow the services that we offer through a program that we call the YES Program and a Youthbuild Program. So we're actually in a growth mode of providing services to Nebraska residents. We also have a contract and it's a contract that's actually managed by the Department of Health and Human Services, Division of Medicaid and Long-term Care, so it's federal money that allows older persons to cross the river and come to us for services. We find that very curious that there has been a select group taken out, isolated, that cannot cross the river to come for services. We also think it's important for you to understand that this issue was resolved in 2007 and we do not understand why it continues in the offices of the DD director, the acting director at that time, Rene Ferninand. John Wyvill was out of town. He could not be part of the meeting but Rene Ferninand, Karen Cavanaugh who was the interim director for Community-Based Services, Kim Davis from then Senator Pat Engel's office, John Hantla who is the CEO of Goodwill, and I met. We reached a deal, so to speak. We submitted all of our policy and procedures to the department. We began a move to compliance to NAC205. We've consulted with Grand Island Goodwill and have been in that mode since. We had a consultative quality assurance visit from Mike Mischnick with the Department of Health and Human Services. He offered some things that we needed to do. We responded. Should I continue? []

SENATOR LATHROP: You can wrap up your...just, yeah, if you can, just kind of wrap it up for us. []

DEAN WILLIAMS: Okay. He responded and we have been in that mode ever since. We were continuing in that mode until we receive the letter from Trisha Mason that basically indicated they were not going to honor the agreement that they reached with us and we have significant issue with that. I would like to echo the comments that Senator Giese made. The hearing today is really not about Goodwill. It's not about any other organization. It's about the sea of people behind me. This is what this meeting is about. And irregardless of policy and procedure and all the things that we can waive under your noses, there's a thing called ethics. It's very, very important. There's a thing called

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"doing what's right" that's very important and there's a thing called "looking at the people who are being affected and listening to what they have to say", listening to what they have to say. []

SENATOR LATHROP: And we will do that today. Thank you very much, Mr. Williams. []

DEAN WILLIAMS: I have lots more I'd like to share, but... []

SENATOR LATHROP: Senator Coash has a question for you. []

SENATOR COASH: Thank you, Mr. Williams. Are you...can you be credential to provide services in Nebraska? I mean you are credentialed in Grand Island. Goodwill has an agency, it has credential to provide services in Nebraska. []

DEAN WILLIAMS: Sir, we've been given so much information I don't know what the real issues are today, and I say that from the bottom of my professional heart. Every time we respond with an answer we get a different question. Our understanding is that the bottom line issue is that the HHS, DD vision, will not send clients across the river. Beyond that, I honestly do not know. []

SENATOR COASH: Okay. []

SENATOR LATHROP: If I can, though, Senator Coash's question was whether or not you can get credentialed to provide services. I appreciate that you're frustrated, I got that. But his question was whether or not you...does the Goodwill in Sioux City is it comport with the regulations that we have in place in Nebraska, do you know? []

DEAN WILLIAMS: We have been moving in that direction since 2007 under the advisement of Rene Ferninand and Karen Cavanaugh in the DD Division. We are in...the majority of our current policy and procedure is in compliance, the NAC205. I

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can't give you an answer beyond that because we are still waiting for the DD Division to respond to the most recent policy and procedure that we submitted to them about a year ago now. []

SENATOR LATHROP: Okay. Senator Coash. []

SENATOR COASH: I want to follow up, you're referring to an agreement from 2007... []

DEAN WILLIAMS: Yes. []

SENATOR COASH: ...that you entered into with members of HHS... []

DEAN WILLIAMS: Yes. []

SENATOR COASH: ...that are no longer state employees. []

DEAN WILLIAMS: Yes. That's correct. []

SENATOR COASH: Can you just give me a brief disagreement? I mean, that's kind of a broad term. I mean, I can have an agreement with Senator Lathrop about what we're going to do later after the hearing, disagreement on paper where somebody signed and said this is what I agreed to do, this is what the department agrees to do. I mean, can you describe a little bit more about the agreement that you're referring to as far as, was it a contract, just steps to be taken, just gentlemen shake your hand, we'll go our way, you go ours, and we'll meet again? []

DEAN WILLIAMS: Sure. No, it was primarily a gentleman's handshake. We do have documentation from John Wyvill supporting that. We are understanding as an organization that we will move into Chapter 205 compliance and that we would consult with the Grand Island Goodwill, which we have been doing to bring ourselves into

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compliance. []

SENATOR COASH: And it's your testimony today that Goodwill has moved in good faith to come in... []

DEAN WILLIAMS: Yes. []

SENATOR COASH: ...to move forward and the ball has been stopped at the Department's... []

DEAN WILLIAMS: Yes. []

SENATOR COASH: ...door, and you're...kind of what I hear you're saying, you've done as much as you can do without some response from the Department in order to move forward with Nebraska credentialing, is that accurate? []

DEAN WILLIAMS: That's correct. []

SENATOR COASH: Okay. []

DEAN WILLIAMS: And teh response was, you cannot provide. The only response we received was a letter that was sent to us by Tricia Mason, who...in the letter it essentially said, if you wish to provide services to Nebraska clients, you must do it within the boundaries of the state of Nebraska. []

SENATOR LATHROP: Senator Cornett has a question for you next. []

SENATOR CORNETT: Follow up a little bit on Senator Coash's questions. In 2007 you reached an agreement. []

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DEAN WILLIAMS: Yes. []

SENATOR CORNETT: Handshake agreement, gentlemen's agreement, whatever you want to call it, to move towards licensing or credentialing in regards to Nebraska laws, correct? []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: During the time period since 2007 until today's date, was the state of Nebraska responding in a written communication or verbally on how you were progressing towards that? When you said...you testified that you were in the majority in compliance. []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: So did they...did you send them, this is what we're doing, they sent you back a letter saying, you've met this point, this point, and this point, but you're still short here and then you've sent them... []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: ...new information and they have not responded? []

DEAN WILLIAMS: That is correct. And that letter was sent to us by Mike Mischnick. It was in...I did not bring it with me. It was in May, 2009. []

SENATOR CORNETT: Have you received any communication from the state of Nebraska in regards to moving forward with your credentialing other than the latest communication saying that you no longer can? []

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DEAN WILLIAMS: No, ma'am. []

SENATOR CORNETT: So there's been a time period of over a year that the state has done nothing in regards to your credentialing? []

DEAN WILLIAMS: That's correct. And our understanding, and actually neither Ms. Fenner or Ms. Mason have ever contacted us. []

SENATOR CORNETT: So there's been more than a year's span of time? []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: That you've been providing services in good faith with the assumption that you were moving towards credentialing? []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: And there was no other communication to the most recent one saying that Nebraska was not going to act in good faith of that agreement? []

DEAN WILLIAMS: With the exception of the letter that Mike Mischnick sent. []

SENATOR CORNETT: Correct. []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: That's the letter I'm referring to. Thank you. []

DEAN WILLIAMS: And I might add we serve a very large number of individuals in our organization. We committed, we made this commitment to ten people, a very small

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number. But we believed that what we were offering and what they were receiving was important enough in their lives that we would move forward with this. This has been a costly venture for us to bring ourselves into compliance for ten individuals. []

SENATOR CORNETT: So you deal quite a bit with federal Medicare, correct? []

DEAN WILLIAMS: Yes. []

SENATOR CORNETT: Do you see any reason why the state of Nebraska cannot allow its residents to cross the state to your facility under the current laws? []

DEAN WILLIAMS: I have never heard of that. We have federal money crossing state lines all the time. []

SENATOR CORNETT: Thank you. []

SENATOR LATHROP: I have just a couple of questions for you. Do I understand that Goodwill in Sioux City is currently entering into contracts with school districts in northeast Nebraska for the kids to come over to the Goodwill in Sioux City? []

DEAN WILLIAMS: Oh, those have been in existence for many years. []

SENATOR LATHROP: And they are not the subject of the letter you received? In other words, that's going to continue... []

DEAN WILLIAMS: Senator, it's only between the ages of 21 and 65. []

SENATOR LATHROP: Okay. And so the answer to my question then is, that the people who are under 21 will still be getting services at Goodwill under these contracts entered into between Goodwill and the school districts in northeast Nebraska? Is that the case?

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DEAN WILLIAMS: We certainly hope so, yes. []

SENATOR LATHROP: Okay. Can you briefly, because the time you spend here makes it more difficult for everybody to have a chance to testify, but can you briefly tell us the services that are provided because at some point we're going to hear about how this can be done in Nebraska and I want to know what you're doing that can't be done in Nebraska. []

DEAN WILLIAMS: Senator, we could have easily moved, gone into South Sioux City and created a storefront facility. We did not do that. We will not do that because of the numbers of individuals that are being served. We believe, and we have had visitors in the organization from the state, we believe the richness and diversity that we offer within the boundaries of our offices and in our organization is the key. We can provide vocational rehabilitation services, vocational services in South Sioux City. In fact, occasionally we do in our South Sioux City store. But we cannot do it in the magnitude that we do in our Sioux City offices. []

SENATOR LATHROP: Okay. Let me go back and ask the question. And I'm trying to get...if I were in the lightning round here, okay... []

DEAN WILLIAMS: I understand. []

SENATOR LATHROP: ...so I need to shorten it up because there's a lot of people that want to testify. What services are you providing to these ten people? Can you just tell us generally? Are they going to the Goodwill in Sioux City and they're employed there? []

DEAN WILLIAMS: Some of the clients that come to us, they were employed and they receive vocational services, we call it, in an effort to give them the skills that would allow

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them to move into community employment or get a job in the community. []

SENATOR LATHROP: And do they do these, do they have these types of jobs at the Goodwill facility or does the Goodwill facility in Sioux City find them jobs in the Sioux City community? []

DEAN WILLIAMS: Both. []

SENATOR LATHROP: Okay. []

DEAN WILLIAMS: And we actually offer two services. The other is, in DHHS terminology, it's all habilitation or day services. []

SENATOR LATHROP: Right. []

DEAN WILLIAMS: But we offer another service in our adult day program for persons who do not...and some of those folks are here today, for persons whose disabilities are such that community employment is really not a viable option. And so we offer social and medical supports and activities for them. []

SENATOR LATHROP: And the committee has a pretty good idea because we've been studying developmental disability issues for two or three years now, what you're talking about, the jargon. I just wanted to understand what the services were that you were providing that would no longer be available to adult Nebraskans in the Sioux City area. Senator Dierks. []

SENATOR DIERKS: Well, yeah, I would like to expand on that a little bit. If you are treating two different types of people, people who live in Iowa, are from Nebraska but live in Iowa and get the service there during the week, as opposed to those who live in Nebraska and are driven over every day for service, do you get what I'm talking about?

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DEAN WILLIAMS: All of our current Nebraska participants or clients live in Nebraska and come to us for service, there's ten. []

SENATOR DIERKS: Okay. I'll have to ask somebody else the rest of the question then. Thank you. []

SENATOR LATHROP: Okay. I think that's all the questions we have for you. We appreciate you coming the distance and explaining the position of Goodwill Industries. []

DEAN WILLIAMS: Thank you. []

SENATOR LATHROP: Next to testify. Good afternoon. []

FRED STEFFEN: (Exhibit 2) Good afternoon, Senator Lathrop, my name is Fred Steffen, S-t-e-f-f-e-n, a parent and guardian from Crofton, Nebraska. I want to thank the committee for holding this hearing and allowing our input on this situation. I guess it's no secret that sometime in early April our out-of-state provider was notified that the contracts would be terminated. So having said that, our first contact, my wife and I, regarding this situation came from ABS in Yankton, South Dakota, not Health and Human Services. The first word that was breathed to us by an employee of Health and Human Services came roughly about mid-May at our son's annual IPP meeting held in Yankton, South Dakota. The service coordinator at that point made the comment when asked about it, said the decision came from high up the ladder. And I have no other comment to make about that. So needless to say, the employees that are on the ground floor are scared to death too. Okay. Now, I'd asked on July 21 at a meeting in Crofton, Nebraska, to have some information provided to us regarding statutes. Ms. Lori Harder promised to e-mail stuff to us. It took roughly, I think, it was the 28th before I finally got the information e-mailed to me. It was a single page. I'm not a lawyer but it appeared to

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be just a...I should have brought it, I guess. It appeared to be a statute that just laid out procedural approach. Anyway, I went to hunting. I got some information from Senator Giese's office. Trevor e-mailed up some stuff that he had gotten from Health and Human Services and right in on top of one of the first pages I looked at was the Developmental Disabilities Act. So I went to poking around and here's what I found: 42USC 1500I, Finding and Purpose A(1). Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choices over their own lives and to fully participate in the contribution to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of the United States society. Question for the panel and for Health and Human Services. If A(1) states that they have the right to exert control and choices over their lives, how can the state then tell them what their only options are and where they can seek any and all of their services. Public law 106-402, Statute 1679, Section 14: An increasing number of individuals with developmental disabilities are living, learning, working, and participating in all aspects of community life. There is an increasing need for a well-trained work force that is able to provide the services, supports, and other forms of direct assistance required to enable these individuals to carry out those activities. Question for the panel and Health and Human Services. How can the state disallow individuals to exert control over their choices as to where to receive services when the option they prefer is full of a work force with people who have upwards of 20-plus years of experience in this occupation? Public law 106-402, October 30, 2000, Statute 1680, 17(B) Purpose: The purpose of this title is to ensure that the individuals with developmental disabilities and their families participate in the design of and have access to needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs authorized under this title. Question. If the state dictates your options as to what geographical communities you can live in and choose your services, how is this self-determination? Public law 106-402, Statute 1681, basically talks about self-determination and primary decision

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makers for services. So my question once again is, how is this self-determination when the state is telling them where and when and how? How can they justify this? Additionally, I believe that the state of Nebraska and the Health and Human Services Division is attempting to regulate interstate commerce as evidenced in the commerce clause. Information provided to you there: *Edwards v. California* 1941. Considered a challenge to California law aimed at reducing the influx of Dust Bowl indigents to the state. The California statute made it a crime to bring into the state any indigent nonresident. Finding people in this case to be articles of commerce. As crude as this seems, our children with disabilities are articles of commerce. There's a lot of money tied to them. The majority found that the statute to be a form of unconstitutional discrimination against out-of-state commerce. Senators, I see my time is up. I have much more but there's just a couple of comments I'd like to make on the back...or in closing. Related issue, our son's SSI check which he pays his own room and board with comes made out to Andrew Norman Steffen, not Andrew Norman Steffen and the state of Nebraska. I believe that the state of Nebraska in trying to determine what, when, where, and how, they're infringing on his civil rights. In addition to this, room and board in Bloomfield, Nebraska was quoted at \$114.00 a month higher than it is in Yankton, South Dakota. Consider the related services and access to things that he's going to have recreationally, educationally, etcetera, in a community ten times bigger. To me this appears to be a regressive back door form of taxation on the most vulnerable population in our communities, leaving in our son's case a discretionary income of roughly \$60.00 per month. There's more. A long-time customer of ours, when you talk about people leaving the state, he's been a customer of our business in northeast Nebraska for over 30 years and personal friends, last Tuesday informed me that they cashed in retirement savings to buy property in South Dakota to protect their daughter's future. So if the impetus of development of a state and the economy is to keep our people at home, you drove a very, very rock solid family from a community in northeast Nebraska that owned a business and were community leaders. []

SENATOR LATHROP: Thank you. I hate to cut people off... []

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FRED STEFFEN: Yep, I'm fine. []

SENATOR LATHROP: ...but at the same time I don't want the folks...wait a minute, just one second before you get away, there may be folks here that have a question for you. I see none, but thank you very much for your work on this subject and for your testimony today. []

FRED STEFFEN: Thank you. []

SENATOR LATHROP: Do we have anybody here from ABS? No? Okay. Yes, we do? Who? Can one of you just come up. I just have a couple of questions about the services you're providing so that we can put in context what people are not going to have available to them and...why don't we...we'll have you fill out one of those sheets out after you get done. Will you start with your name, please? []

GLORIA PEARSON: Gloria Pearson, P-e-a-r-s-o-n. []

SENATOR LATHROP: And, Ms. Pearson, what's your position with ABS? []

GLORIA PEARSON: Executive director. []

SENATOR LATHROP: What I'm interested in...thank you for testifying. It didn't look like you were planning on this, maybe you were just intending to watch this, but I wanted to ask you the same questions I asked Mr. Williams, which was, does ABS have a contract with school districts in northeast Nebraska to provide services to children that are under 21 that have developmental disabilities? []

GLORIA PEARSON: Yes, we do. []

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SENATOR LATHROP: And that isn't affected by anything that's going on in these proceedings, is that right? []

GLORIA PEARSON: That's correct. []

SENATOR LATHROP: Okay. Tell us what services are provided by ABS to...you have 23 Nebraskans that currently receive services in Yankton, is that the case? []

GLORIA PEARSON: No, it's less than that, about 12. []

SENATOR LATHROP: Twelve. Can you tell us what services that are provided to those 12 folks? []

GLORIA PEARSON: A wide array of day and residential services and the day services include job development, a workshop, special education classes, volunteering, a wide range of day programs. And then residential is also very varied with people living at home in their own apartments who just receive small amounts of support, to people that are in group homes who have 24-hour supervision. []

SENATOR LATHROP: So these would be in case of the residential services, that's people from Nebraska that take up an apartment or a group home in Yankton and folks from ABS have regular contact with them to provide them supports for their living circumstance. []

GLORIA PEARSON: Yes. []

SENATOR LATHROP: The day services you are providing, do you have a workshop there at ABS? []

GLORIA PEARSON: Yes. []

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SENATOR LATHROP: So some of these people are commuting from Nebraska to Yankton for the purpose of working during the day and developing skills for ultimately some transition into the labor force? []

GLORIA PEARSON: Yes. []

SENATOR LATHROP: You also provide special education services and these again would be for people over 21? []

GLORIA PEARSON: We have a special education teacher who offers classes and you can be a special ed student or adult. It doesn't matter. If you're interested in taking the class, you can. []

SENATOR LATHROP: And that's...those are the services that are being provided that you were told that contract wouldn't be renewed? []

GLORIA PEARSON: Correct. []

SENATOR LATHROP: Are there any other services or have we covered them all? []

GLORIA PEARSON: I think we've covered most everything. Of course, we do have some nursing and things like that as well, but they're all kind of tied to the day services. []

SENATOR LATHROP: Okay. I thought it would be helpful and thank you for coming up. I thought it would be helpful for us to have some context for what we're going to hear from the people who are receiving services there. And with that, I will see if anyone has any questions. Senator Dierks. []

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SENATOR DIERKS: Ms. Pearson, we talk about two different types of service. Service for people who are from Nebraska but move their family or the people who are going to have the service into South Dakota and get service that way. And people who live in Nebraska and bring their kids in every day as opposed to having them come up and stay for the week. Are both those services...is it your understanding, that both of those services are going to be discontinued? []

GLORIA PEARSON: That's my understanding. []

SENATOR DIERKS: Thank you. []

SENATOR LATHROP: I did have one other question and that is, do you provide those services at a rate established by the state of Nebraska? []

GLORIA PEARSON: Yes. []

SENATOR LATHROP: Okay. Thank you. []

GLORIA PEARSON: Thank you. []

RANDY ANDERSON: Hello, my name is Randy Anderson, A-n-d-e-r-s-o-n. I'm the father of Jennifer Anderson who is 27-years-old and lives at our family home with us in South Sioux City. Jennifer has worked at Goodwill Industries in Sioux City for 11 years. I have always lived in northeast Nebraska. My family still lives in Wausa and Bloomfield area. My wife's family is from the Coleridge and Harrington area. We were raised with commuting to Norfolk, Nebraska, Yankton, South Dakota, or Sioux City, Iowa for shopping, doctors, and hospitals, and sometimes employment. This is a way of life in Sioux land as it is for people in Iowa outside of Omaha. My question is, if Medicaid dollars cannot go across into Iowa for services at Goodwill, then how can Medicaid dollars go across state lines to doctors and hospitals. In 1980 my wife and I became

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Nebraska certified foster parents. We adopted three children into our family, Jennifer being the youngest. We have dealt with the Department of Health and Human Services for 30 years. We have had many different social workers, some good and some bad. Jennifer came to us as a foster child at the age of three days old, straight out of the hospital. We did not know about her disabilities until after her adoption. We have learned that it takes extended family, social workers, a good school system, and friends to help raise a disabled child. We have received this in Nebraska and the South Sioux City school system. We were told that Jennifer would never be able to walk, ride a bike, or tie her shoes by herself. Jennifer does all of these things. She works 25 hours a week at Goodwill. When she started at Goodwill she sorted cookies, then she worked in the contract area sorting nuts, bolts and washers. She filled bottles of oil out of a 50 gallon drum so she called this dirty work. When she worked in the cookie shack sorting cookies, she worried about running out of cookies on the pallet. This led her supervisor teaching her how to run a pump hand floor jack to get the cookies. Now Jennifer runs a floor jack for the clothes sorters at Goodwill two days a week, sorts cookies one day a week, hangs clothes two days a week, these are accomplishments have come from a team of Jennifer's parents, her social workers, the South Sioux City school system, and Goodwill Industries programs directors, supervisors, and other workers. Since Jennifer was approximately 3-years-old she has had IEP meetings with these teams of people. These meetings were set up with the guidance of the DHS and are a part of Jennifer's records with DHS. They were always short-term goals in this process. We had to make the decision of sending Jennifer to Goodwill or NorthStar before she turned 16 and we toured both facilities. Jennifer's team felt that her needs would be best served at Goodwill. Then the transition period started when she was 16. Jennifer would work one day at Goodwill and get the transition apartment through the South Sioux City school system for four days. At age 17, Jennifer went to Goodwill for two days and three days at the apartment. This went on until at age 21 she had transitioned to Goodwill at full-time. Now DHS, the same agency that was a part of her transitioning, decides they don't have to tell anybody what is going on, not to mention any short-term goals, intermediate or long-term goals, no transition period, no letter to Jennifer or us, her legal

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guardians and parents. We found out through the grapevine of friends on June 14 that DHS is not going to renew its contract with Goodwill, and on June 30 would be Jennifer's last day. You do not treat people this way, especially very vulnerable disabled people. What happened to the guidance that DHS has proved and provided in the past? No transition or short, intermediate, or long-term goals of transitioning. No place to go. Just pipe dreams of what we're going to do for you at NorthStar. It will take years of planning and building to substitute NorthStar into what Goodwill already offers, not to mention the expense to us, the taxpayers. I believe the promises that DHS and NorthStar are offering will never happen. We are not being presented with facilities in place. We are presented with empty office space. NorthStar says we are going to do this and that and will be done by September 1 of 2010. What is Jennifer supposed to do, sit in a corner of an office all day while they try to get their ducks in a row? There is not even enough room to turn a floor jack around, yet alone a door big enough to get it in the room. I ask you to tour Goodwill in Sioux City and building services in Yankton and compare them to what NorthStar is offering in South Sioux and Bloomfield. If you compare the facilities you have in Omaha and Lincoln area and other parts of the state to what is available in northeast Nebraska you will see we have nothing because you have allowed us to seek services across the state line for years. If you want to build services in South Sioux City and Bloomfield, then do it. But don't cut these people's services at Goodwill and ABS while you do it and expect them to sit in the corner doing nothing while you figure out what you're doing and then build it. We need new leadership in DHS, somebody with a social work degree as in years past, not a cold-hearted attorney with no compassion for the people she is supposed to be serving. I think Governor Heineman appointed her to cut programs to slash the budget. Well, you need to find other places to trim the budget. You should not pick on the disabled, aged, and the blind because they are... the ability to advocate for themselves. These folks are Nebraska's most vulnerable and need the taxpayers assistance. I have always been proud to call myself a Nebraskan, but not now. I am thinking of selling my home in South Sioux City and moving Jennifer to Iowa. You see, Goodwill is as much a family to Jennifer as we are. She has a boyfriend who works at Goodwill and they eat together

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every day and share coffee breaks together. She loves her job more than everything else, even her dog, Sweetie. Please help us. []

SENATOR LATHROP: Mr. Anderson, thank you for that testimony and for coming down here today. I do not see any questions. So with that, you have our appreciation for your testimony and coming down here today. []

RANDY ANDERSON: Thank you. []

JENNIFER ANDERSON: I'm Jennifer Anderson. []

SENATOR LATHROP: Hi, Jennifer. Thanks for being here. []

JENNIFER ANDERSON: I want to stay at Goodwill. []

SENATOR LATHROP: Okay. Is that all your testimony? []

JENNIFER ANDERSON: Yeah. []

SENATOR LATHROP: Well, it was important testimony and we appreciate your coming down here. []

SENATOR COASH: That's the most succinct testimony we've heard today. (Laughter) I appreciate her. []

SENATOR LATHROP: I might say it's the most succinct testimony I've heard in four years of being in the Legislature. (Laughter) Thank you, again, for coming down here today. []

JEAN ANDERSON: My name is Jean Anderson, A-n-d-e-r-s-o-n. I am the mother of

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Jennifer Anderson. In five days, Jennifer will celebrate her 11th year at Goodwill Industries in Sioux City. She celebrates this anniversary the same way many married couples celebrate their wedding anniversary. She's very proud of her accomplishments at Goodwill. On November 22, 1982, DHS called, they had a newborn baby girl that needed a home. The next day I drove to Norfolk, Nebraska, and picked up a baby girl who had been born on November 21. We were given a police escort out of Norfolk. DHS was afraid the father would try to find her. He wanted to sell her on the black market. Jennifer was dealt a horrible hand of life, a father who beat the mother even when she was pregnant with Jennifer which caused her developmental disabilities. Jennifer has struggled with everything she's had to learn, walking, talking, hearing. Jennifer had to learn sign language in order to communicate while she learned English because of a hearing problem when she was very young. But between the social workers at DHS, the school staff, and the staff at Goodwill, Jennifer has been able to meet and achieve almost every goal that was ever set up for her. My husband and I, along with Jennifer's sisters and brothers, have encouraged her, loved her, and fought for her all through her struggles in life and we do not intend to stop now. Jennifer's whole life revolves around Goodwill. I never believed she would ever be able to tie her own shoes but she did. Goodwill has taught her how to run a floor jack. Jennifer is able to do many jobs at Goodwill. When Jennifer was transitioning between school and employment we chose Goodwill because we felt they provide the most diverse and best programs for her needs. If she was not successful at one job, there was a host of others that she could try. Without Goodwill I shudder to think where she would be today. Now, the very agency that placed her with us is trying to displace her from the only world she knows and loves. Why should Jennifer have to give up her world because DHS has a problem with the statute that has been interpreted a different way for the last 20 years. I graduated from Wayne State this May with a major in human service counseling. The one key component that they shoved down my throat was apathy. I'm not quite sure, but I'm pretty sure, apathy is not a part of the curriculum at law school. Maybe this is why we need to have social workers heading up the DHS instead of lawyers. Shame on you Governor Heineman for removing the social workers, the heart of DHS, and replacing

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them with lawyers. Most people look to DHS for help, support, and protection from abuse. DHS has been a part of our lives for 30 years. We did not just adopt Jennifer. We have two older adopted child through DHS. Unfortunately, the very agency we called to report abuse is mentally abusing my daughter with the news that she will be moved from Goodwill to an agency that has nothing in place and is grasping at straws to duplicate Goodwill in 30 days. Now, who do I call to report abuse? Jennifer is stressed every day over the thought of losing her job. Every morning she tells me, please don't let the naughty lady in Lincoln take my job. What am I supposed to tell her? It's politics and they can do whatever they want and we can't stop them. I feel hopeless when I look into her blue eyes and I tell her, I'm trying to help save her job. DHS says we can't cross the river to Iowa for services, yet NorthStar takes clients into Sioux City, Iowa, every day to work for businesses. The school children, I realize that's education dollars, but as I understand it, they will continue to use the Goodwill facility. I can't help but feel that Jennifer's age is being discriminated against. DHS, as far as I know, has not made any attempt with Goodwill for a solution to the problem to try to make some sort of a local agreement. Jennifer loves Nebraska. She loves Husker football. She loves the Cardinal's, ladies basketball team. They tease her at Goodwill when she wears Nebraska clothes because they are in Iowa and it doesn't bother her a bit and she doesn't quit wearing them. Her room is total Nebraska. Having to move to Iowa would upset her world. I did not give birth to Jennifer on November 21 in 1982 but my husband and I gave her life. We love her as our own and we will fight, even DHS, that tries to come between Jennifer and the services she needs. If we have to, we will move to Sioux City to get Jennifer the best services that meet her needs. Nebraska has never provided for her needs in the northeast part of the state, but at least in the past we were allowed to seek those services across the border until now. Jennifer's needs comes first before the state's. I do believe it's the law. Wake up, Nebraska, DHS, and Governor Heineman. We are not going away. We are in this for the long haul. Shame on you, DHS, and Governor Heineman. You should be ashamed of yourselves. []

SENATOR LATHROP: Are there any questions for Ms. Anderson? I see none. Thank

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you... []

JEAN ANDERSON: Thank you. []

SENATOR LATHROP: ...for sharing your testimony today. []

CRAIG FRERICHS: Hello, I'm Craig Frerichs, F-r-e-r-i-c-h-s. I am the school administrator at Laurel-Concord, Coleridge, Newcastle, Wynot. Part of my job as administrator is to find placement or help parents and these young adults find somewhere for transition services in northeast Nebraska. What we look at is, one thing is transportation and it definitely is within the range that has worked very, very well for our parents and our schools. The other thing is the facility itself. We look for a facility that has classroom accommodations as well as an on-job site for these young adults. We also look at the staff, a staff that is caring for these young adults. We also look at the community itself that's large enough and it's unbelievable how Yankton and ABS work together. They have an on-site job services as well as taking these children or young adults out into the work force in that community. They work very well and they support that and it works very, very well. The last component is, what do the children or the young adults and the parents themselves think after they go there. I've been working with these kids, many of them are out here today, many years, and I have never had one complaint from this facility which tells me that it's working very, very well for them. I want to make sure that they know that the services that they have works best for our schools in northeast Nebraska because of all these things. I think one thing that you want to make sure that you want to be careful of, is this will be a very devastating move against these young adults with disabilities. I think both mentally and maybe physically for them. As I've been in education a long time I know the affects that this may have on these young adults. Thank you for listening. []

SENATOR LATHROP: And thank you for your testimony. Pardon, Mr. Frerichs, Senator Dierks has a question for you. []

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SENATOR DIERKS: You were with me when we visited ABS in Sioux City and Yankton, right? []

CRAIG FRERICHS: Yes, yes, I visited several times, yes. []

SENATOR DIERKS: How would you describe the differences between what you see the services are at ABS compared to what you think they might be in Nebraska? []

CRAIG FRERICHS: Well, the thing about when I look at these young adults, and once in a while I've been in the situation where I've had to use myself for the transportation, and so when they're waiting at the door and can't wait to go, and they're smiling when you pick them up, and everything is a very, very good fit for them, that tells me that it's a good place for them. []

SENATOR DIERKS: Do you have information about the employment for these youngsters? We saw at Yankton the ability for these kids to find jobs in Yankton. Do they find jobs as well in Nebraska? []

CRAIG FRERICHS: I do not know that myself, I'll be honest with you. I don't think there are jobs in Nebraska that I know but I do actually have a nice that's working in Yankton through this program. And so I think that's where most of their jobs go and that's cooperation with Yankton, South Dakota. and ABS and they work that well together. []

SENATOR DIERKS: Thank you. []

SENATOR LATHROP: Thank you for your testimony. Good afternoon. []

BERNICE MAXWELL: Good afternoon, Senator Lathrop and members of the committee. I'm Bernice Maxwell, M-a-x-w-e-l-l. I'm special ed director/teacher at

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Coleridge school. And for the past 32 years I've worked with children through the age of 21 with varying disabilities. While all of these children are unique in their abilities, they are just like us in the fact that change is very difficult for them. Children with special needs go through major transitions as they enter each phase of their life. And the transitions involve a great deal of planning, evaluating, research, meeting, discussing, and even arguing to make sure these students get the necessary services and supports to make these transitions safe and successful for them. Federal law mandates that schools provide documented transition services beginning at the age of 16 and it is our responsibility to help them move into adult services with minimal fear. Building a trusting relationship with these individuals takes much time and effort. They need to be assured that they can be welcome and successful in another environment outside of the school system. As educators, we need to do our part to ensure the continuation of adequate legislation for all children, especially those with special needs. They deserve the same opportunities and chance for productive and meaningful future, not merely a dormitory facility. And this can only be done if we continue to send our students to quality programs which have proven to be in the best interest of them. I guess that's all I have to say. We do a lot of work to make sure that we get them up to the point that they can be on their own and I'd hate to see that backslide. []

SENATOR LATHROP: And you are involved in transitioning them as they go from 20-year-olds to 21-year-olds and then to different programs... []

BERNICE MAXWELL: Yes. []

SENATOR LATHROP: ...and what you're saying today is, you're pleased with how that works with ABS. []

BERNICE MAXWELL: Very pleased. []

SENATOR LATHROP: Okay. I don't see anyone with any questions. We appreciate

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your coming down here and your thoughts and insight. []

BERNICE MAXWELL: Thank you. []

JANE ARENS: Hello, I'm Jane Arens, A-r-e-n-s, from Crofton Community Schools. I'm one of the special ed teachers there at that school. I know one of your concerns that I've been hearing is, what does Yankton and Sioux City offer that we don't have in Nebraska. And coming from a small town, our community, we don't have the employment opportunities that they do have in Yankton from where I'm at. I mean, we have a couple of bars that have restaurants in there, we have a grocery store. It's kind of handicapped accessible but not the best for an environment for a student. With our economy the way it is, the business people there can't afford to pay a lot of our clients the money that they would need to be able to live in the community and to be able to access the things that they need to be able to access that we can't offer in our small community. Having only...right now, I'd have two, maybe three students that would benefit from going to ABS Services and they at ABS have the opportunity to be able to use, have maybe 50 or 25 clients working on a project. They can meet the quotas that the businesses want so we can be able to be productive. They get a paycheck. They get to see, I made so many of these products and now I can get so much with it. Then ABS, for us, takes them into the community. They go to Walmart, they go to HyVee, they go to Kmart, stores of these kids really want to get the games and stuff that we don't have access in our community right now. And they take them into the community to be able to interact and socialize. They learn how to go to the store and what they should do and the behaviors that they need to do at that time that we can't possibly do with our small community as it is right now. Even if we had a place in Bloomfield that would have a facility like that, I cannot say they would have the numbers there enough to be able to justify being able to have enough there for them to be able to meet the quotas businesses want to meet to be able to feel productive. Another aspect, I know in our IEPs that we focus on, is the social aspect. What type of activities do they do for recreational activities? ABS they offer dances that students go to. I have one student

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that's went to a dance. He came back all excited because he got to dance with a girl. It was the most exciting thing in the world. He's gone to high school dances. Yeah, he sits there and his friends kind of interact with him a little bit but he doesn't feel like he fits in. It would be just like me taking a kid out of the public school and go, guess what, we're going to Russia and you're going to a dance in Russia. We'll teach you some phrases in Russian and we'll teach you some dance moves, and guess what, we'll stand right beside you the whole time. That kid is going to feel awkward. He's not going to feel like he fits in and that's something that they get when they get to go to Yankton and there's a variety of people there, the diversity there. As was stated before, is there for those students to be able to develop. And the communication that that student came back after going to that dance and sharing with his friends that's something they could interact with, something that they could relate to that I hadn't been able to see before. But it's something that they can draw from and so I guess what I'm saying here is, yes, in Nebraska I could teach them how to sort silverware and how to do certain job skills but they're not going to be able to take that and transition that into a real working job because we don't have the access to the employment opportunities that we need to be able to access. []

SENATOR LATHROP: Senator Dierks has a question for you. []

SENATOR DIERKS: I didn't catch your first name. []

JANE ARENS: Jane. []

SENATOR DIERKS: Jane. Well I did catch it. So you feel very definitely that one of the advantages of having these children or young adults go to ABS in Yankton is that the jobs are more available in the Yankton area? []

JANE ARENS: For our area it is a lot more available. An issue that we have is a lot of these students they have to have the same type of environment when they're learning

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how to do a job skill. We could teach them a job skill and then try to transfer them, but they don't take that carryover to a new environment. []

SENATOR DIERKS: Do they have the same job capabilities in Sioux City, do you know? []

JANE ARENS: I'm not certain in the Sioux City area of how that all works there. []

SENATOR DIERKS: Okay. Thanks for coming Jane. []

SENATOR LATHROP: I see no other questions. Thanks, Jane. []

JOE JOHNSON: Joe Johnson, assistant city administrator in South Sioux City, Nebraska. Senator Lathrop and the committee, thank you for allowing individuals and organizations and the city of South Sioux City, Nebraska, the opportunity to have significant communications with you today. We appreciate it. One of the most important keys of success in South Sioux City, Nebraska, is being a member of the Sioux land community. The Sioux land community includes cities and towns from states of South Dakota, Iowa, and Nebraska. Our community does not end at the Missouri River. Our community offers a unique approach to solving common community issues by looking at issues from a tristate perspective and providing shared community solutions. The Sioux and community foster strengths from all three states. For an example, a business prospect considering Sioux land has a choice of three economic development programs, three different tax structures, and development sites in all three states. This strength holds true for all aspects of daily life in the Sioux land community. The Sioux land community...what one city or town lacks, another city or town provides. Goodwill Industries of Sioux land offers Nebraska families needed service in South Sioux City and across the Missouri River. One of these services is the Goodwill camp that has been located in Nebraska approximately two miles west of South Sioux City for the last 80 years. However, the recent decision by the Department of Health and Human

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Services not to extend agreements with out-of-state service providers for disabled Nebraskans will diminish the need and services and cause undue hardships on Nebraskans. The city of South Sioux City, Nebraska, has an extremely positive relationship with Goodwill Industries and NorthStar Services and has witnessed firsthand the positive impact those organizations have on our community through services and community volunteering. The combination of services provided by NorthStar Services and Goodwill Industries complement each other by meeting the needs of their clients in the Sioux land community. The city of South Sioux City, Nebraska, recommends that the Developmental Disability Special Investigative Committee reverse the decision by the Nebraska Department of Health and Human Services not to extend service contracts with out-of-state service providers. By reversing this decision, the Developmental Disability Special Investigative Committee will allow disabled Nebraskans options, and to continue established and productive relationships with those current service providers. Thank you for your time and understanding of this very important issue. []

SENATOR LATHROP: Thank you, Mr. Johnson. I don't see any questions, so we appreciate your testimony. []

JOE JOHNSON: Thank you. []

SENATOR LATHROP: I will share with you something that I was told by one of the folks that tries to keep it comfortable in here is that we have the air turned up as high as it will go. (Laughter) I think it...someone told me once that it comes from UNL. I'm not sure how that works, but we got to stop talking about the budget when they're in the room and maybe we'll get better air in here. Yeah, we're not going to cut their budget any more. We got the message. Anyway, the next person to testify. []

SUSAN FEYEN: I provided a copy of my testimony but I'd like to read it, if that's okay, so everyone can hear what I have to say. []

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SENATOR LATHROP: Okay. []

SUSAN FEYEN: (Exhibit 3) My name is Susan Feyen. I'm a licensed independent clinical social worker and I'm here with my colleague, Melissa Koch, who is a licensed independent mental health practitioner. []

SENATOR LATHROP: Can you give us your name one more time? []

SUSAN FEYEN: Susan Feyen, it's F, as in Frank, e-y-e-n. []

SENATOR LATHROP: Okay, Susan, thank you. []

SUSAN FEYEN: Thank you for the opportunity to speak today. We're with OMNI Behavioral Health, Melissa and I. As you may or may not know, OMNI Behavioral Health is a nonprofit organization that provides community-based services to youth, adults and families. We're a local agency and have been for the last 17 years. We provide community-based services in Nebraska, east of Kearney. Our services are reimbursed by Medicaid, Behavioral Health, Child Welfare, and Developmental Disabilities. And today we're here to talk with you about our work with the Division of Developmental Disabilities. We have a contract to provide behavioral management team consultation for the Division of Developmental Disabilities. What we do is assist community-based providers with managing aggressive and acting out consumers, assisting the agencies with identifying ongoing training and management needs, as well as assisting direct staff with implementing specific behavior management programs aimed at reducing the symptoms of impairment. Under the direction of a psychologist working with extensive experience with Developmental Disabilities, a therapist and two bachelor level staff work closely with the providers, the individual, and the team. The common approach is to observe behaviors, gather information, develop a behavioral management plan, and assist an agency in implementing a plan. We work intensively

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with the team for five weeks followed by six months of follow up. We also have a residence in the community designed to, for a limited number of consumers, to stay at our home for a short period of time in order to assist them in assessing needs, developing a plan, and implementing methods aimed at creating desired change. The purpose of our program is to be, provide added support, training, and services to individuals that might need extra expertise. Our program supports an individual, but also provides many additional supports to providers. It allows providers to make systematic changes to support all the individuals they serve. Through our work in this capacity, we have had the pleasure to get to know, many if not all, the providers in the Lincoln, Beatrice, and Omaha, as well as most of the providers in the other regions of the state. Nebraska providers are a very diverse group and have extensive expertise and willingness to make changes based on the best care of the individual and the family. Since the beginning of our contract 13 months ago, we have gathered a substantial amount of information about the provider community, which includes strengths, weaknesses, needs, and requirements. As one would expect, not all providers serve the same type of consumer, and as a result, the training supervision needs associated with each organization varies widely. The Division of Developmental Disabilities, under Director Fenner, monitors and evaluates the performance of each and every contract agency in Nebraska with a very keen eye on maintaining community and personal safety, effectiveness and efficiency of services, collaborative relationships with the state of Nebraska and all providers and families. Without that oversight, there is virtually no meaningful mechanism for the state of Nebraska to assess the safety of vulnerable citizens or the communities in which they reside; to judge the effectiveness of the services and how valuable taxpayer dollars are being spent. I'll respond to the questions of any inquisitive senator or concerned taxpayer. Thank you for the opportunity to speak. []

SENATOR LATHROP: Thanks for your testimony, Susan. I see no questions. Thank you again.

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SUSAN FEYEN: Thank you.

SENATOR LATHROP: Can I get a show...no, I'm done. Can I get a show of hands to see how many other people care to testify today. Oh, okay, good. Thank you. We'll take the next testifier.

A.J. JOHNSON: Good afternoon, committee members. My name is A.J. Johnson, J-o-h-n-s-o-n. And I'm the special education coordinator at Hartington Public School. We've had several area administrators from northeast Nebraska in our area who send students to ABS, come up and testify today. And the reason for that is because we are concerned about what happens to these students once they...once our services have finished and once they enter the community. And I think the main question that we need to get to is the question of purpose, it's the question of why are we here. And I believe that amongst the services that are available for both students and adults alike in the northeast Nebraska area the services in our area, ABS provides their clients with the best sense of purpose. It provides them with the best reason to get up in the morning and want to go to work and want to do something productive. And that's what has been so frustrating, I believe, for the families of these parents (sic) is they're afraid. Some of these people, I was at a meeting when DHHS came up to Crofton and heard stories of students and adults who had gone to other...had been served by other agencies and had not had success with those agencies like they have had with Ability Building Services. And so the question comes, and the reason why was because they didn't have that sense of purpose. And a sense of purpose comes with purpose in what you do and finding purpose in your relationships you're making and in the community endeavors you can undertake. When we think about our own jobs we can think about things that provide purpose for us. Just yesterday, I spent the entire day doing paperwork. That's not why I'm in education. I'm excited because my purpose for being there is that the kids are going to be there on Tuesday. That's what gets me excited about my job. I hope that you senators are here because you're excited about trying to forge a future for Nebraska. The people at ABS deserve a sense of purpose, they

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deserve to have a reason to get up, not just to be busy because I've heard questions about what services can you provide that are not offered in Nebraska or we've talked about buildings that will be built or facilities that will be updated. But having a sense of purpose isn't just about having something to do all the time, it's about having something to do that's meaningful to you and that creates meaningful relationships with those around you. And that's why I highly recommend that ABS continue to work with the citizens of Nebraska. Thank you.

SENATOR LATHROP: Very good. Thank you, Mr. Johnson. I see no questions. So we appreciate your testimony.

LINDA KALLHOFF: Good afternoon, senators. I'm Linda Kallhoff. And I work for NorthStar Services in northeast Nebraska. And at this moment I believe I'm representing our CEO, Alan Zavodny, who has had a medical emergency and is on his way to the hospital. So here's my testimony because I didn't come here to testify today. But what I would like to say is services for people with disabilities, when you choose services, as a person who experiences a disability or a family member who is helping your family member choose services, is not like choosing a doctor or a dentist or I think even where you might go to school because it affects every piece of your life. It affects maybe where you live, where you work, or where you spend your day. It might...it affects where you're going to take a walk in the evening. It affects who your neighbors are. It affects who your neighbors are. It affects where you're going to shop. It affects everything. So when changes happen in that kind of a service it's a way "huger" event than having to change your doctor or your dentist. It's changing every piece of your life. It's like picking up your whole life and moving to some other planet. So I understand that the families behind me are experiencing those kind of things for their family members. And I appreciate that. NorthStar in Nebraska has been an agency for as long as I've worked for the agency, since 1975. And we've provided services through the 22 counties in northeast Nebraska for lots of people who experience developmental disabilities. We in the last five years have worked...have been working really hard to

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modify and transition the kinds of services that we do. We are working hard to become an employment first agency, which means that those people who receive day services, our first efforts with them are going to be career planning and looking towards what kinds of things their interests and abilities might lead them to in terms of employment or other contributions in community life. We sense the issues with out-of-state provider changes. We've been working hard in our South Sioux City area to also get in place a day service, an inhouse day service system, which is up and running and available. In terms of one of the other things that I'd like to address is the issue of employment and whether or not small communities across Nebraska or Nebraska in general can create employment options and opportunities for people. In the last five years that we've been working at our transition into employment first services, we've worked with the University of Missouri in a mentoring process to help us learn that career planning process and cycle and have been keeping track of employment statistics for people that we serve. And there is data out there that says across the country 24 percent of people with disabilities are employed nationwide. In Nebraska that data is a little better at 29 percent. In the last four years that NorthStar has been keeping data on our efforts to help people in our community become employed our last quarter, which was the first quarter of 2010, the data, our data showed that 50 percent of the people that we serve have some kind of a job in a community. Is it the best job? Do they want more employment? Some people do. But we're making inroads with the new experiences or the new education that we have affiliated ourselves with. So that being the case, NorthStar is available to provide services and ready and willing to do so. Thank you.

SENATOR LATHROP: Thank you. We hope Alan is okay.

LINDA KALLHOFF: Yeah.

SENATOR LATHROP: He testified in front of this committee many, many times. And we should say that I don't think this is about NorthStar, you know.

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LINDA KALLHOFF: And that's...

SENATOR LATHROP: NorthStar has come before this committee and talked about issues, been very, very helpful to this committee over the years with issues that relate to providing services in the community. And we appreciate what they do in the 22 counties in northeast Nebraska.

LINDA KALLHOFF: Thank you.

SENATOR LATHROP: Senator Coash.

SENATOR COASH: Hi, Linda. So you're getting ready to fire up services in South Sioux. When did you make the decision to do that? Was it...I'm trying to get a time line. Were you already planning to offer services there or was it not until the contracts...

LINDA KALLHOFF: We have been offering services in South Sioux City.

SENATOR COASH: You have been. Okay.

LINDA KALLHOFF: And we are providing services to approximately, I think, 35 people in South Sioux City.

SENATOR COASH: Day services?

LINDA KALLHOFF: Day services.

SENATOR COASH: So NorthStar was always a choice for families in the...

LINDA KALLHOFF: Yes.

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SENATOR COASH: ...has always been a choice for folks living in that community?

LINDA KALLHOFF: Well, since 1974, somewhere along that time frame.

SENATOR COASH: Okay. So the folks who have chosen to get services at Goodwill and at ADS also had the choice to go to NorthStar at the time?

LINDA KALLHOFF: At some point I would assume so, but yes.

SENATOR COASH: I mean, families have choices where they want to get services.

LINDA KALLHOFF: Right.

SENATOR COASH: So you've always been there. And one of the previous testifiers testified that you're...are you growing a little bit to try to expand your capacity to serve more folks...

LINDA KALLHOFF: Yes, we are.

SENATOR COASH: ...given that they'll...looks like they might have more need?

LINDA KALLHOFF: Yes, yes.

SENATOR COASH: Okay, thank you.

SENATOR LATHROP: I do have a few question for you. In your testimony you indicated that for someone to make a move, an individual who chooses services, you referred to it as a bigger deal. And it is because the experience and the testimony that we've taken over the years as it related to individuals with developmental disabilities is that where they're getting services affects who they're going to live with, who they're going to be in

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relationships with, where they shop, where they live, all those things. And when we make those changes if we tell them you are going from Yankton or Sioux City back to someplace in Nebraska, that's very disruptive in their lives.

LINDA KALLHOFF: Once the decision of where you're going to receive services and you establish your life, it's not just your services, it's your life, you establish your life in a community and you get the services you need to do that. So, yes, it's a big decision. It's a big deal. It changes a lot of things.

SENATOR LATHROP: And for those individuals with developmental disabilities it's difficult for them to make those changes. It appears for me at least, and I'm not an expert in the area, but I've service on this committee, I've chaired it for two or three years now, asking people to change or pulling them out of their circumstance is very difficult for an individual with developmental disabilities. Is it not?

LINDA KALLHOFF: I would assume that that's true for all of us. If we're being asked to move out of our whole life with...not because of our choosing, if I get a better job I live in O'Neill, if I get a better job in Lincoln I'm willing to give up my neighborhood, my church, my grocery store, I'm willing to give that all up because I've made the decision. But if I'm not the one making the decision and I'm giving all that stuff up, that becomes a hard decision.

SENATOR LATHROP: We might have learned a few lessons over the last few years about asking people to uproot from their situation though or from where they're getting services. And I do have some concern. I appreciate what NorthStar does, I really do. And I appreciate that they have expressed a willingness to try to fill in whatever gap that may be created or whatever needs may come up. But I do have a significant concern about what happens when we ask people who have developmental disabilities, who have their extended family at a Goodwill Center in Sioux City, to now move around different people they haven't developed that trust relationship with. And I'm not going to

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go through the experiences we've had moving people in Nebraska, but they demonstrate that it's particularly stressful for the developmentally disabled. And while we appreciate what sounds like your assurance that NorthStar is going to try to accommodate the needs of this people, there is this element of disrupting their circumstance to make that transition. We appreciate your testimony and your coming down today.

LINDA KALLHOFF: Thank you.

SENATOR LATHROP: Oh, I'm sorry. Senator Giese has a question.

SENATOR GIESE: Thank you, Senator Lathrop. Just for the record. Can you give us a time line of the new facility in South Sioux City that you're currently working on, when you were made aware of that or when you decided to start that. And is that normal to do so in such a short time frame?

LINDA KALLHOFF: We began discussing those kinds of things when we received information that the contracts with Yankton and Sioux City would be terminated. Now exactly when, I don't know. Again, I wasn't the person that was going to make the...do the testimony today, so I don't exactly have that information.

SENATOR GIESE: Okay, I appreciate that.

LINDA KALLHOFF: But since we...but it is since we received that information that those contracts were...

SENATOR GIESE: Is that in your past experience, is that normal? Let's say, and I don't have the date yet. I will have shortly. But that...short of...I mean, it doesn't sound to me like there's a lot of planning in that, you know. For say...and I don't know when the...you know, it was about two...maybe a month ago, I'm going to say a month ago that

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NorthStar decided to do...provide...have an office and do some of the things that Goodwill provides in Sioux City. I mean, to me that's not...we're not comparing what...and I'm not demeaning what NorthStar does by any means. But to go from Goodwill to NorthStar or any new provider is, as Senator Lathrop said, quite a transition in itself. But going from this and ABS as well, this huge facility to something not quite the same is...would be even more traumatic.

LINDA KALLHOFF: And I can't respond to that. But I can say that again, startup services, starting up new services based on need or someone looking for services is something that we have done and do over time. And lots of times that's on an individual basis. More likely it's on an individual basis of family or a person looking for services. We get to know them through different processes, career planning processes, person-centered planning processes and start creating and helping create those kinds of environments and situations, opportunities that are specific for that person. That is something we do and have done over time for years for people. Starting new facilities, we have done that over the years also. Have we in the past number of years created a day services setting in a short time frame? I don't think so. But can we do it and did we do it? Yes. So...

SENATOR GIESE: But then in your recollection you've had no shorter time frame than what we've talking about now, from not providing services to providing services.

LINDA KALLHOFF: We're creating...but we have been...we have done that on a short time frame, creating individual services for people. So, yes.

SENATOR GIESE: Okay, thank you.

SENATOR LATHROP: I think that's it. Thank you once again, Linda, for coming down today.

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LINDA KALLHOFF: Okay, think you.

SENATOR LATHROP: You can put it in this box, that would be great.

SHANNON KENNEDY: Okay, thank you. Good afternoon, everyone. My name is Shannon Kennedy, Ke-n-n-e-d-y. I am a high school special education teacher in South Sioux City. I do teach at the Transition Apartment. I teach students with moderate disabilities from the time they enter high school. And they usually stay in our program until they're 21. So we do, when we have IEP meetings, we start talking about transition, you know, at the age of 16. Both the Goodwill and NorthStar are typically invited to these meetings to start talking to parents about what direction they want their students to go or their kids to go after they are 21. And in my experience I have a great concern with NorthStar getting anything going in a small amount of time. It's my experience that when they have come to these meetings they seem to be real vague about answering questions and are not good at following through, quite frankly. That's been my experience. Whereas students that we've sent to the Goodwill in Sioux City when they come to meetings they are very clear and things happen. And quite honestly, I think it's a lot better for my students to be able to have that experience. So I just wanted to let you know that for me there definitely would be a concern about NorthStar getting up and getting going based on what I've seen in the past. Thank you again.

SENATOR LATHROP: And just to be clear, your experience with NorthStar that you're referring to isn't how they're doing generally in the 22 counties in northeast Nebraska today but what you've seen at meetings that...

SHANNON KENNEDY: In South Sioux.

SENATOR LATHROP: ...discussed the subject of them picking up where these two providers would leave off.

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SHANNON KENNEDY: Yes sir.

SENATOR LATHROP: Okay. Any questions for this witness? I see none. Thank you, Ms. Kennedy, for coming.

SHANNON KENNEDY: Thank you.

DONNA POULOSKY: My name is Donna Poulosky and I'm from South Sioux City, Nebraska. I did not intend to testify, but here I am. We have two spectrums of the disabled. Okay? My daughter, Terry, over there, she's not high functioning like some that you have heard about. She will never work. She will never live outside of our home without her father or I. We did try NorthStar. Okay? NorthStar was too high functioning for her. Goodwill has taken our daughter and they have taught our daughter social aspects being outside the home, how to shop. She loves to push that grocery cart. They go up to the Goodwill camp ground. She wouldn't be like this if it wasn't for Goodwill's help. Okay? They manage, they help us and help her manage the behavioral issues. She is what you call a one-on-one adult. Nobody leaves her in a room by herself. You don't go anywhere without an adult or a supervisor with her. If it wouldn't be for Goodwill we don't know what we would do with her. She...Goodwill is amazing. And please, it was through the South Sioux City School System that she got in to Goodwill. Our caseworker from DHS, we had NorthStar there, we had Goodwill there, all in the IEP. We...some families do not have a choice. Okay? We did not...I mean we have a choice, I guess. We could have put her in NorthStar. She could have sat on a couch all day because they're more functioning to the workplace. Okay? Our daughter it not going to do that. But yet she gets socialized in Goodwill. She is taught table manners, she is taught bathroom ethics. She is...she had a grand mal seizure up there five, six years ago. And do you know what? They wouldn't let her go in the ambulance by herself. When my husband and I got to the emergency room we had four people from Goodwill Services sitting right there in that emergency room waiting for us. And like I...we can't do it, we cannot do it up there in South Sioux City, Sioux City, wherever, the northeast. I'm

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kind of like Mr. Williams. You tell me left or right, don't tell me north, east, south, whatever. (Laugh) But up there we can't do without Goodwill. Please, please do not let the state of Nebraska take Goodwill from us because then my husband and I are going to have two choices: we will have to move to Sioux City and we have talked to a couple of senators over there in Sioux City, we know our rights, we know where we stand, or my daughter will stay at home. And those are the only two choices that the state of Nebraska will give us. Thank you.

SENATOR LATHROP: Just a moment. Senator Giese.

SENATOR GIESE: Ms. Poulosky, then what then...September 1, what then if...so your daughter, so you're saying NorthStar is not an option.

DONNA POULOSKY: That's correct, they are not an option.

SENATOR GIESE: Okay. They don't have any...they won't have anything for her?

DONNA POULOSKY: We went to a meeting here a couple weeks ago at NorthStar, open-minded. I thought, you know, because I'm pretty stubborn where she's concerned, but I open-minded it. Went in there to an empty building. Contract is supposed to run out at Goodwill with August 30, September 1 my daughter cannot, along with some other adults, human beings, they cannot go into an empty building and have NorthStar decide right then and there what issues they have to contend with. My daughter has behavioral issues. Okay? She's a one-on-one. She can't go into a facility, that would be like sending her to our grocery store and saying, here, clerk, take my daughter while I grocery shop. She doesn't know her from Adam or Eve or whatever. You can't send her into a facility that's empty, that she's not...she's not familiar with. Because then it goes downhill. We have to start from scratch and build her back up. And, no, no, she will not ever be able to go to NorthStar. They will not be able to give the services to my daughter that Goodwill can offer.

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SENATOR GIESE: Thank you.

SENATOR LATHROP: I see no other questions. Thank you for your testimony. And just because we're making a record, we can't have two people testify at the same time. Okay. If you want to testify and then...is this your daughter?

RONNETTE WEMHOFF: Yeah.

SENATOR LATHROP: Okay, she's welcome to testify after you.

RONNETTE WEMHOFF: Okay, that's fine.

SENATOR LATHROP: Having a panel discussion just doesn't work well for our record.

RONNETTE WEMHOFF: No, that's fine. I just wanted her here with me so that you could put a face with what I'm about to say.

SENATOR LATHROP: That's perfectly fine. And we're glad she's here.

RONNETTE WEMHOFF: My name is Ronnette Wemhoff, W-e-m-h-o-f-f, from Coleridge. I'm the mother of Ashley Wemhoff, on of the individuals affected by the decision that's brought us all here today. I would like to begin by expressing my sincerest gratitude to you senators. I'd also like to thank all the professionals and all the support that's followed us down here today to testify on behalf of our children. It has been 15 years since we were faced with the decision of finding transitional services for our daughter, Ashley. Naturally, we were unfamiliar with the process and we depended on our school district, our ESU unit, and at that time Nebraska Department of Social Services or HHS. They all agreed and advised us that Yankton Area Adjustment Training Center, or ABS, was our best option. We took their advice and Ashley has

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been receiving has been receiving services there ever since. At no time in the last 15 years has the issue of, quote, unquote, jurisdiction to check on quality of care ever been brought up as our Nebraska caseworkers are there daily to...weekly for meetings. ABS is and has been certified with the state of Nebraska for over 20 years. The fact is, they are certified nationally with the Council on Quality and Leadership, a certification that not one provider in the state of Nebraska has. I ask you all, where would you choose if it were your child? Ashley was 12 years old at the time. And it was one of the hardest decisions that we've ever had to make. We trusted them and they loved her. She was Bud's baby and the youngest client that ABS has ever had. The services that Ashley and the other individuals experience are far superior to anything offered in our area. And this has been witnessed by anyone who has chosen to take the time and compare these facilities. I invite our Governor and Mrs. Fenner to take this opportunity before they make such traumatic and life-changing decisions. As a matter of fact, we received this list of rights, and I wish I would have made copies for everyone, from the Governor and HHS regarding these individuals with developmental disabilities, all of which have completely been ignored through this whole process. We cannot even discuss this with our children as they cry at the mention of being taken from their jobs, their friends, their staff, and a place they feel safe, protected, loved, successful, productive, and proud of their accomplishments. It breaks my heart as these people go to work every day with their friends and they do their very best. They have established relationships and it's where they obtain their medical care and they participate in social activities. I can assure you that if our state agencies would have advised us 15 years ago that there was a program in our area that offered all this and met our daughter's needs she would be there. But there wasn't then and there isn't now. As a resident of the state of Nebraska our families home for over five generations, I find it truly difficult to comprehend contemplating spending our life savings in legal actions against our state and our home and this is not pleasant for me to say, but we will or relocating to another state to receive services for our daughter that should have already been provided by the state of Nebraska. This population has existed in northeast Nebraska for close to 40 years. It was the state of Nebraska who let these individuals go and now they want to

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destroy their lives by bringing them back. For those of us who live in bordering counties we, as do our senators, realize how very vital it is that we work with our neighboring states. This is a time honored tradition when it comes to employment, medical care, college enrollment, water and land rights, building bridges, and building relationships. And the relationship that our state has shared with ABS in Yankton has spanned over 20 years. I ask you, is it really worth the trauma and the displacement that these defenseless individuals will face when there is really no fiscal or responsible reason for the change? Thank you for your time and consideration.

SENATOR LATHROP: Thank you, Ms. Wemhoff. We appreciate you coming down and your testimony today. It's always very helpful.

RONNETTE WEMHOFF: Okay. And can Ashley say a few things?

SENATOR LATHROP: Sure.

RONNETTE WEMHOFF: Okay, Ashley. Can you tell them what you do. Her name is Ashley Wemhoff, W-e-m-h-o-f-f. Can you tell them what you do at ABS.

ASHLEY WEMHOFF: I do CDs and CDs and (inaudible).

RONNETTE WEMHOFF: You work for (inaudible).

ASHLEY WEMHOFF: (Inaudible).

RONNETTE WEMHOFF: And you work for a lot of other area companies in Yankton.

ASHLEY WEMHOFF: Yep.

RONNETTE WEMHOFF: What did you always want to do?

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ASHLEY WEMHOFF: I don't know.

RONNETTE WEMHOFF: Your dream was to work at McDonald's. And when she started, 12 years ago, at ABS we knew that there was never, ever a chance that she would work at McDonald's. And now they are talking about transitioning her into the community for a job. And who else is in Yankton?

ASHLEY WEMHOFF: Jason.

RONNETTE WEMHOFF: And who else?

ASHLEY WEMHOFF: Jason and he's not here.

RONNETTE WEMHOFF: And Sean?

ASHLEY WEMHOFF: And Sean.

RONNETTE WEMHOFF: Sean, and who's Sean?

ASHLEY WEMHOFF: My boyfriend.

ASHLEY WEMHOFF: And how long have you and Sean been together?

ASHLEY WEMHOFF: I don't know.

RONNETTE WEMHOFF: Eight years.

ASHLEY WEMHOFF: Eight years.

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RONNETTE WEMHOFF: And what else do you do? Do you have yoga classes?

ASHLEY WEMHOFF: I don't, Joe does. (Laughter)

RONNETTE WEMHOFF: Do you have exercise classes?

ASHLEY WEMHOFF: Yeah, after (inaudible).

RONNETTE WEMHOFF: Yeah and do you go the Summit Center?

ASHLEY WEMHOFF: Me?

RONNETTE WEMHOFF: Yeah.

ASHLEY WEMHOFF: No.

RONNETTE WEMHOFF: Yeah, you went for swimming lessons.

ASHLEY WEMHOFF: No, I don't.

RONNETTE WEMHOFF: You did.

ASHLEY WEMHOFF: I did. Not now.

RONNETTE WEMHOFF: Not now. And you have Special Olympics.

ASHLEY WEMHOFF: That is on Monday nights now.

RONNETTE WEMHOFF: And do you love your job?

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ASHLEY WEMHOFF: Yeah.

RONNETTE WEMHOFF: Do you want to leave?

ASHLEY WEMHOFF: No. And I don't know, but Jason...

RONNETTE WEMHOFF: Do they cry?

ASHLEY WEMHOFF: You do. (Laughter)

RONNETTE WEMHOFF: Can you say thank you.

ASHLEY WEMHOFF: Thank you,

SENATOR LATHROP: You are very welcome. And thank you for sharing that.

TERESA ARENS: Hi. My name is Teresa Arens, Teresa without an H, A-r-e-n-s. I'm from Hartington. I was a special education teacher in the Plainview, Bloomfield, and Hartington districts for a total of 14 years. Now I am also the mother a beautiful 7-year-old daughter, Brianna, who has undiagnosed conditions at this time. I felt I needed to get involved with this as this sounds like it's going to affect my daughter's future. In the words of Sharon Osborne, on the Celebrity Apprentice, you don't mess with momma bear's cubs. And in my opinion, you've messed with the worst breed of momma bears and papa bears there is. We have...we know how to fight. We've been fighting all our children's lives for what we think is best. And it's...if you ask most of us, it's not a life we chose, it chose us. I sat for years in the seat that you are in. I sat watching parents and wondering why aren't they doing more and why it's not as near as bad as you're making it sound. But let me tell you, my daughter has been a blessing. And she is why I became a better special education teacher because I understood what they were going through. Before I go any further, I want you to do something I didn't do

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for a long time. I want you to think about a time in your life when you anticipated something that was very special happening. It could have been your high school or college graduation, your wedding, your engagement, the birth of a child, the birth of a grandchild. Remember how that felt? Was your heart racing like mine is right now? Were you babbling...bubbling over with excitement? Were you maybe a little bit out of breath? Can you feel that? That's what these kids feel every day when they know where they're going and they know what they're doing. That joy will be taken away from them. That's their special day is every day when they go to work. This will be replaced with a sense of loss and stress, as you have talked about. My daughter may not be affected by this at this time. But let me tell Saturday mornings in my house are absolutely awful. She will start screaming and walking around and be very visibly upset because her routine has been broken. Her usual routine is Mom gets up, Mom gets dressed, Dad gets me ready for school, I wait for my van, I get in the van, and I get to go to school. When that van doesn't show up our days are horrible. And some days, just to keep the peace, we drive around the section so that she gets it out of her mind that she has to go somewhere. These people will not be satisfied with just a drive around the section. Some of these people will have a lot of major changes in their lives. They may sit, rock, and cry. Some of them may become violent. And some even maybe even more serious than that. This issue doesn't only affect our children. Let's face it, it affects every parent...let's face it, every parent's secret goal in life is to get their child's feet out from underneath their table. Some children make this job really easy. A normal child all of a sudden is moving out of your house, being packed up for either college or moving out on their own. We need to work harder than that with these kids. And some of these people on some level have gotten that level of independence, that they are on their own in some way, shape or form. And you will be taking that away if they take away their jobs. The worry...my worry is some of these people have already talked about moving across state lines. My daughter attends a wonderful program in Coleridge. And my worry is, if some of these other parents whose children are also not involved at this time don't see a future for their child in the area and they decide to move, the numbers are dwindling in my daughter's program, and suddenly my daughter will not have a program

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that we fought long and hard to get her into. Our next option would be a 45-minute drive every day for her to go to just school where right now she's only driving 20 minutes to school. Our backs would be against the wall. My husband is a farmer and we cannot move our land obviously. Let me leave you with this. I just read an article yesterday called "The Mother at the Swings" by Vicki Forman, and she talked about her handicapped son and that when he was in the hospital, he was a premier, and they knew there were going to be problems, a social worker handed them a paper and said that there would be three kinds of people coming into their lives. There would be rocks, there would be wannabes, and there would be gingerbread men. She added another category, she added those who want to know. And I thank you for being the people that want to know what our children are going through. The gingerbread men were the people that would just run as soon as they saw a problem. And the people that were wannabe's are the people that would want to be there but it's just too much work. And the rocks would be the people that would be there through everything. The choice is yours now. Are you going to be a rock, a wannabe, or a gingerbread man for us? We'll take all the rocks we can get because, after all, every mountain is made out of little rocks and together they're a strong unit. Thank you.

SENATOR LATHROP: Thank you very much. Are there any questions? I see none. Thanks, Teresa.

TERESA PETERSON: Good afternoon, Senator Lathrop and committee. My name is Theresa Peterson and I'm from Omaha, Nebraska. And I first just would like to thank you all for taking the time to listen to us today. It's so important to allow all of us to have a voice. And I've thoroughly enjoyed listening to the families of the South Sioux City recipients. And I hope I don't cry. I thought I was okay before I listened to the last two testimonies. But I am going to read my testimony. And if you would bear with me. It may not initially seem to be relevant to this hearing but I really believe that there is relevance and I believe that there is a pattern that we're seeing. And so if you could just bear with me it's just about three pages. Dear Senators, I have some thoughts that I would like to

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share today on the topic of out-of-state providers and how exactly those contracts are approved. Governor Heineman had made the comment to Senator Giese that, quote, you can't have it both ways, in reference to allowing some out-of-state providers to contract with the state and not others. In actuality, the company to which Governor Heineman was referring is an out of state...or pardon, company was in fact technically an in-state company by virtue of the fact that it had set up office in Lincoln, Nebraska. This company was Qualis and was hired, among other things, to provide 60-day home healthcare reviews for certain Medicaid recipients. The other out-of-state companies are, of course, the reason for this hearing. In an essay written by Fred and Karen Steffen of Crofton, Nebraska, printed in Saturday, August 7, 2010 World-Herald, they asked the question, Why is Health and Human Services of Nebraska going to spend a huge sum to reinvent something that already exists? The key here is that they are discontinuing services, good services that have been in place for some time, that residents are happy with, and they are being promised that something adequate will take its place. Kerry Winterer, Director of Nebraska Department of Health and Human Services, pledges, in another World-Herald article that, quote, comparable, new services will be established in Nebraska for those who need them and those making the switch will not experience a gap in care, end quote. I have to ask myself, why are they cutting services at all until these comparable service providers are in place? Sadly, I think that the answer may be found in similar instances across the state where services are being hacked without any safety net in place. And I have some different references for those references I'm talking about that I've attached when I hand these out. It's a terrifying feeling knowing that you're about to be cut loose without anyone, anything or any service to support you. I am familiar with this feeling because it is exactly what we felt when we were informed that our daughter's services were being terminated in 30 days. We were told that we had ten days to request a fair hearing to retain services, but received the notice on day eight of that ten-day grace period. I have another reference there. The program that our daughter, Heather, qualifies under isn't as important as the fact that it is happening all across the state in a variety of Department of Health and Human Service administered programs. And again, I have another reference. Since our

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experience in early June, we have been able to get our daughter back in the program that she has been in for 11 years now. Anyway, for now is what they tell us. I can't help but wonder if getting rid of South Sioux City Services isn't part of a larger pattern, one that gets rid of local services, be it Nebraska or Iowa or South Dakota, but one in which the needs of the patient are intimately understood and addressed. Once funding for such services is eliminated it frequently destroys the very providers that are so crucial to the recipients care, leaving the recipient without other services in place. This is an extremely vulnerable position to be in and by nature would make the recipient more amenable to anything offered to them by DHHS. Is this what we want? I think that we can do much better than that as Nebraskans. Does that mean my time is up?

SENATOR LATHROP: Nope, you're good. You got another minute, Theresa.

THERESA PETERSON: Oh, okay, okay. Let me give an example. Two years ago, we found out secondhand that we would no longer have service coordinators for our daughter's program, the Katie Beckett Program. DHHS did not notify us of the reduction in services. I spent a week trying to determine if in fact they had been eliminated. Long story short, I finally spoke with Ginger Goomis at Department of Health and Human Services and asked her no less than six times if the Katie Beckett coordinator positions were eliminated. To which she finally answered yes. I was assured that this position would be taken over by another department and that we would be contacted on a regular basis. It is now two and one-half years later and we have received one call two years ago. There is a point here and that is once you are off the grid, once you have lost that local contact or provider you are on your own, sometimes fighting a very uphill battle, as happened to us in June. So all of this to say, why are so many longstanding local services being eliminated and in so many cases being farmed out or managed by companies purely in it for profit? There must be a reason that so many of our Department of Health and Human Service programs are now being either administered or managed by the myriad of hybrid managed healthcare companies out there. In our daughter's case the quasi managed healthcare company that cut our services was the

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afore mentioned Qualis. Qualis received a \$365,000 contract from Department of Health and Human Services to complete 6,300 reviewed or recertifications. The review does not qualify someone for the program but merely recertifies or looks for changes in health status. The Qualis contract for this states that they will be paid \$55 per review. A medical director who is an acquaintance of mine, when hearing our fee, responded with, wow, that's a lot of money per review. But let's look at it for ourselves. Reasonably, two review could be completed per hour and that would equal 32 reviews per day per person. One person could complete 9,020 reviews in a six-month period. At this rate it would take 3.28 individuals to complete the 6,300 reviews. They're usually RN's, at a salary of \$40,000 per year or \$20,000 for six months it would take in the vicinity of \$65,000 to complete these reviews. Qualis, however, received \$300,000 more than this. Again, how is that saving money? Is it possible that by Qualis' denial of service to recipients that the Department of Health and Human Services more than makes up for that \$300,000 over expenditure? I hate to think it, but by the time the World-Herald article exposed the situation, on June 5, 2010, Qualis had already denied service to 69 out of 1,271 reviews completed to date. These denials were coincidentally revoked after the article appeared. These 69 denials represented about a 5 percent denial rate. I'm not sure what savings that would represent for the Department of Health and Services but perhaps it more than covers the \$300,000 over expenditure. I am worried that we are hiring companies to do our dirty work. If cuts really need to be made then let's do it ourselves and stop paying the managed care middle man. And some of these middle men are making money by denying services at exorbitant rates. Consider Dale Wolfe, the CEO of Coventry Healthcare. Coventry, in case you aren't familiar, is the new managed...or Nebraska manager for approximately 90,000 Medicaid recipients. Dale received a whopping \$9 million in total compensation for 2008 from Coventry, but that was down from \$14 million in 2007. Dale has now retired. And just in case you thought that foolish was behind them, Alan Wise, the new CEO of Coventry, received \$10 million for 2009. Keep in mind that this does not take into account shareholder earnings. What are we doing? why is our state paying these companies our hard earned money and are we paying them to add another layer of buffer around the Department of Health

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and Human Services? Are we paying them...yes.

SENATOR LATHROP: Theresa, we're going to have you summarize.

THERESA PETERSON: I have like two paragraphs. Is that good enough.

SENATOR LATHROP: Okay.

THERESA PETERSON: Okay. Let's work within our confines and stop paying companies that are truly out of state and out of touch with needs. I know that we have enough talent in Nebraska to manage Medicaid ourselves, especially in time of recession. And what incentive is there in paying a company that has...as this to provide quality healthcare? There's none whatsoever. It is difficult for me to wrap my mind around these healthcare CEO salaries. It's very surreal to me, but not necessarily because of the sheer amount. If the CEO of a Fortune 500 company makes this producing steel or producing media well then so be it. But it's appalling to consider that these sums are sucked out of taxpayer earnings. But worse yet it is a burden that is borne by the most vulnerable in society. And it's borne by those who are not well and are denied life-giving treatment at times. My daughter has opened my eyes to many wonderful things, like all children do. But in particular, she has made me aware of the intense needs of people in a way that I can't imagine having learned otherwise. We do not have to be a party to this as a state. When we contract with these managed care companies, those that have little incentive to provide anything and everything to gain financially, we are in effect taking money from the working class and making the wealthy wealthier. And lest we think that Coventry is an isolated case, I have listed a few other companies with DHHS services and comparable salaries. Finally, by contrast let's look long and hard at the excellent providers and services that we have locally, including those in South Dakota and Iowa because we cut them out of the caregiving circle, until all we have left are people that manage us but none to care for us.

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SENATOR LATHROP: Thank you.

THERESA PETERSON: And I just thank you for your time here today.

SENATOR LATHROP: Thank you. And I don't see any questions. But thank you and good to have you here.

THERESA PETERSON: Thank you.

SENATOR LATHROP: Next to testify.

ALAN KNEIFL: My name is Alan Kneifl, Kneifl, K-n-e-i-f-l. I'd like to first off thank Senator Lathrop and his fellow senators for hearing our concerns. I'm from Newcastle, Nebraska. My wife, Carol, and I are parents and guardians of our son, Joe. Joe works at ABS in Yankton, South Dakota. I'd first like to give you some background on how Joe arrived at ABS. Even though Newcastle is located almost centrally between Yankton and South Sioux City, most individuals were transitioned to South Sioux because our Health and Human Services Office was in Dakota City. When Joe was in school there was very little in the Newcastle area as far as jobs for transitioning, because of our small size. One thing that did become available though was help from our other schools. Five years ago, we began sharing services with Laurell-Concord and Coleridge Public Schools. Wynot Public Schools came on board one year later, giving us a four-school mix. Dr. Dan Hoelsing was superintendent and he immediately began finding jobs in Laurel for transitioning students. Joe was able to work in a hardware store, nursing home, and a kitchen in the school. Joe liked this arrangement very well and improved with his job skills. As time went on, Joe felt good about himself and made new friends in both Laurel and Coleridge and had found some structure to his school days. We then moved to graduation. Health and Human Services at Dakota City wanted to do summer transitioning to NorthStar in South Sioux City. We transported Joe to South Sioux City's NorthStar every day. I think the people did try with what they had, but they just didn't

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have jobs for Joe to do. Joe began to get frustrated and angry. No structure, no success and soon Joe was headed in the wrong direction. It culminated with a meltdown on Joe's part. We were forced to hospitalize Joe in Sioux City. This was the most traumatic time in our lives. Desperate, I visited with Dr. Hoelsing. He encouraged us to take him to an excellent mental facility in Sioux Falls. We checked Joe out of Sioux City, took him to Sioux Falls. In about five days, Joe had improved enough to come home. Dr. Hoelsing felt at this time we needed to try a placement at ABS. Dr. Hoelsing, Cedar County Schools had been using ABS with great success for many years. We toured ABS, met with their staff and tried to come up with a plan for Joe. Joe, at this time, did not want to go to Yankton, he'd always wanted to be in the big city. He wanted to go to Omaha, Chicago or New York City. (Laughter) Obviously, not good options for us or Joe. After another meeting with ABS we had a plan and Joe began work there. At first progress was slow. It took Joe awhile to get into the routine. As time went on, Joe began to do much better. He found...he has found structure, success, made many friends, and is becoming very confident...more confident every day. When he gets home he tells us about his day with enthusiasm. I tell you this because in these three years we have experienced the most traumatic time in our lives but also the most success and triumph in Joe's 22 years. Please understand that we are scared at what pulling the rug out from under Joe and these other young adults might do to them. We also feel so frustrated at trying to understand why our most vulnerable are being targeted in this way. Two weeks ago, when we went to the hearing in Crofton with HHS, Joe called us on the OnStar. He told us to please pray to God that he could remain in Yankton. Other things that we are frustrated about--we only received notification recently. Number two, it's been very hard to get information about this decision from HHS. Number three, while we understand that Nebraska may some day be able to mirror these services we receive, we do not believe it can be done so soon. I think it would take years to build a program, not months. And with the rural setting we live in we know that the community-based services program being pushed at us will not work for us. We have no workable options for Joe. Thank you, senators.

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SENATOR LATHROP: And thank you for coming down, Mr. Kneifl, we appreciate your testimony. Are there others wishing to testify? Okay. And is there anybody else in the room that still intends to testify or would like to? And what do we got? Two hands up. Okay. Good afternoon.

DAN HOESING: Good afternoon, senators. And thank you. Special thanks to Senator Dierks and to Senator Giese for your work within the districts. My name is Dan Hoelsing, H-o-e-s-i-n-g. I currently serve as superintendent at Alliance Public Schools in Alliance, Nebraska. In addition, I provide administrative services to Coleridge, Wynot and Newcastle Public Schools in northeast Nebraska where I was formerly superintendent. My job is assist them with finance and program funding for students. I've been in the business of education of all kids for 30 years. This is my 31st year. And I'm testifying in opposition to a proposed administrative change made by the Department of Health and Human Services Division of Developmental Disabilities. Specifically, this change seeks to end the waiver authorizations for individuals from Nebraska to currently receive services from Ability Building Services in Yankton, South Dakota in October of 2010. Prior to this ruling, school districts were required to secure services in the least restrictive environment, closest to home, and as close to the regular education setting as possible. In addition, once a student turned 16, as you heard, school districts were required to develop a transition plan for students with disabilities to transition from school to an adult work and/or living arrangement. If these services are provided outside of the school setting, agencies were required to file for an approved rate with the Department of Education in Nebraska. In the past, the services were based on the needs of the individual. This ruling on funding for adults with disabilities may not directly prohibit public school districts access to out-of-state services. It does, however, severely limit our ability to provide transition services to students if they cannot extend their work, living, and relationships beyond their high school experience in the same setting. The current waiver system provides a seamless transition from the school setting to jobs provided at a sheltered work sight, supported job in the community, or a combination thereof. The recreational activities, adult education, and independent living skills classes

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along with public transit and supervised and independent living accommodations provide a range of services to our adults with disabilities currently living and working at Ability Building Services in Yankton, South Dakota. These services would be extremely difficult and costly to replicate in rural settings in Nebraska. For many of these adults this will not only impact where they live and work but their friendships and professional relationships established over many years in a community that truly embraces the value of people with disabilities. My first point of concern as an administrator focuses on the fair treatment of individuals with disabilities. The Department of Health and Human Services may be within their legal authority to initiate this change. The question before you, as you've heard from many of the people testifying, is the fine line between legal and right. Public law 94-142, passed in 1995, identified people with disabilities as a suspect class of people who require special consideration to ensure that their rights and equal access to treatment are protected. This law clearly pursued the alignment of legal and right. My second point of concern focuses on funding and fair access to education and transportation services, especially in communities bordering other states. The Governor has been clear in his expectation of school districts to collaborate, to provide more services to students at a reduced cost. The school districts have responded through the development of learning communities, distance education, interlocal agreements, shared staffing, and a variety of other cost-saving measures, while at the same time improving student performance in the state of Nebraska. The fiscal impact of this change comes at a time when districts are faced with a projected decrease in state support of education of \$140 million in the 2011-12 school year. This expansion of our current waiver system provides a vehicle for states to further collaborate to provide quality services close to home at the same reduced costs. I urge your support for the Legislature to model your expectation of other agencies to collaborate with neighboring states to provide quality services, especially for those individuals who cannot advocate for themselves. In closing, I ask you to consider permanently extending the waivers and/or legislation to allow the citizens of the state of Nebraska the choice to receive services closest to home in their present work and living environment. The decisions to limit access to out-of-state options for adults with disabilities mirrors others in our

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country who are subject to similar displacement and struggle to recovery. Our history demonstrates that it was legal for the American government to displace hundreds of thousands of Native American people who were forced onto reservations legal at that time, but was it right? It was also legal for our government to intern hundreds of Japanese in World War II. Legal at that time, but was it right? In 1995, Public Law 94-142 identified another suspect classification of American citizens who were denied or provided limited access to education and the basic rights afforded to other Americans due to their disabilities. Legal at that time, but again morally and ethically wrong. Legal is not always easy. But doing right takes greater courage and determination and conviction as evidenced by those who testified are in attendance today. Finally, I urge you and thank you in advance for taking the high road to advocate for those individuals whose future lies in the balance of your wisdom to go beyond what is legal and make the right decision. Thank you.

SENATOR LATHROP: Very good. Thank you for those thoughts and your words. We have...it doesn't appear there's any questions, so you're free to return to your seat.

DAN HOESING: Thank you.

SENATOR LATHROP: Thank you very much though. We have two more folks in the back. You may approach and...

MELINDA WELLS: Hi, I'm Doctor Linda Wells. I'm the transition coordinator for special education in South Sioux City Community Schools. Transition is of extreme importance in our school system, so much so that 30 professionals are involved in our transition program. We run our own sheltered workshop within the school system, it's called Cardinal House. We also have a sheltered apartment which the teacher for that apartment just spoke to you. I just want to say that the Nebraska service providers have told me repeatedly that the current trends in special needs populations are far away from sheltered workshops, that I'm really not with it if I really believe in sheltered

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workshops. And I really believe in sheltered workshops, whatever name you call them. And Goodwill has provided wonderful services for my students after the age of 21. And we in South City Schools will continue to provide those shelter workshop experiences before the age of 21. And we're hoping very much to use the Goodwill services or to have our students use them after high school.

SENATOR LATHROP: Very good. No questions. Thanks, Dr. Wells. We appreciate your testimony.

JIM GUNSOLLEY: I'm Jim Gunsolley. I'm the transition specialist for Education Service Unit number one in northeast Nebraska. I serve 24 schools districts in that area. I work with special needs students who are age 16 and over. We talk about the world of work and what the kids are going to do after they get out of high school. Jennifer and another student spoke earlier about the affect that this might have on them. And they tend to put a real human face to this decision. Many others simply aren't here and I think it's very important for us to be advocates for them. Nebraska is a great state. People should not have to move to continue their services in another state. The decision by DHHS, in my opinion, is wrong. It's not a win-win for families, it's not a win-win for the people that are being served by Goodwill and ABS. Services in northeast Nebraska simply do not exist to the extent that they do at Goodwill in Sioux City or ABS in Yankton, South Dakota. NorthStar, at this point, does not provide that local service. It would be interesting to see at some point in the future if they could develop that service. And then parents, at some future point, could make a decision if they want to access those services or continue with Goodwill or with ABS. I also believe in the shelter workshop concept. It's my understanding ABS or excuse me, that NorthStar, at this point, does not have a shelter workshop setting for people. In any case, it takes years of planning. Sometimes we start with kids below the age of 16 to build some kind of vocational plan for them when they...for when they leave high school. And quite often, we access ABS and Goodwill, for example, in Sioux City at age 16, 17, 18 and they work there for some period of time before age 21, when they leave high school. I just would encourage you and all of us to

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try and do the right thing. As Dr. Hoelsing said earlier, we simply want to do the right thing for these people. And this seems diametrically opposed to what should be done for them. I thank you.

SENATOR LATHROP: Thank you very much for your testimony. I don't see any questions so you're free to return to your seat. Are there any other persons wishing to testify? As I indicated at the beginning, I've asked Jodi Fenner to testify last. So, I guess, we're at the point where we'll hear from Ms. Fenner next. Good afternoon and welcome to the LR11 committee again.

JODI FENNER: Thank you, senators, for allowing us this opportunity this afternoon. I have some prepared comments and then I'll address some of the issues that were brought up today. I want to start with saying that everything we do in the Division of Developmental Disabilities Community-Based Services Section starts with the people that we serve. They are our priority. We work closely with individuals, their families and providers to support over 4,500 people in services in various Nebraska communities. Our role is multifaceted. It involves the implementation of state and federal laws related to DD services. We provide for service coordination and technical assistance. We're also responsible for the certification, oversight, and contracting for community-based providers. I was asked to attend today to discuss the division's decision not to renew its contracts with Goodwill and ABS. In the communication I sent last week, I provided members of the committee with documents that summarize the rationale for not renewing these out-of-state provider contracts. I've also shared with you some of the steps that the division is taking to make the transition to Nebraska or South Dakota services as smooth as possible for the individuals involved. We realize that this is very difficult for individuals and their families. We didn't make this decision lightly or without thoroughly assessing our options before reaching the conclusion that we could not renew these contracts. There are three key reasons for our decision. The first is, as required by state statute we have an obligation to adopt certification and regulatory standards for community-based services. The second is as a condition of receiving

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federal waiver funds, through CMS, we are required to meet the terms and assurances contained in our Nebraska Medicaid waivers, and those terms and assurances require us to apply our certification and regulatory requirements to all providers consistently. We cannot claim these federal funds for payments to providers who do not meet all of the regulatory requirements. The third and final reason is because we do not have regulatory jurisdiction in other states, we cannot fulfill our certification and regulatory duties in relation to those out-of-state providers. We cannot simply contract with Iowa and South Dakota for this oversight as their certification and oversight processes and standards are significantly different than in ours. Similarly, the surrounding states do not allow Nebraska providers to provide services to their residents under their home and community-based waivers. The Legislature is free to entertain legislative options and exceptions to current certification requirements in the Developmental Disability Services Act. However, any exception could not be limited to Yankton and Sioux City and could open up many more cross-border situations in other parts of the state. And I'm happy to answer any questions you have based on the foregoing information that I've provided you.

SENATOR LATHROP: If you want to go ahead. Senator Coash, you're recognized.

SENATOR COASH: Thank you, Senator Lathrop. Okay. Just to try and get my head around your second point which was the federal funds and the certification. I'm interested in how that came about. Did you...did CMS send you a letter and say, hey, we see what you've been doing, state, for the last many years, and now we're going to pull our federal funds? Did you identify it on your end? I mean...

JODI FENNER: Yes. What happened is, as you know, we've been working on our new waivers for quite some time and our regulatory changes. So we've had a lot of contact with CMS. We've also gone through an audit in the last year. So I've become intimately acquainted with the expectations of CMS with regard to enforcing our quality assurance provisions. What happened, and how this was brought to my attention is my staff

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brought me these contracts as we were preparing to renew annual contracts. And my question to them was, because I was simply unaware and maybe I should have been aware, but I wasn't. And I asked them to explain to me how we were meeting our terms and assurances with these contracts. And I was told we were not. So...

SENATOR COASH: So is there a date in the future where if these contracts were extended that CMS has said, you can do that but you won't be getting the federal match?

JODI FENNER: We're not getting the federal funding today, the moment we noticed we were doing it we stopped. We've had a discussion with CMS. It doesn't appear that they're going to go back and ask for past monies. They could do that. But since we identified the issue and have stopped claiming waiver matching for the ABS, we never claimed matching for the Goodwill, I learned. But again, I can't...they haven't committed to anything, but initially they've at least...they haven't said they were going to ask for the money back. And currently we are in compliance with the federal waivers because we're not maintaining that state match.

SENATOR COASH: Okay.

JODI FENNER: I mean the federal match. I apologize.

SENATOR COASH: Can you address, one of the earlier first testifiers talked about, I think it was Mr. Williams from Goodwill, talked about his efforts to work with the department to become a certified Nebraska provider that has not...I mean, they're not. So he talked about that process starting in 2007. And I know that was before you were the director. So...but what...can you give me your side of that and how you see that process.

JODI FENNER: I can and I will answer this as respectfully as I can. But my prior...my

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staff and prior directors have told me that their version of that agreement, so to speak, was that we would work with them to come in and be a provider. He mentioned the relationship with Grand Island. The department's understanding was there would be...there would be a presence in Nebraska, whether they did that through Grand Island or through moving into Nebraska. Either of those would be valid options. There was a comment that we hadn't responded since last spring. And quite frankly, that is just not true. As late as September of '09, September 8 we notified Goodwill that their paper policy review had finally been completed. That was a very lengthy process because their rules...their agency policies didn't match what we would require in Nebraska. That process had been completed. And we needed some additional information. And there is also a secondary portion of the certification process where they have to go...currently, they still go through Public Health. And so we have had conversations since then. And there was some back and forth communication. Verbally Goodwill indicated that, no, they were not going to complete that certification process to provide services in Nebraska.

SENATOR COASH: So could they get certified in Nebraska? I mean, they've started the process.

JODI FENNER: They will have to have a Nebraska presence for us to be able to have...I mean, I...we have to be able to meet the same terms and assurances that we meet for every other Nebraska provider. And if they want to do that, we will certainly work with them in doing that. But we were told that that was not something they were interested in.

SENATOR COASH: Okay. I'm going to have some more later, but go ahead.

JODI FENNER: I did also want to address some of the comments about the empty warehouse and the facility related to the new facilities in South Sioux City. And I apologize. I know Alan had to leave in an emergency and we wish him well with his

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health. But I actually have a video I could have delivered over this afternoon. Those facilities are up and running. They're currently doing some sorting and preparing. The storefront is not ready yet. But they've already started collecting I'm not sure merchandise is the right word for that. But if Alan was here, I'm sure he would give you a much better update than I can. But he did send me a video update this morning showing me what they have accomplished so far. And they are currently serving at least one individual I know of who transitioned already.

SENATOR LATHROP: Okay. Jodi, I think I'll ask a few questions. There seems to be two aspects to this. And one is that there are services being provided that have...that these families have come to rely on. And you and I don't have to go through our experience and taking people and uprooting them from their services because over the last several years we've seen what that does. It's very difficult, very, very difficult for individuals with developmental disabilities to be uprooted from their situation and go to a different situation because they like routine, they have relationships, people they develop a trust with. And that's hard for them to move. Would you agree?

JODI FENNER: I would agree, Senator.

SENATOR LATHROP: And so this decision to, that we'll talk about the reasons for, but the decision invariably will result and it's certainly not what you want, but one of the consequences is going to be these families and their young adults who are getting the services in Sioux City and Yankton will experience this same kind of stress and difficulty making a transition. Would you agree with that much?

JODI FENNER: If you're saying "same kind" as far as requiring physical movement as in the population you were referencing, I mean, we're not asking them to physically move where they live necessarily. For the individuals who live in South Dakota we've actually worked with South Dakota (inaudible) transition into their services. So I wouldn't liken it to the situation that happened last January. But there will be change and it will be hard.

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And that is why we, even though we're technically in violation of the statute, and that's really hard for me to do, I felt we had to do that so that we could allow for a more lengthy transition.

SENATOR LATHROP: Okay. So you at least recognize that for these families this is going to be very difficult. And you had recognized that long before they came down here today to talk about how difficult this is going to be if they can't take their son or daughter to Yankton or to Sioux City?

JODI FENNER: Yes.

SENATOR LATHROP: Okay. So we have the problem. And I'd like to better understand because I don't and I'm trying to read this stuff. And it's coming in sort of "HHSeese", if I can. The reason that we've made...that the decision was made to not extend the contracts for these providers. And I appreciate that they are out of state. And I appreciate that we cannot send our surveyors to a facility in Yankton or in Sioux City. They don't have to let them in the place, right? So our surveyors come up and they want to make sure that they run a clean shop and the habilitation services are being provided and they don't have to be let in. This is the question though. Is it a federal statute that says you can't do this? Is it...what statute specifically says that this idea of coordinating with South Dakota or with the state of Iowa for these services can't be done?

JODI FENNER: Well, the federal government will let you lower your standards as much as you like when it comes to Medicaid waivers. But what they make you do is they make you consistently apply whatever your standards are. And our standards in Nebraska, part of our quality assurance system requires routine surveys by both our office and in certain circumstances public health. We also have...it's not just the survey, it's the adult protective services issues that we have and all of those things as well. It is truly the regulatory jurisdiction we have over our providers and the ability to exercise that.

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SENATOR LATHROP: Okay. Let me interrupt you, if I can. And not to cut you off but to take what you've told me so far. And that is there's nothing about CMS that says you cannot send your people across the border to get their services in South Dakota or Iowa. But they say you must have consistent standards among those who are providing the services. Is that the case?

JODI FENNER: Yes.

SENATOR LATHROP: And your interpretation of that is that we don't know if there's consistent quality of services because we can't go over to Goodwill in Sioux City and look around and subject them to our regulations. Is that the rationale?

JODI FENNER: It's more than just looking around, but yes, it's applying our regulations in statute, yes.

SENATOR LATHROP: Well, I'm...it's surveys to make sure they're complying with regulations.

JODI FENNER: Yes. And that's why I said as a Legislature, if you wanted to provide a legislative exception to allow state funds for somebody outside of the certification process, that is something that the Legislature could do. But there is a price tag with that.

SENATOR LATHROP: Before I get to that, and we'll talk about it in a second. Do you have any idea whether or not the ABS in Yankton, South Dakota does not meet our standards?

JODI FENNER: I know that with ABS we've actually worked much closer with them and we've gone through many parts because they actually have residential services. Even though we don't have jurisdiction, we've actually looked at a lot of their services more

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closely than Goodwill. But, no, I mean, this isn't about quality. We don't doubt Goodwill's quality or ABS's quality.

SENATOR LATHROP: Well, wait a minute. Because you suggested that it is, that it's about making sure that there is a consistent level of care among all the providers that are providing services to people from the state of Nebraska. And so my question is, do you have any reason to think that either Goodwill or ABS isn't doing just that?

JODI FENNER: Well, we do have an instance with Goodwill in the last month where they have violated our regulation and our contract. So, yes, we do have questions about that. With regard to ABS we do know we've had critical incidences reported that haven't been followed up on, nothing significant, well, I won't say nothing significant.

SENATOR LATHROP: Well, that's happening in Nebraska though, too, is it not?  
(Laughter)

JODI FENNER: Well, but you've directed me to change that, Senator. You've...my recollection is this committee asked me to fix that.

SENATOR LATHROP: Jodi, I'm not...no, listen. I'm not here critical. Because notwithstanding what I've heard already today, you and I have had a good relationship. And I think you're doing some good things. Okay? You've done a lot for this community since you were appointed by this Governor. And what's happened under your watch has been a significant amount of improvement. I'm not here to criticize you nor to tease you today. But I am interested in the answers to the questions, though. And you're telling us then that it isn't a federal statute that requires this and that it's about our ability to regulate or to ensure that we are maintaining the same standards in different states as the providers are required to maintain in Nebraska.

JODI FENNER: Yes.

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SENATOR LATHROP: And as a practical matter, we don't know that they aren't doing that. There may be instances, same as there are for Nebraska providers. There may be instances where they're not meeting the standard on every service provider to every care provided. But as a general rule or as a general statement, we don't know that they're not doing just as good a job or perhaps even a superior job than the Nebraska providers. Would that be true?

JODI FENNER: You're correct, we do not know.

SENATOR LATHROP: So the question then is, what? What do we have to do with our regulations or with our statute to satisfy Health and Human Services or the executive branch that these people continue to provide the services?

JODI FENNER: What we can do, like South Dakota or like Iowa has done or South Dakota also allows some level, they privatize their certification. They allow certifiers to be...they allow providers to be nationally certified. They don't require the same type of oversight that we do. And we trust that to a private entity, whether that be an entity called CARF or there is about four or five different certifications that Iowa accepts. And we can, and we've talked to Medicaid about this, we're certainly able to change our standards that would also allow people though to go across the border in all of the other areas too. We can't just do it for two locations if we lower them.

SENATOR LATHROP: You've brought that up and I want to follow up on that.

JODI FENNER: Sure.

SENATOR LATHROP: Because I'm trying to think of other communities that may, perhaps somebody in Rulo, Nebraska, or north, pardon me, southeast Nebraska might want to go to St. Joe, Missouri or something like that.

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JODI FENNER: Yeah, there's a lot of them, Council Bluffs.

SENATOR LATHROP: Or Council Bluffs.

JODI FENNER: We get requests all the time.

SENATOR LATHROP: If Nebraska is setting the rate and these people are willing to provide the services at the rate set by Nebraska, what's wrong with that?

JODI FENNER: Well, the issue is if you want to have good quality services in Nebraska, providers aren't going to...I mean, our providers have stepped up in the last year. I think we've asked them to step up and expand capacity, expand the quality in the different types of services they provided. If you open it up and let people take their services wherever they want in other states, our providers are not going to be willing to do that. That's why we have a roomful of providers here who are sitting there anxiously awaiting, you know, hey, are we going to lose our Omaha business, are we going to lose our business up in, you know, by Gering and Scottsbluff because there are companies across the border that will take them. And we have good rates compared to other states in some instances.

SENATOR LATHROP: Let me ask a related question, I believe at least. And that is, if these providers consented to a survey of their facility by or consented to oversight by Nebraska, as long as they are providing services to Nebraska residents, in other words, whatever the standard is in Iowa, if it's lower than Nebraska's, they agree to provide services at a standard demanded by the Nebraska regulations and submit to surveys by Nebraska inspectors, are we okay at that point?

JODI FENNER: No, no, because we still don't have access to if somebody files an APS or CPS complaint against somebody who isn't a Nebraska...who isn't one of our...I

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mean, there's a lot of information. I mean, our APS would not share that information with other states.

SENATOR LATHROP: What's APS for those of...

JODI FENNER: Adult protective services, child protective services. I mean, it's more than just consenting because consent can be withdrawn at any time. And then again whenever we have a violation like we had this month, what do I do? Do I cancel it at that point in time? I can't force them to take action. I can't do anything about it other than terminate the contract.

SENATOR LATHROP: But just to talk about the process a little bit, if you had somebody in North Platte, Nebraska, that's providing the service and you get a report and there is reason for concern, you're not going to pull their contract right away. You're going to give them an opportunity to fix it, aren't you?

JODI FENNER: Yes, and they oftentimes come in and do that because they know that we do have regulatory authority over them. And the other thing is, is if you want me to start doing surveys in other states, I don't have the staff, I don't have the capacity to do that. I'll be real honest with you. I just don't have that type of capacity to ensure quality services nationwide. I mean, and that's why other states don't do this. No other state that I'm aware of does this.

SENATOR LATHROP: Sure. Okay. What have we been doing to this point in time?

JODI FENNER: Nothing. I mean, we have service coordinators who have the routine contacts that we haven't been surveying these facilities. Occasionally we'll do what we call an informal walk through, but, no, these facilities have not been formally surveyed in more than a decade.

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SENATOR COASH: By us.

JODI FENNER: By us.

SENATOR LATHROP: Do you get...are they being inspected or surveyed by their own state?

JODI FENNER: I believe that in South Dakota, I believe APS is. I'm not sure, I believe in Iowa that Goodwill is...they're certified through what they call a dean status, so it's a private entity CARF that has certified them. And I am not certain whether CARF is doing their surveys or if I was doing their surveys.

SENATOR LATHROP: If Iowa or CARF, either one is doing a survey, do you have...are they sent...is a copy sent to Nebraska?

JODI FENNER: I believe we get a copy of their certification but we certainly don't get a copy of their full survey process.

SENATOR LATHROP: And the certification would suggest that their meaning whatever...

JODI FENNER: That they would be CARF standards which are not consistent with Nebraska's standards.

SENATOR LATHROP: Well, are they not consistent with Nebraska because they're more stringent or less stringent...

JODI FENNER: No.

SENATOR LATHROP: ...or less stringent or just different?

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JODI FENNER: No, less stringent. In fact, it took more than six months asking, working with Goodwill to update the rules and regulations just to get the paper to be consistent and compliant with Nebraska regulations, that's not addressing the day-to-day, real life activities; that's just paper.

SENATOR LATHROP: Are there any providers providing services to the developmentally disabled that are Nebraskans, but outside the state of Nebraska other than these two providers?

JODI FENNER: No.

SENATOR LATHROP: These are the only two?

JODI FENNER: Yes.

SENATOR COASH: Could we grandfather them in through...?

SENATOR LATHROP: Yeah, you know what I don't want to do is that I...I appreciate your testimony and I appreciate you answering the questions that I have because it's enlightening. What I don't want to do is...I want to have an opportunity to visit with you after we're done to see if there isn't something that we could do, maybe there isn't but we could talk about it and I don't want to commit you to it by answer...asking you questions any further on the record I guess. But, Senator Dierks, do you have any questions?

SENATOR DIERKS: Jodi?

JODI FENNER: Yes.

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SENATOR DIERKS: When we met the other day with Senator Giese, I was under the impression that we were going to be able to continue the funding for those children who are going through APS if they lived up there during the week but not those that drove up every day.

JODI FENNER: That's correct. We have an agreement. We talked to the South Dakota director. They can't absorb them all overnight, but if they live in South Dakota, which they do, they are also entitled to South Dakota services. And we've worked out about a six-month transition period for those seven individuals. And then people who choose or work with their transition coordinator and are in what we call residential services in South Dakota in the future will also have that option. That's the wonder of the Americans with Disability Act is it guarantees people with disabilities have options to move from state to state. And so I really want to give South Dakota credit for working with us on that.

SENATOR DIERKS: Do you receive information about the successes or failures of the program at APS? Do you get that information in your office?

JODI FENNER: I get information through my program coordinators. Have I gotten specific information? I've gotten a lot of others from parents who...you know, I understand the struggles. I mean, I'm...I get that. So we get...I've gotten several of those in the last month, and I appreciate that and I respect what those families...

SENATOR DIERKS: Some of the questions I asked earlier, and I got chastised a little bit about it, was the difference between the services that are provided at the facility in Yankton compared to some of the services we provide in Nebraska. And I think that we have to ask those kind of questions if we're going to have any decisions made, so.

JODI FENNER: Um-hum.

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SENATOR DIERKS: If you think that the facility...if you think APS is providing good enough services to those students who live there during the week, why wouldn't we continue to give that same services to those that drive in every day?

JODI FENNER: Well, again, if you want to give me a statutory exception and if the Legislature wants to make an exception for that, I will fully support that. I don't get to make those choices, Senator, and my obligation is to follow the laws that you make. So if we come into this next legislative session and you make that exception, I'll even...you know, I'll work with you but it's...there...we still have to follow the law.

SENATOR DIERKS: So this is part of statute.

JODI FENNER: Well, it's part of the statute that requires consistent regulations. If you want to change the direction and you want me to change the division, I mean, this committee made recommendations for us to enhance our oversight and our regulations. We worked very hard to do that. We're working on surveyor training right now so that we can move from biennial or once every three-year surveys to annual surveys. And I was directed last year to make sure that the protections in the community were as good as, if not better than, ICF/MRs, and I've got a whole team full of people who are making that happen. If you wanted us to change direction, you know, I don't get to make the policy or the rules but I do have to follow them, so.

SENATOR DIERKS: Okay. Well, I, too, have good feelings about what you do with NorthStar. I've been to several of their facilities and I think that the people that run them are doing a great job. I'm just...I've heard so many stories from the people who use the service from APS that I have to be asking you those questions.

JODI FENNER: You know, and, Senator Dierks, and I have a lot of respect for what NorthStar does and we have a lot of great providers in Nebraska but, you know, I'm not just a mean attorney. I'm a mother and, you know, I have a son with a disability, and

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when you're a parent, you make choices and sometimes your choices are limited. And for many of the people here, they made the best choice for their child at the time just like the people who chose to...who had to place their children in BSDC. But I cannot guarantee that providers...and your providers are going to be consistent forever. I can't...just like you can't guarantee me I'm going to have this job forever. Sometimes life changes but saying that we have other good providers doesn't answer the concerns of the parents behind me, and I understand that. I do.

SENATOR DIERKS: Another question I have is that I understand that APS and what's the other one in Sioux City...

JODI FENNER: Goodwill.

SENATOR DIERKS: ...Goodwill, that they are nonprofit organizations. And what about NorthStar, is that a nonprofit?

JODI FENNER: I believe they are but I'd have to check their organizational documents. We don't make that a requirement.

SENATOR DIERKS: Okay. Thank you.

JODI FENNER: My administrator is telling me yes.

SENATOR DIERKS: Thank you.

JODI FENNER: You're welcome.

SENATOR LATHROP: Senator Giese.

SENATOR GIESE: Thank you, Senator Lathrop. Ms. Fenner, one question on the...prior

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to 2007, how did we handle the yearly...how did we remain in contracting with APS and Goodwill prior to 2007?

JODI FENNER: We just did it.

SENATOR GIESE: We just did it.

JODI FENNER: We just signed a contract. The...my predecessors just signed a contract that quite frankly I think they knew, and several of them won't say it out loud but they'll tell you that they knew it wasn't the right thing to do but they did it because...well, I don't know. I mean, I can't speak for what happened in the past, but it was not the appropriate thing to do at that time either.

SENATOR GIESE: Well, and I appreciate your answers and...but the concern, I guess, that I have is that, you know, we had a meeting, you were involved in one of them...

JODI FENNER: Um-hum.

SENATOR GIESE: ...and we had another one before that. There really was no option, I guess, for us, and we've heard several of your options today, but. So then you're telling me and I think you did at one of those meetings that although it's not, at that time and maybe today, may not be an option for us to change what we're doing now. It's not impossible. Would that be...but couldn't...

JODI FENNER: No, it's not impossible. It's not impossible. The Legislature has a lot of options.

SENATOR GIESE: But I don't know, do we even have to go to the Legislature? Do we have to go that far? You write your regulations.

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JODI FENNER: Yes, I do.

SENATOR GIESE: So you...

JODI FENNER: Based on the directions, largely in part, of this committee.

SENATOR GIESE: But you could write those regulations. I mean, does it take an act of the Legislature to do what we're trying to do?

JODI FENNER: I could make a regulatory exception for out-of-state providers but I cannot claim federal funds for it, and you would have to give me money to pay for that. I do not have money in my budget to absorb that level of service, straight state-funded.

SENATOR GIESE: Is that...I think the committee, they had an e-mail that...

JODI FENNER: Well, I say that. I would want to talk to my attorneys before I say that. I'm really saying that out of tune, but I...

SENATOR GIESE: But the CMS office, Kansas City State, though, requires DHHS only contract with providers that meet certain requirements, but they say that that's not a requirement, we're not...

JODI FENNER: CMS allows us to choose our own regulatory requirements every state's waiver system is different. Again, Iowa has a complete privatization of certification. If that's what we wanted to do in Nebraska, that is a choice we could make.

SENATOR GIESE: Thank you.

SENATOR LATHROP: I think that's all.

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JODI FENNER: Thank you, Senators. Appreciate your time.

SENATOR LATHROP: Thank you for coming down. We appreciate your explanation, your patience in answering our questions, and...

DEAN WILLIAMS: Senator, (inaudible).

SENATOR LATHROP: You know, Jodi, why don't we give them just...I'll give you two minutes, okay, and I mean literally. We're not going to have...the difficulty with that is it's kind of out of the nature of how we conduct these series. But just in case you have something to say when this is over, Ms. Fenner, we'll afford you an opportunity to respond. And, literally, we'll just say you've got a couple of minutes.

DEAN WILLIAMS: I understand. First of all, we are CARF accredited agency. We operate only one program under dean status and that's because we comply to an exhaustive amount of review by CARF. We have three surveyors who come to us every three years; they spend four days in our organizations. So we have a great deal of oversight. This is our current out-of-state provider service...I'm so sorry, out-of-state service provider agreement that we have signed off on. Number 11, clause 11, states...

SENATOR LATHROP: Wait a minute, is this an agreement you've entered into with the state of Nebraska?

DEAN WILLIAMS: Yes.

SENATOR LATHROP: What's the date of this agreement?

DEAN WILLIAMS: June 2, 2010.

SENATOR LATHROP: And for what period of time does this agreement cover?

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DEAN WILLIAMS: This expires, I believe, August 30. This is the...

SENATOR LATHROP: Okay. So this is a three-month agreement.

DEAN WILLIAMS: This is the standard agreement that we've been operating under, I believe, since 1991. Number 11, permit federal, state, and local officials to monitor and evaluate the services by inspecting the facility, observing, service provision, and interviewing the service provider staff or person served. It clearly articulates that there is federal and state capacity to provide oversight of Goodwill Industries in Sioux City, Iowa.

SENATOR LATHROP: Okay. What we'll do is we'll allow you an opportunity or we'll have the committee clerk make a photocopy of that and share it with the committee. You don't know, though...or maybe I should ask it differently, do you know whether or not the--is it CARP? CARF?

DEAN WILLIAMS: Yes.

SENATOR LATHROP: Is the CARF standard is identical to Nebraska standards?

DEAN WILLIAMS: Nebraska standards are extremely, extremely prescriptive, the most prescriptive I've ever seen.

SENATOR LATHROP: Being more difficult than the CARF?

DEAN WILLIAMS: Yes.

SENATOR LATHROP: Okay. So when Ms. Fenner says the difficulty with your certification is it doesn't mean the same thing as the Nebraska...

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DEAN WILLIAMS: Oh, we're certified by other bodies, Humage (phonetic) and CARF, and I just wanted to state that we are CARF certified.

SENATOR LATHROP: Okay, okay. And I appreciate the significance of that.

DEAN WILLIAMS: And also we have been working toward NAC Chapter 205 compliance since 2007. Mike Mischnick from the Department of Health and Human Services DD division came into our organization, reviewed our policy and procedure. We had responded to that, and I will restate: We are continuing to wait for DHHS to respond to our response.

SENATOR LATHROP: Okay. One second. Do you have any questions? Okay. That's it. Thank you very much.

DEAN WILLIAMS: Thank you.

SENATOR LATHROP: Do you have any interest in returning to the table? No, I don't think we need to. And with that, that will conclude our hearing. I will tell you since some of you may not be familiar with this process, it's not like a court proceeding; now we go in the back and huddle and come out with some kind of a judgment. We're the legislative branch, so our goal today was to gather information to guide us in the policy making process, and it's not that we will have some decision because this is not our branch of government but we can change policy, so. We will take this information and share it with our colleagues and decide what to do legislatively as a consequence of your testimonies. So we appreciate your coming down again, and thank you for your testimony today.

\_\_\_\_\_: So on subjective (inaudible) our services are (inaudible)?

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SENATOR LATHROP: We...I should be clear about this because we were asked to reverse the decision made by Health and Human Services. And so that you understand the way state government works, all the agencies in of state government are run by the executive branch, that's the Governor. As state senators, we can't tell the Governor how to run his agencies unless change policy that directly affects how those agencies are run, and we can't do that unless we're in session and there's a bill and the bill passes, the Governor signs it. Okay. Now that may not mean that we're done talking about it but in terms of reversing the decision, that's not within our constitutional authority. Okay?

SENATOR DIERKS: (Inaudible).

SENATOR LATHROP: So one last thought.

SENATOR DIERKS: I'd just take the opportunity to thank all of you for coming. We know what a problem you're having and we're just glad to see a good turnout like this to come and express your feelings to us. Thanks so much.