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Developmental Disabilities Special Investigative Committee
October 17, 2008

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The Developmental Disabilities Special Investigative Committee met at 1:30 p.m. on Friday, October 17, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska. Senators present: Steve Lathrop, Chairperson; John Harms, Vice Chairperson; Greg Adams; Tim Gay; Arnie Stuthman; and Norm Wallman. Senators absent: Abbie Cornett.

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SENATOR LATHROP: Good afternoon, everyone. My name is Steve Lathrop. I'm the State Senator from District 12 up in Omaha, Ralston, Millard, those areas. And we're here today to continue the hearings on our commission, the LR283 commission. Today we are going to have our last hearing. So this is kind of the last opportunity to speak and to be heard. We have scheduled speakers today. We've asked Ron Stegemann, who is the CEO at Beatrice, to speak first. We'll have questions for Ron and want to talk to Ron. And then John Wyvill is the director of Developmental Disability Services, and Chris Peterson, who's the CEO of Health and Human Services, to kind of round out our investigation and our study. The usual rules will prevail. I see most people here are faces that I recognize. We're glad you're back and that you continue to be interested in the subject. Please make sure your cell phones are turned off or at least to vibrate so we're not interrupted by those calls. Senator Wallman, get to that phone. (Laughter) And then we have three people that are going to speak. If you have anything to add, this being our last hearing, if you had anything to add that's new and you care to come up we'll take a little bit of time at the end for some brief comments, if you have any. I'll also take a minute to introduce my colleagues. To my far left is Senator Wallman from down around Beatrice, what's the name of that town...? []

SENATOR WALLMAN: Cortland. []

SENATOR LATHROP: ...Cortland, okay, from Cortland; Greg Adams from York; Tim Gay from Papillion; Doug Koebernick is my assistant; and then John Harms from

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Scottsbluff; and Arnie Stuthman from Platte Center; and our clerk today is Beth Otto who does a great job of keeping a record. And Beth always gives me...(laugh)...she always gives me something to read, and I never read it. But it's so sweet that she does that. (Laughter) Mostly, she wants to make sure that the phones are turned off, so she's kind of the person that's trying to make sure that we get good audio. Speak up into the mike. And then if you're going to testify today, please fill out a sheet, put it in the box when you come up so Beth has the correct spelling of everyone's name. With that, I think we'll start with Ron. []

RON STEGEMANN: Good afternoon, committee members. My name is Ron Stegemann, S-t-e-g-e-m-a-n-n. I am the chief executive officer at the Beatrice State Developmental Center. I'm here to answer any questions you have for me today. []

SENATOR LATHROP: Good. Do you have anything you want to say before we start asking questions, Ron? []

RON STEGEMANN: No, just that I appreciate the opportunity to visit with the committee again and sharing information that I have that might help you in creating the recommendations, report that you have to deliver in December. []

SENATOR LATHROP: By December 15, yeah, you're right. []

RON STEGEMANN: Okay. []

SENATOR LATHROP: We're glad you're back. And for those of you who have not been here for every meeting, Ron was...testified in the first hearing where we kind of got our feet wet on the subject matter, and then testified in Beatrice when we took our hearing down there. And you're back today. CEO of the Beatrice Development Center, is that right? []

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RON STEGEMANN: Yes, sir. []

SENATOR LATHROP: Ron, how long have you been the CEO? []

RON STEGEMANN: I've been in the CEO position for just over a year now. I took over as acting CEO at BSDC, I believe, on October 17 of last year. []

SENATOR LATHROP: So how long were you acting CEO before you became the CEO? []

RON STEGEMANN: I started as acting CEO in October and, I believe, became...got the position permanently in December. []

SENATOR LATHROP: Of '07? []

RON STEGEMANN: '07, yes, sir. []

SENATOR LATHROP: Okay. Kind of came in the middle of the firestorm. []

RON STEGEMANN: Yes, sir, very much so. []

SENATOR LATHROP: Okay. What did you do for the Beatrice Development Center? You came from within. Tell us what you did before you became the CEO. []

RON STEGEMANN: I have been at BSDC a little over 19 years now. September was my 19-year anniversary. My responsibilities within the organization started as a human services treatment specialist. Their primary focus at the facility is to do assessments to determine where people are within their developmental disabilities to create learning programs. Based on what the team approves, each individual needs to learn and then to teach the developmental technicians or our direct care staff how to run those learning

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programs with each of the individuals, monitor those programs, monitor the running of those programs, and then make any revisions as necessary. HSTS is a member of the interdisciplinary team, and as such they have a lion's share of what we do in terms of habilitation for each of the folks. []

SENATOR LATHROP: Okay. So you were involved in direct care. []

RON STEGEMANN: I was not a direct care staff person. However, the HSTSs serve very much in the direct care role in a lot of instances. They may cover for breaks, lunches. They are involved with the presentation of active treatment as well as the monitoring of it as well. So very close to the direct care position, yes. []

SENATOR LATHROP: But that interdisciplinary team, that's the bringing together of the different talents, have them evaluate and look at each particular patient, develop plans, make sure the plans are being implemented. []

RON STEGEMANN: Yes, sir. I believe you may have received, in information today, what that interdisciplinary team looks like. []

SENATOR LATHROP: We did get a stack of documents... []

RON STEGEMANN: Okay. []

SENATOR LATHROP: ...just a few minutes ago. And I got to tell you, we couldn't get through them in the time we had. []

RON STEGEMANN: I understand. []

SENATOR LATHROP: So we'd have a hard time responding to what's...or knowing exactly what's in that stack of documents. []

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RON STEGEMANN: But you're correct, it is all those various disciplines at BSDC. And they do assessments as designated and they will create reports for recommendations of any learning or training or service programs the individual needs to be involved with. And then the team comes together, prioritizes what each individual be involved with over the upcoming year. And then the plans are created and set forth and implemented. []

SENATOR LATHROP: Okay. Ron, as you probably know, we have yesterday spent the morning with the folks from CMS. You've been involved in their surveys, at least you've made the place open and knew that surveys were being undertaken even before you became acting director or acting CEO. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And yesterday, and I want to try to give you my judgment or our judgment because I think I can speak for the commission, what we were...what was explained to us by CMS is that when they began, when they conducted a survey in 2006 they found BSDC to be out of compliance. And I acknowledge right at the beginning you were not the CEO when this happened. In September of '06 they found us to be out of compliance or not meeting the conditions of participation seven out of eight of them. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Which appeared to be some kind of a record for the number of conditions of participation not met by an institution. []

RON STEGEMANN: Along with the 431 pages of citations. []

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SENATOR LATHROP: Right. And yeah, the conditions of participation for the folks who don't understand, as we've been taught in the last several months, those are sort of the big picture, the big offenses that an institution can create that provides developmental disability services. Would you agree with that? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And those being out of the conditions of participation in seven out of eight categories means that there are a lot of smaller regulations that are being not met or violated in order to come up with that kind of a conclusion. Would you agree with that too? []

RON STEGEMANN: It can be a number of smaller violations or it can be what they determine to be a systemic issue. []

SENATOR LATHROP: Okay. Since that time, the state of Nebraska has had opportunities to provide plans for how we're going to rectify that and then follow-up surveys have been done. Is that right? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And from what was explained to us yesterday, and we got a little, kind of a cheat sheet from CMS that shows that they've done about eight follow-up investigations since then, all of which have still concluded that we've been out of...not met conditions of participation on every one of those occasions. []

RON STEGEMANN: I don't believe there's been that many follow-up surveys. There have been that many visits possibly due to them coming back for immediate jeopardy issues. []

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SENATOR LATHROP: Okay, you're right. They've been there for one reason or another on eight other occasions. And on each occasion they have concluded, and whether it's been a survey or a follow-up or in response to an immediate jeopardy, they have continued to find that we are not meeting the conditions of participation, most oftentimes, four or five out of the eight. []

RON STEGEMANN: When they come in on those occasions you're referring to, if it's for a follow-up for an immediate jeopardy, that is the only issue they look at when they come into the organization. They do not do a survey to look at conditions. They are only looking to alleviate the immediate jeopardy situation. []

SENATOR LATHROP: Okay. There...the document they gave us indicates that they had a column here for conditions of participation not met. And each of those occasions that they were here they had lists of conditions not met. []

RON STEGEMANN: I... []

SENATOR LATHROP: Can't comment on it. []

RON STEGEMANN: ...wasn't here yesterday. []

SENATOR LATHROP: Okay. []

RON STEGEMANN: I don't...I haven't seen the document you're referring to. []

SENATOR LATHROP: Okay. Okay. Well, the state's response to the conditions of participation not being met and the problems with our certification with CMS was to bring in Liberty Mutual or, not Liberty Mutual, (laugh) Liberty consultants. Is that right? []

RON STEGEMANN: At one point, yes. []

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SENATOR LATHROP: All right. And they were hired to come in for what purpose? []

RON STEGEMANN: To assist Beatrice State Developmental Center in meeting the conditions of participation. []

SENATOR LATHROP: Their contract, did you have anything to do with entering into that contract? []

RON STEGEMANN: No, sir. []

SENATOR LATHROP: All right. But they came... []

RON STEGEMANN: Well,... []

SENATOR LATHROP: Go ahead. []

RON STEGEMANN: I need to qualify that. That was discussed with me, but I did not, I was not a part of the contract itself. []

SENATOR LATHROP: Okay. Did Liberty come into the Beatrice Development Center for the purpose of looking at the operation and trying to bring us into compliance with the conditions of participation? []

RON STEGEMANN: They started a relationship with us in creating a plan of correction. And it grew into what you've referred to, which is looking at the organization and bringing us into the conditions. []

SENATOR LATHROP: I don't know how important this is but it was a contract worth over \$1 million. []

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RON STEGEMANN: Yes, sir. []

SENATOR LATHROP: Okay. So it wasn't just somebody that came in and looked at a small aspect. They were going to examine, in fact did examine the entire operation. Would that be true? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And they made recommendations on how to improve the entire operation with two goals in mind. One was so that we would meet the conditions of participation and not lose or certification to CMS. Goal number one? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And goal number two would be just to have the operation up and running in a way that would also satisfy the Department of Justice. []

RON STEGEMANN: At that point in time we had just, actually a year ago this month Department of Justice had just did their survey. So they would have not...we did not have... []

SENATOR LATHROP: They came in ahead of that. []

RON STEGEMANN: ...the report done. []

SENATOR LATHROP: Okay. Well, in any case then at least the second, the second purpose was to have them just make recommendations so the place ran better. []

RON STEGEMANN: Right. []

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SENATOR LATHROP: Okay. They issue a report which was done in April of this year. Is that right? []

RON STEGEMANN: That's when the majority of the Liberty staff left. So... []

SENATOR LATHROP: And on their way out the door didn't they leave behind a report. []

RON STEGEMANN: They sent a report after a period of time, I believe, to Director Wyvill. []

SENATOR LATHROP: To who? []

RON STEGEMANN: Director Wyvill. []

SENATOR LATHROP: Okay. To John Wyvill. []

RON STEGEMANN: Right. []

SENATOR LATHROP: Okay. And that kind of listed their recommendations on how...what Beatrice State Development Center needed to do in order to get into compliance and to run properly and meet the standard of care in the industry. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Okay. So Liberty leaves behind a list of things that they say: These are the things you need to do, in their report. []

RON STEGEMANN: Yes. []

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SENATOR LATHROP: They help reorganize, in some respects help to reorganize the Beatrice Development Center. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And kind of at the same time as all this is going on, we're getting things from CMS that they want to see done. []

RON STEGEMANN: Um-hum. []

SENATOR LATHROP: Is that true? []

RON STEGEMANN: Yes, sir. []

SENATOR LATHROP: Okay. And then the Department of Justice issues its report. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And that, we're all familiar with what that letter said and what their findings were. But ultimately, the state enters into an agreement with the Department of Justice, does it not? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And in that agreement the state of Nebraska and the federal government, the Department of Justice enter into an agreement. And the agreement, basically, sets out the things that the state will do in order to improve the Beatrice Development Center. []

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RON STEGEMANN: Correct. []

SENATOR LATHROP: And in that report or in that agreement it generally provides for when a variety of things needs to be done. []

RON STEGEMANN: There are dates within it, yes. []

SENATOR LATHROP: Right. And it starts out early on and says: These things will be done within 90 days, unless there is a more specific date provided for, doesn't that...? []

RON STEGEMANN: Correct. []

SENATOR LATHROP: Okay. And I'm not going to ask you about all of those things right now, Ron. But I do want to ask you generally, since the 90 days have gone by, there's probably 165 things in here, would you agree? []

RON STEGEMANN: I didn't count but you're probably accurate. []

SENATOR LATHROP: The paragraphs are numbered and each one of the paragraphs... []

RON STEGEMANN: Oh, okay. []

SENATOR LATHROP: ...kind of say, you will do this and we will do that. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Okay. Not all 165 need to be done within 90 days but a good number of them do. []

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RON STEGEMANN: Yes. []

SENATOR LATHROP: And they include things like reorganizing different parts of Beatrice or providing for staffing, securing the services of a neurologist or a psychologist, those kinds of things. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Now what I would like to do is to ask you with respect to the Department of Justice, the 90 days had passed. How many of those things do we actually have done? []

RON STEGEMANN: I couldn't tell you a number. I can tell you that the Department of Justice, Dr. McGee, who is the independent expert that's working with them, brought a team into BSDC and they spent approximately two and a half days at the facility with the purpose of checking to see where we are at in our implementation process. And... []

SENATOR LATHROP: When were they there, Ron? []

RON STEGEMANN: I would guess they were probably at the facility three weeks ago. []

SENATOR LATHROP: Okay. They're...and so that people understand, you and I both read this agreement. But so that everyone understands, that agreement was entered into, essentially, the end of June. So the 90 days or the first quarter report would be due approximately October 1. []

RON STEGEMANN: Right. I believe it started on July 2. []

SENATOR LATHROP: Okay. So the 90 days or the first quarter have passed. Have you seen a report from... []

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RON STEGEMANN: Dr. McGee? []

SENATOR LATHROP: ...Dr. McGee? []

RON STEGEMANN: No, I have not. []

SENATOR LATHROP: Okay. But you say he was at your place three weeks ago. []

RON STEGEMANN: Approximately three weeks ago with a group of experts that he had brought into the organization to look at where we were at in our implementation process. []

SENATOR LATHROP: Did he provide you with any conclusions relative to or any of his conclusions relative to where you were at in the implementation process? []

RON STEGEMANN: Nothing specific, no. []

SENATOR LATHROP: Did he say anything generally? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: What did he tell you generally? []

RON STEGEMANN: What he said was this first visit will be an overall look at the organization. He asked for specific things that were included within the agreement, the 165 things you referred to. There were things like priority groups for things like behaviors, for things like the use of restraints, for medical issues. We provided him with all of those groups. What he said, initially, was this is kind of a period of baseline; we want to see where you're at now based on what the Department of Justice saw when

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they came in, which would have been over a...almost a year prior to that and then put that up against what we have accomplished within the 165 pieces of agreement that are there. And then we'll be moving forward from that direction. Dr. McGee has been very complimentary of the facility, of the staff within it and of the cooperation that he has received from BSDC in his effort. []

SENATOR LATHROP: Okay. I said 165 things and it may be only 140. But it's a lot, a lot of different things that need to be done. And a lot of them needed to be done in the first 90 days. []

RON STEGEMANN: And there are multiple things within each of those items that need to be done,... []

SENATOR LATHROP: Right. []

RON STEGEMANN: ...many of which were accomplished before we ever had the agreement. []

SENATOR LATHROP: Okay. So with respect to the items that needed to be completed in the first 90 days. Can you just tell me where we're at or tell us, generally, where you're at with respect to knocking out those things that you agreed to with the Department of Justice? []

RON STEGEMANN: I really can't. And part of the reason for that is as you read through that document you will see that there are words used like "adequate," "appropriate." So it will be up to the independent expert to make a determination as to whether or not we've met that. []

SENATOR LATHROP: Okay. I would agree that some of those things are subjective in the sense that they say "adequate" or "proper" or "sufficient." But some things, some

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things that deal with staffing are not so subjective. And as I look through the problems with CMS, as I look through the DOJ agreement and the recommendations from Liberty, the consultants, there are some pretty specific recommendations with respect to staffing are there not? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Can you tell us where we're at with...we were down in Beatrice in what, June or July... []

RON STEGEMANN: Um-hum. []

SENATOR LATHROP: ...if I'm remembering right. Can you tell us where we're at, what improvements you've in the staffing problems, which seem to be part of the core issue at Beatrice,... []

RON STEGEMANN: Sure. []

SENATOR LATHROP: ...where we're at or what steps we've taken in the last 90 days. []

RON STEGEMANN: Okay. We have made significant progress in our staffing of developmental technician positions, the direct care positions. And that's been accomplished through a number of different things, one of which is decreasing the census at the facility, closing some of the homes on campus. As a matter of fact, yesterday we announced the closing of another one of our residences, reallocating the staff that we do have on board. We've done a better job of recruiting and retaining staff. I received a report from our...which is a position that was created through the recruitment and retention funds that were allocated to us--it's that position orientation facilitator. I've asked him for some documentation of that because I thought it was a rather strong statement. But he was willing to go out on a limb and say that he's saved

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at least eight people that probably would have left BSDC had he not been working directly with them. So we're doing a better job within our retention. My assistant administrators and my new administrator for neighborhood services came to me a couple of weeks ago and said, wow, we're full of staff on first shift. My response to that was, that's kind of difficult to believe. And we have to take a look at how many staff do we actually need on first shift now based on who we are and the size that we are. But it's been a long time since we haven't had any noticeable number of vacancies on first shift. Our second shift staffing has also improved as well. The most recent overtime information that I got from our human resources department had our mandatory overtime during a two...the most recent two-week period down to a little over 28 hours. And our voluntary...or the overtime as a whole was reduced by 600 hours from the previous pay period. So that gives us indications that our staffing at the direct care level is improving. []

SENATOR LATHROP: The direct care level being the people that are face-to-face with the...constantly face-to-face with the residents. []

RON STEGEMANN: Eight hours a day, yes, sir. []

SENATOR LATHROP: When you say that the overall, because the mandatory, I think I've been through this before with you,... []

RON STEGEMANN: Um-hum. []

SENATOR LATHROP: ...the mandatory overtime are the people who don't have a choice in the matter. And then we have some people who actually volunteer for overtime so that they don't get forced into a different shift. []

RON STEGEMANN: Not solely because they don't get forced into it, because they like the money. []

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SENATOR LATHROP: Some people do it just for the money. []

RON STEGEMANN: Right. []

SENATOR LATHROP: But some people are doing it to avoid having the employer, Beatrice Development Center, tell them when they have to do a... []

RON STEGEMANN: There is a likelihood some of those folks are doing it for that reason, yes. []

SENATOR LATHROP: Okay. So you said we're down 600 hours. How many hours did we have in overtime in total? []

RON STEGEMANN: I believe there was approximately 3,600 hours of overtime. []

SENATOR LATHROP: And that's over what period, a two week period. []

RON STEGEMANN: Two week period. []

SENATOR LATHROP: It still, I mean these reports the Department of Justice, the agreement talk about a substantial or getting overtime down to minimal or no overtime. Not quite there would you agree? []

RON STEGEMANN: No overtime will not happen. I've been there 19 years. That has never happened. But we can minimize and we can reduce it further. []

SENATOR LATHROP: Yeah, you can go a long ways from where you're at. []

RON STEGEMANN: Yes. []

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SENATOR LATHROP: You mentioned the retention and recruitment money that was provided for by the Legislature. At the end of our last session we made an appropriation or allocated or earmarked about \$1.5 million for that purpose, did we not? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Tell me what you've done with that. []

RON STEGEMANN: That money was used for recruitment efforts. Each new developmental technician position, not any of the rest of the positions at the facility, but each new DT staff, if they made it through their first six months, could receive \$500 in incentive pay. For their first year of employment, successful employment, they would receive an additional \$1,000 for that at the time of their year evaluation. And at the end of the second year evaluation they would receive \$2,000. So they had an opportunity for two years of employment to receive an additional \$3,500 in incentive pay. []

SENATOR LATHROP: Okay. Did...was it all used? That sounds like a recruitment rather than a retention strategy. []

RON STEGEMANN: Okay. []

SENATOR LATHROP: Was it all used for recruitment or did you do something with respect to retention too? []

RON STEGEMANN: For retention for the developmental technician positions only, none other at BSDC, we provide for a satisfactory or above performance \$1,000 incentive pay at the time of their annual evaluation, for satisfactory or above performance. []

SENATOR LATHROP: Was any of that...were any of those dollars used for other than

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direct care staff? For example, you didn't use any of that \$1.5 million to find a psychologist or a psychiatrist or a neurologist or a speech therapist. []

RON STEGEMANN: No, sir, not that I'm aware. []

SENATOR LATHROP: All of it was used for direct care staff. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: How much of that \$1.5 million have you spent on recruitment and retention of direct care staff? []

RON STEGEMANN: I have not seen those figures. []

SENATOR LATHROP: You don't have any idea? []

RON STEGEMANN: Well, I can...there's another piece to it that we didn't quite get to for the retention piece. []

SENATOR LATHROP: Okay, go ahead there. []

RON STEGEMANN: One of the things the staff were telling us at the point in time in which the money was allocated to us was that they were shot, that they were tired, that they had had to work too much overtime. So one of the undertakings that we did was to bring temporary agency staff on board to alleviate them having to work the overtime. So to do that we sought out certified nursing, agencies that had certified nursing staff with them with the understanding that they would have a certain level of skill in taking care of people. When they came into the organization we would have to add some DD training to that. We could get them out on the floor as quickly as possible so they could alleviate the issue of having work overtime for a staff that were there. []

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SENATOR LATHROP: So, I guess, what you're telling me is that some of the dollars that we set aside for recruitment and retention of staff you actually used to bring in temporary staff. []

RON STEGEMANN: As a method of retention for the staff we had. []

SENATOR LATHROP: Yeah. The rationale employed in order to justify using that money for temporaries was we're improving morale by reducing overtime. []

RON STEGEMANN: Right. []

SENATOR LATHROP: Now I'll ask you how much of that \$1.5 million do you think you've spent, if those are the three purposes to which the money has been put. []

RON STEGEMANN: I would guess probably in the neighborhood of about \$1.1 million. []

SENATOR LATHROP: How much of that was spent on temporary help? []

RON STEGEMANN: I believe in the neighborhood of \$900,000. []

SENATOR LATHROP: So in terms of recruitment and retention, which was the original purpose of the money, we probably spent \$200,000 in bonuses. []

RON STEGEMANN: At this point, because it was over a two-year time period that the money was to be distributed. []

SENATOR LATHROP: Has all that money been distributed or are you giving me numbers of dollars distributed and earmarked for some purpose? []

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RON STEGEMANN: No, the plan was designed for the \$1.5 million over a two-year period. So the remaining then is still available for the recruitment and retention stuff that I had spoken about before--the... []

SENATOR LATHROP: Okay. []

RON STEGEMANN: ...satisfactory performance incentive bonuses. []

SENATOR LATHROP: Let me make sure I understand it. You spent \$1.2 million so far?
[]

RON STEGEMANN: About...again, I haven't seen the actual figure, I'd guess about \$1.1 million. []

SENATOR LATHROP: One point one and \$900,000 of it has gone to temporary help. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And the balance has actually been given to direct care staff to either bring them in or retain them. Is that the case? []

RON STEGEMANN: Correct. I am not aware of it being spent for any other purpose. []

SENATOR LATHROP: Okay. And you would then have a balance of about \$300,000. []

RON STEGEMANN: Three hundred thousand to four hundred thousand dollars. []

SENATOR LATHROP: Okay. Liberty provided, as we've talked about, they've provided a report and you've read it, obviously, as have I. And they made a number of

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recommendations. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Do you know how many of those recommendations you've actually followed? []

RON STEGEMANN: We recently reviewed the recommendations that Liberty had within the report, I believe there was 252 of them. And within that review we figured that there was about 11 or 12 of them that we had not either implemented fully or in the process of implementing since the time that Liberty came on board with us. []

SENATOR LATHROP: All right. One of the...I was just thumbing through that over the lunch hour. And one of the recommendations was that we hire two behavioral analysts. []

RON STEGEMANN: Was it two or five? []

SENATOR LATHROP: Might be five, a number of behavioral analysts, that we put on five behavioral analysts. []

RON STEGEMANN: Board certified behavioral analysts. []

SENATOR LATHROP: And they're hired and on staff. []

RON STEGEMANN: They are not. []

SENATOR LATHROP: Okay. (Laugh) Then you were correcting my terminology and not agreeing with me. []

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RON STEGEMANN: Just the number, yeah. []

SENATOR LATHROP: Okay. The recommendation was for five behavioral analysts. And the reason I ask you about that particular recommendation, Ron, is that it said terminology like--we think it's imperative or it's...it was a very, very strong recommendation, seemed to be a centerpiece of their staffing requirements. []

RON STEGEMANN: It's a supply and demand issue. I believe there are three in the state of Nebraska. []

SENATOR LATHROP: Okay. How many of them do you have working at BSDC? []

RON STEGEMANN: None. []

SENATOR LATHROP: Okay. []

RON STEGEMANN: We did...we have utilized the services of one through contract for a period of time. []

SENATOR LATHROP: All right. Let me just go back and ask you how many vacancies do we have at the direct care staff level presently? []

RON STEGEMANN: We just changed 66 vacancies that were direct care level, and we created new positions that are our shift supervisor positions. []

SENATOR LATHROP: When did you do that? []

RON STEGEMANN: We posted that position approximately four weeks ago. []

SENATOR LATHROP: Is that actually been undertaken? []

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RON STEGEMANN: Yes. []

SENATOR LATHROP: I mean you're in the process of doing that. []

RON STEGEMANN: It closes...those positions close this afternoon at 4:00 for people to apply for. []

SENATOR LATHROP: So they haven't been filled. []

RON STEGEMANN: No, sir. []

SENATOR LATHROP: Okay. Then let me ask you just presently, without respect to that new level of management that you're going to put into place,... []

RON STEGEMANN: Okay. []

SENATOR LATHROP: ...when Liberty left in April they said we had 100 vacancies in direct care staff. How many vacancies do we have in direct care staff now? []

RON STEGEMANN: We have approximately 100. But I don't know where Liberty got that number. []

SENATOR LATHROP: So you'd say that we still have 100 vacancies. []

RON STEGEMANN: At present? []

SENATOR LATHROP: Yes. []

RON STEGEMANN: If you include those 66 positions, yes. []

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SENATOR LATHROP: Yeah, okay. Which is...those don't even start until sometime maybe next week, right? []

RON STEGEMANN: It will be a while for the hiring process to take place, yes. []

SENATOR LATHROP: Okay. So it doesn't sound like we've made a significant dent in the shortage of direct care staff... []

RON STEGEMANN: Our census... []

SENATOR LATHROP: ...or am I missing something? []

RON STEGEMANN: Census has continued to be reduced. I don't know where Liberty got their number from. []

SENATOR LATHROP: You agree it was in there. I'm not misrepresenting the report. []

RON STEGEMANN: There may be a number in there, but I'm not sure how they arrived at that number. []

SENATOR LATHROP: Okay. You mention the census. What is the census at Beatrice? []

RON STEGEMANN: I believe it's 256. []

SENATOR LATHROP: What was it when we were last down there? That sounds like a number that was pretty close to what it was the last time we were there. []

RON STEGEMANN: It probably isn't terribly far off. It was probably around 260 or low

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260 somewhere. []

SENATOR LATHROP: Okay. So you've had three or four or five people leave since we were there this summer. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And what about the professional positions. There were psychiatrists, neurologist, there was a lot of criticism about not having a neurologist on staff, was there not? []

RON STEGEMANN: Not necessarily not having one on staff, but not having more hours available from one. []

SENATOR LATHROP: Tell us where we're at with respect to the professional staff. And maybe if you can do it in terms of where, making a comparison to where we were in April or when Liberty Mutual...or when Liberty...I keep calling them Liberty Mutual, when Liberty consultants left. []

RON STEGEMANN: It's difficult for me to go back and grab ahold of that time period and make any kind of a comparison. I will tell you what we are doing now in terms of bringing those types of professional staff on board, if that will help. []

SENATOR LATHROP: Okay. []

RON STEGEMANN: Okay. What we've done with the neurologist position is we've increased our neurology hours by 50 percent. With the contracted neurologist that we had on board and have had for a number of years we increased our neurology clinic times. []

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SENATOR LATHROP: Does that increase to 50 percent get us to the recommended level of neurology hours? []

RON STEGEMANN: Our independent expert has not given us a number of hours. He will determine if that's adequate, appropriate. []

SENATOR LATHROP: But the DOJ report addressed the number of hours you need, did it not... []

RON STEGEMANN: They did not give us... []

SENATOR LATHROP: ...for neurology? []

RON STEGEMANN: ...a number. []

SENATOR LATHROP: Pardon me? []

RON STEGEMANN: They did not give us a number. []

SENATOR LATHROP: Okay. So you're waiting to find out if an increase of 50 percent is sufficient? []

RON STEGEMANN: Right, and that will be with the work we do with Dr. McGee. []

SENATOR LATHROP: The report may not have specified exactly how many hours, but it did tell you how many hours or how much care the patients at Beatrice need from a neurologist, did it not? []

RON STEGEMANN: It uses words like "appropriate", "adequate". []

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SENATOR LATHROP: No? They didn't say an annual exam? Pardon me? I'm trying to do this off of recollection and... []

RON STEGEMANN: Okay. []

SENATOR LATHROP: ...and like you, there's a lot of information out there, Ron. []

RON STEGEMANN: There is. []

SENATOR LATHROP: I'm not to trick you. []

RON STEGEMANN: Sure, I understand. []

SENATOR LATHROP: I am just trying to get a good sense of neurology, for example, I thought it was the Department of Justice agreement that said we will have...do this with respect to our patients because of their risk of epilepsy and so forth. []

RON STEGEMANN: Right. []

SENATOR LATHROP: Do an examination, like an...in a pretty short period of time and annual exams after that. []

RON STEGEMANN: We believe that our, and perhaps this will help. We believe that our increase in neurology hours for our neurology clinics will meet the intent of the DOJ agreement. []

SENATOR LATHROP: That is what I'm looking for. []

RON STEGEMANN: Okay. Dr. McGee will tell us if indeed that's, by his opinion, true. []

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SENATOR LATHROP: Okay. Why don't you help me with the other specialists. []

RON STEGEMANN: Sure. []

SENATOR LATHROP: We need nurses, speech pathologist, occupational therapist. Can you go through that with me? []

RON STEGEMANN: Another one of the issues was psychiatry, in the area of psychiatry. We had a firm that we contracted with for our psychiatric service. And they, in essence, said...they're from Lincoln. They said, we can make as much or more money sitting here in Lincoln as driving down to Beatrice, so they declined to recontract with us for this year. So at present we are without psychiatric services specifically, and that is being covered by our medical staff. We have... []

SENATOR LATHROP: Before you move on, I think I read something in the report that specifically said you needed a psychiatrist and specifically said they didn't want the psych services provided by medical staff. []

RON STEGEMANN: It does. []

SENATOR LATHROP: It does. So how long have you been without a psychiatrist, Ron? []

RON STEGEMANN: Since July 1. []

SENATOR LATHROP: And what efforts are being undertaken to bring a psychiatrist into Beatrice? []

RON STEGEMANN: Where we're at now is our medical director, Dr. Alfred Harrington, has negotiated with two psychiatrists. And we believe that those contracts will be signed

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off on. And what we'll have is psychiatric services two times a week with those gentlemen. []

SENATOR LATHROP: Did the DOJ recommend a full-time psychiatrist? []

RON STEGEMANN: Again, they don't give hours, full-time. They say "adequate" and "appropriate." []

SENATOR LATHROP: And you think two hours two days a week is going to be adequate and appropriate? []

RON STEGEMANN: Based on the number of individuals we have who have psychiatric needs, yes. []

SENATOR LATHROP: Go ahead. []

RON STEGEMANN: Additional positions--physicians, we did bring Dr. Alfred Harrington on board as our medical director. I'm not sure if he would have been there at the time that you visited this summer. We have had a nurse practitioner, half-time nurse practitioner that has left. And so we have recruited and retained the services of a full-time nurse practitioner who has certification both on the medical and mental health side. And she will join us at the end of October. So that increases our medical staff by a position of one. The other areas that we are in the process of bringing contracts in, and I have to take some back with me to our contract folks when I leave here today, is in the area of therapies. And very simply, that comes down to a supply and demand issue as well, and what we have the capability of being able to pay those folks, and that's in the area of physical therapy, occupational therapy and speech therapy. []

SENATOR LATHROP: Can you...I'm going to ask you a question about the vacancies that we have because it might be easier for me to understand what we haven't filled

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than to have you tell me kind of individuals that you've put on. []

RON STEGEMANN: Okay. []

SENATOR LATHROP: But we talked about this the last time we were down in Beatrice. And you told me that there is a ceiling on what you can offer to someone if they want to...when you're trying to recruit a nurse or a physical therapist or something like that. Am I right? []

RON STEGEMANN: The ceiling is within the personnel created structure for each position. []

SENATOR LATHROP: Right. And that is established by whom? []

RON STEGEMANN: As a...within my discussion that's done by State Personnel. []

SENATOR LATHROP: So you're having trouble, just generally you're having trouble finding therapists that will come down to Beatrice because you can't offer them enough money, is that true? []

RON STEGEMANN: I can now. []

SENATOR LATHROP: All right. Tell us how come you can now? Did you go get more authority? []

RON STEGEMANN: Not necessarily more authority, but what we have to do within all of this is we have to go beyond what we're able to do within our state personnel system and offer them employment through contracts. []

SENATOR LATHROP: Yeah. (Laugh) I don't even know where to start with that one.

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The personnel, State Personnel decides what a physical therapist is worth. You can't find somebody for that and so you go make them a contract or have them come in and do the same work but you pay them more than probably what physical therapist would ordinarily get paid in an employment situation. []

RON STEGEMANN: Not necessarily, it may be the same through the contract. []

SENATOR LATHROP: So if a physical therapist, for example, is worth \$45,000 a year, for example, at...we can't pay that because of our personnel practices. So you make them a contract employee. []

RON STEGEMANN: Yes. As an example, recently had a speech therapist who left our employment to go to work for Beatrice Public Schools. She left for a pay increase of approximately \$15,000 a year and she doesn't have to work summers. []

SENATOR LATHROP: So did you hire her back? Is that the rest of the story? []

RON STEGEMANN: No. She went to work for the school. []

SENATOR LATHROP: And you just lost her. []

RON STEGEMANN: However, a lot of those therapists like to have businesses on the side and then contracts on the side. So it's very possible we can get her back through contract for work during the summertime. []

SENATOR LATHROP: Okay. Why don't you give us a list of the openings that you still have, the vacancies. And you've already gone through the direct care staff. Can you tell us what vacancies you still have. []

RON STEGEMANN: What Director Wyvill handed me was...doesn't include information

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for vacancies, it just shows filled. But we're actively recruiting for 27 developmental technician IIs. I believe, by the end of today we're recruiting for four developmental technician mentors, and those positions will be offered to BSDC staff today. And we're recruiting for the 66 developmental technician shift supervisors. We're currently recruiting contracts with two psychiatrists. I am recruiting for an active treatment administrator position. We are actively recruiting for one physical therapist, and in the process of creating two contracts...or contracts with two physical therapists to fill the need. Our psychology director position is being filled by contract. We have two psychologist positions that are filled by contract. []

SENATOR LATHROP: Will they be...will they work 40 hours a week under these contracts or are they just coming in a half day or... []

RON STEGEMANN: The two psychologist positions will be full-time. This psychology director position is about a quarter time. We currently have one quality improvement administrator position under contract. We are recruiting for one social worker II position. We are recruiting for one speech pathologist position and have two speech pathologists under contract. We are actively recruiting three activity specialists in our vocational department. And those are newly created positions. We are actively recruiting for an investigations administrator. We are actively recruiting for four treatment team leaders, three human services treatment specialists, two human service treatment specialist I's, three laundry workers, four nurse II positions, and one chief of security. []

SENATOR LATHROP: Will that get you manned? Will you be fully staffed at Beatrice if you get all those people there? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And will you satisfy the Department of Justice with...if you put all those people on? []

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RON STEGEMANN: Yes. []

SENATOR LATHROP: And do you need to put all those people on to satisfy the Department of Justice? []

RON STEGEMANN: All of them, no. []

SENATOR LATHROP: Well, you might not...they may not care about the laundry guy. []

RON STEGEMANN: Yeah. []

SENATOR LATHROP: But you need all those trained folks. []

RON STEGEMANN: Absolutely. []

SENATOR LATHROP: Okay. So you need them for the DOJ, you need them for CMS, and they're also the recommendation of Liberty, who we paid. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Do you have the budget to put all these people on? If they all came to your door and the qualified showed up and were ready to work could you put them on? []

RON STEGEMANN: That I can't tell you. I know what I've been told by those above me is bring them, fill the positions. []

SENATOR LATHROP: Okay. So you've had some conversation with whom about putting all these folks on? []

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RON STEGEMANN: Director Wyvill and Chris Peterson. []

SENATOR LATHROP: Okay. And they've said, hire whoever you need to hire, get them on. []

RON STEGEMANN: Yes. []

SENATOR LATHROP: Okay. I just have a few more questions for you and then we'll...I'll kind of step out of the way and let everybody else ask a few... []

RON STEGEMANN: Okay. []

SENATOR LATHROP: ...or whatever questions they might have. But you've been the director now for a year. You kind of came in, in the middle of a very difficult situation, admittedly. Do you have sort of priorities or goals or a vision for how you're going to bring Beatrice out of a very difficult place where it has...stands to lose its certification to CMS. Do you have a vision or a goal that you can share with us about how you intend to do that, Mr. Stegemann? []

RON STEGEMANN: Sure. Almost everything that you'll see within the conditions of participation, and particularly those that have to do with active treatment are attached to staffing at the facility in many ways. It's difficult to provide active treatment. And active treatment starts when...from the time a person wakes up to the time that they go back to sleep again and starts all over. You don't go to a building for active treatment. You don't go to a room for it, it happens throughout your waking hours. So active treatment is a huge component of what we need to be doing at the center. In order to do that and do it to a level at which CMS requires and that we think each person deserves we need to make sure that we have adequate staff on board to do that. So one of the big priorities over the last year has been to bring staff on board. Specifically we focused a lot on

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direct care staffing. The Legislature was able to and provided us with additional funds to assist us in that process. And we appreciate that. Our focus now that we are doing better on our direct care positions, we're not where we need to be at. We need to continue to recruit and retain staff and make that a much improved process for those folks, is that we need to fill those specialty positions, those therapy positions, because that's a key component to what active treatment is. We have many people who have excellent experience with folks with developmental disabilities. They know them, they know what makes a good day for them and what constitutes a bad day. But we need to have those specialists on board in order to give us the expertise that's demanded by CMS and that each person deserves in order to have the services as designed for each individual person. So that's the focus that we have now. Beyond that, my initial quest then is to improve those active treatment services based on the staff that we get on board, continue to improve our systems so that we can meet all eight conditions of participation with CMS. And that comes through staffing, it comes through the training of staff, making sure you have qualified, knowledgeable staff, ensuring that you have adequate supervision at the service delivery point. And that's the issue with the creation of the 66 shift supervisor positions is so that there is someone there working side by side with the developmental technicians in a management supervisory role that can ensure that those services are being provided regardless of where a home manager, who has a much broader range of supervision might be. So they'll be working directly within them. And that's a big piece of where we felt that there was a gap between what we teach staff needs to be done with each individual and what actually was happening out on the living unit level. The Department of Justice brought it to our attention, CMS brought it to our attention. We've known it based on our interactions with them. And so this was our method of increasing the supervision at the line level so that we're ensuring that services are being provided. []

SENATOR LATHROP: By the way, as you fill those 66 positions that are supervisory, you're going to take most of them from the DT staff. You might have some people from outside apply for it. But generally, you're going to...you're recruiting from the DT staff. []

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RON STEGEMANN: Right now it is an internal posting only. And the idea is that we dig into that commitment, that expertise, that knowledge we have at the DT level and allow them the opportunity to grow and expand and become a part of the management piece. So you're correct. []

SENATOR LATHROP: Okay. And that will necessarily increase the number of vacancies in the DT openings at Beatrice. []

RON STEGEMANN: Right. And we will fill those positions. []

SENATOR LATHROP: All right. The thought I had as I was reading all of these recommendations from CMS to...or the problems that were identified by CMS, the recommendations or the promises we made in the DOJ report and then the recommendations in the Liberty report is this is going to cost some money to do. []

RON STEGEMANN: Yes, sir. []

SENATOR LATHROP: Have you requested more money for the Beatrice Development Center. []

RON STEGEMANN: I believe there's been an increased request of \$2.5 million over the next biennium. []

SENATOR LATHROP: Pardon me? []

RON STEGEMANN: Each two years of the next biennium. []

SENATOR LATHROP: So an increase for Beatrice of \$2.5 million over two years. []

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RON STEGEMANN: I believe each of two years. []

SENATOR LATHROP: Each of two years or \$5 million over the two year budget period.
[]

RON STEGEMANN: Yes. []

SENATOR LATHROP: Did you make that request? []

RON STEGEMANN: I made that request along with Director Wyvill and Chris Peterson.
[]

SENATOR LATHROP: Do you think with that additional money you can meet and fill all these vacancies or is it going to be used for...some of it's operational. You might have roof that leak now that you have to fix. Is it all going to go to personnel? []

RON STEGEMANN: The majority of our budget is in personnel, it is in personal services. If the roof leaks, we pay rent on the roof and they take the repairs out of the rent. So the two biggest cost factors for BSDC and by far the largest cost factor is the amount of wages and benefits that we pay folks. []

SENATOR LATHROP: You said that you made the request. Do you know if it showed up in the preliminary budget that came out last week? []

RON STEGEMANN: I don't know that for sure. []

SENATOR LATHROP: You haven't looked at that or been told? []

RON STEGEMANN: I haven't been shown that, no. []

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SENATOR LATHROP: Okay. I think that's all I have. Oh, I'm sorry. Senator Stuthman. []

SENATOR STUTHMAN: Thank you, Senator Lathrop. Thank you for your presentation, although I wasn't here for a little bit of it. The concern that I have in the amount of staff that you're going to need is about 125 at least. Do you feel that you'll be able to get that many hired in this short period of time to accomplish what we need to get to? []

RON STEGEMANN: Short period of time? []

SENATOR STUTHMAN: Well, I don't know what time you're...you'd like to have them come to work tomorrow. []

RON STEGEMANN: Sure. []

SENATOR STUTHMAN: And I would like to see that, too, but that isn't possible. []

RON STEGEMANN: I think the best...what we can do within all that is to gradually increase our staffing number. BSDC constantly recruits for direct care positions. I can't think of a time ever when we weren't recruiting for direct care positions. We are making headway now with those specific therapy positions. And we're having to do it, unfortunately, through contracts in order to get those services provided for the individuals. That will be a more difficult process. And it will take some time and it will take money. []

SENATOR STUTHMAN: Okay, thank you. And I wish you the best. []

RON STEGEMANN: Thank you. []

SENATOR LATHROP: Oh, I'm sorry, Senator Harms. []

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SENATOR HARMS: Thank you very much, Senator Lathrop. And, Ron, thank you for coming. I noticed in a report that you just gave us that deals with service contracts... []

RON STEGEMANN: Okay. []

SENATOR HARMS: ...or January 2, '07 through September 30, '08. I notice that you have hired a couple of organizational development consultants, Buehler, if that's the correct pronunciation, and Sanchez (phonetic). []

RON STEGEMANN: They are no longer with us. []

SENATOR HARMS: Well, I understand that. []

RON STEGEMANN: Okay. []

SENATOR HARMS: But what I'm wanting to know is, what was the purpose of and what did they accomplish for you as organizational development consultants? And what were you trying to accomplish? []

RON STEGEMANN: I did not bring those folks on board. Those were brought on board by our prior acting CEO. []

SENATOR HARMS: Okay. So what was the purpose? Do you know? []

RON STEGEMANN: As I understand the purpose for that was to look at our organization as a whole to find out where the strong and weak points were within the organization, in order to report that back to the then acting CEO. []

SENATOR HARMS: And what did they find? []

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RON STEGEMANN: I did not ever see a report from those folks. I was not in this position at that time. []

SENATOR HARMS: Do we know whether we have a report? I think you paid, what, \$18,000 or \$20,000 for it. Surely we have a report somewhere. []

RON STEGEMANN: It might be a better question for Director Wyvill. []

SENATOR HARMS: Okay. I wanted also to talk to you a little bit about as we downsize this particular program, do you feel comfortable we have the right community-based programs to put your clients into and that we're going to have the right supervision and the right control. []

RON STEGEMANN: At this time, my knowledge of the community-based programs is probably five or six years old. At one time I was involved with the OTS program, and so I did outreach and went out to a number of different community programs. So I can only base my response to that question on the difficulty we've had in having folks go from BSDC to community-based programs, particularly those that have some challenging behavioral concerns. At present time, there are some inadequacies in being able to provide specifically for those folks that do have challenging behaviors. []

SENATOR HARMS: So are you supporting then that continued movement has increased the number of clients in Beatrice into community-based programs? []

RON STEGEMANN: Absolutely. []

SENATOR HARMS: And how are we going to control that? And how are we going to supervise that? And how are we going to make sure that we have an adequate program? []

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RON STEGEMANN: I believe that's a question better responded to by Director Wyvill. []

SENATOR HARMS: Okay. When I look at a number of the reports and documentations, Beatrice has been studied a great deal. You've spent a lot of money in consultants and reports. And you've had a lot of people look at you very carefully. It's pretty clear what you have to try to accomplish in a very short period of time. But as I look at that and as I have studied this it's really clear to me that a lot of the issues that you have from your door down throughout your system (inaudible) management issues, management's concerns or having the right people to manage. What are your thoughts about that? Is that a correct observation? []

RON STEGEMANN: There are management issues that do need to be addressed. []

SENATOR HARMS: Okay. And so what are some of those management issues as you see them? As the CEO, what are some of those issues? []

RON STEGEMANN: I talked a little bit about the issue when you are short staff, how that kind of expands into everything else. When you are as short of staffing as BSDC was at one point, after 2006 or at the time of 2006 when CMS came, and you were looking at a shortage of folks to be able to hire, in general, from your labor pool, it becomes difficult in some perspectives to be able to manage effectively the people that you have on board. If you take performance corrective actions, if you terminate individuals because they are lacking in performance that's a person gone. I believe, with the numbers that we have now we can correct that. And one of the positions I've brought on board is our residential services administrator, Dan Hyman. He has years of experience in ICF/MR settings, both in Ohio and in Florida. And one of the reasons that I brought him on board is his experience in being able to come into an organization, work with the management structure that exists, make sure that the managers know what the expectations are of their performance, and then begin to correct that performance throughout the organization. []

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SENATOR HARMS: So how did we get ourselves in this position with regard to the management structure? I mean, just in some cases it's not quite there. So how did we allow it to get there, I mean, as you look at it. I realize you've only been there, you know, a year. []

RON STEGEMANN: Sure. []

SENATOR HARMS: But when you look at it, how did we get ourselves in this position? []

RON STEGEMANN: Having been there a year, I can't tell you how the management piece got to where it was a year ago when I started. []

SENATOR HARMS: In one of the previous hearings that we had, we have people within our own state that go in and look at it. I asked them the same question. And it's an amazement to me that no one knows how to put their finger on that issue. How did we get there? How do we resolve it in the future? And how can we protect that it never happens again? []

RON STEGEMANN: One of the reason why... []

SENATOR HARMS: What are your observations of that? []

RON STEGEMANN: I can give you a, I guess, just a personal point of view from that. []

SENATOR HARMS: That's fine. []

RON STEGEMANN: One of the reasons why I wanted to bring someone in from outside of the organization was to get a fresh set of eyes on our management structure. You will

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find probably, if you went through the amount of seniority that exists among our managers, you will find that it's probably very high. They've been with the organization for a number of years, and they have experiences that have led them to the point where they are now. Typically, you don't start at BSDC as a manager, you work into that at some point. But we have had some that have come in at the manager level. So by bringing someone in new to the organization it releases that person from any sort of relationships that exist between the folks that are there now. They can go into it with unbiased relationship ties, with a new set of eyes, with a set of performance expectations that I've worked on and have provided with him, and then those things can be dealt with accordingly. When you work together with people for a long time you develop certain relationships. And I believe that may be a contributing factor to some of our management issues that exist now, not just management but organizationally as a whole. []

SENATOR HARMS: I would agree with that. I think it is very difficult to do. I've experienced that myself and in different organizations so I do understand that aspect of it. In regard to the present organizational structure that you have,... []

RON STEGEMANN: Yes. []

SENATOR HARMS: ...are you satisfied with that structure, that it's an adequate structure? And if you had the opportunity, would you reorganize that or develop it in some other form? []

RON STEGEMANN: I believe I do have the opportunity. I don't believe that our structure is static. There are some...still areas that I have questions on. And as I bring those administrators in and begin to be able to form a team with those folks, I'm still a couple short, I think we need to take a fresh look at the organizational structure and make sure that what I've set up, based on the recommendations that Liberty gave us, is indeed going to be a functional structure for the facility. []

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SENATOR HARMS: So what are those areas that you would look at? What are the areas that you have concerns about? []

RON STEGEMANN: Specifically we have areas like nursing and the therapies under our active treatment division. Is that the best fit for those folks? Given that they're involved with each person's day-to-day activities and they have a piece of that within the IDT it does fit to a certain extent. Does it work better under the medical structure within our organization? That's a piece I'm not quite sure about and will continue to work on and look at. []

SENATOR HARMS: As you look at your management structure within the organization, do you feel that you have it...have the appropriate people in the right places through the structure? []

RON STEGEMANN: I'm getting them there. []

SENATOR HARMS: Pardon? []

RON STEGEMANN: I'm getting them there. []

SENATOR HARMS: How are you getting there? []

RON STEGEMANN: Well, I believe we had in terms of within neighborhood services, which was where a majority of the staff worked is within neighborhood services. The bringing on of Dan Hyman as the administrator for those has, with...in my opinion, has been a very positive move. Underneath him are three assistant administrators for the three different areas that we have. Those are three very strong individuals that rose out of what CMS kind of left for us when they walked out of the door in 2006. There were a number of us that stepped up and tried to do the best job we possibly could for BSDC

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with some outside assistance. And these are three folks that stepped up and were outstanding in that process. And they're very dedicated and committed and they want to be successful. []

SENATOR HARMS: I know when we were at Beatrice, as well as the people who have come here to testify, it's really clear that, at least to me it's clear, that the culture of Beatrice has to change in order for you to accomplish what you want to accomplish. []

RON STEGEMANN: Yes. []

SENATOR HARMS: I applaud what you're trying to do here. How are you looking at changing that culture, and what type of planning are you doing to get to that change. []

RON STEGEMANN: One of the ways that we look at changing culture is by being out there amongst the staff, amongst the individuals throughout each day. And so a lot of that, and again while I don't want to put too much on the fact that I've brought a person on board, a lot of our discussion with Dan Hyman prior to him coming to work there was--talk to us about cultures, what kind of cultures have you been involved with, what type of changes have you had to make in organizations. And...so that was one of the things that I've charged him with. And he has reported back to me we do have several cultural issues that we need to change. []

SENATOR HARMS: What are those? []

RON STEGEMANN: They are issues that you will see throughout the reports. How are people spoken to, how are they provided services in terms of how the staff interact with them? Are they asked to do things, are they told to do them? Are we making sure that we put ourselves on an even level with the individuals, that it's not staff are up here or professional staff are up here and clients are down here and we're talking down to them. So language is a huge piece within all of that. So it's very important that the assistant

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administrators and the administrator for those services focus on and take a look at the daily interactions that happen between everyone in the organization and the clients and make those specific changes. []

SENATOR HARMS: Are you familiar with your staff development program that you have established that they use for staff development that everybody goes through? []

RON STEGEMANN: Yes, yes. []

SENATOR HARMS: What's your evaluation of that program? []

RON STEGEMANN: Staff development provides, I think, a good quality training program for our new hire staff to give them the basic skills and knowledge that they need in order to get started on their career as a developmental technician. Where we need to focus our attention, most likely, and I spoke with our coordinator just recently, is on the training and education of veteran staff, so it's ongoing training that we need to be able to focus on. Again, going back to staffing if you don't have enough staff out on the floor it's pretty difficult to pull anyone out and do some ongoing training with them. So... []

SENATOR HARMS: I noted thought, I did visit with the staff. And they are just a little frustrated with that particular issue because it's really hard for them to...they have to chase them down to make sure that they can get it down to meet what the criteria is. Now, I'm not trying to trap you with this. But in talking with CMS yesterday one of the things that they talked a little bit about staff development. I wish I would have known that before I talked to your people. They did bring forward the fact that some of the concepts and some of the philosophy and some of the ideas that we have are antiquated and unappropriate and they need to change. So that's why I'm...I was wanting to...getting to staff development. I'm not trying to set you up in any form or manner. []

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RON STEGEMANN: Sure. []

SENATOR HARMS: But it's something, I think, you're probably going to have to look at. You're going to have to go in and evaluate that carefully because they were pretty...they were surprised with what was really taking place. And it wasn't...times have changed a lot. And maybe the adjustments haven't been made there. So I would surely encourage you to make sure that that's accomplished, because when you set the stages for these people and if you aren't giving them the newest thoughts and the newest ideas of how to handle and treat and deal with their clients in many cases it doesn't work...

RON STEGEMANN: Right. []

SENATOR HARMS: ...well at all. So... []

RON STEGEMANN: I appreciate that. And that's one of the difficulties we have in dealing with CMS is they'll say they're outdated, they're antiquated, they're not up to national standard practice. But then they won't tell you what is. So we have to go out there and find that for ourselves, and we'll certainly work on doing that. []

SENATOR LATHROP: That's an interesting comment to make, because when I was reading the Liberty report they talked about contemporary, prevailing practices. Anybody in the healthcare industry is familiar with the phrase "the standard of care." []

RON STEGEMANN: Um-hum. []

SENATOR LATHROP: And I did get the sense as I read through the...particularly the Liberty report, that there is a...John...Senator Harms is exactly right. They came in and said, you know, we were using restraints way more than anybody should have. We kind of had some practices that might have been good 20 years ago, but that's not how you

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do things today with the standard of care. And as I was reading through the recommendations of Liberty it seemed to be get your people out and get them to some seminars. Get people out and get them exposed to what the national standard is and what everybody else is doing in the country because we seem to stay at Beatrice and no new ideas penetrate the walls. And we keep doing things the old way. []

RON STEGEMANN: Well, up until two years ago we had the Sharing Our Best Conference at BSDC. And they came to us and shared those ideas. So it's...having been at Beatrice and having had some contact with the outside and being able to attend some conventions and other things over the years it just seems odd to me that, because we do bring in national level speakers to that conference, that BSDC would not have been aware of those. []

SENATOR HARMS: Well, I would tell you that your...the people that I visited with are very committed to staff development. And so I'm not being critical of them. I just wanted to make sure that, and I think what Senator Lathrop has said, you probably really need to look at that, because eventually that may lead to some other complaints, some lawsuits, other kinds of issues because times have really changed. []

RON STEGEMANN: Sure. []

SENATOR HARMS: And someone need to really do an analysis of that. []

RON STEGEMANN: Thank you. []

SENATOR LATHROP: Senator Adams. []

SENATOR ADAMS: Thank you, Senator Lathrop. Ron, maybe the question that I ask is nothing more than a rehash of what we've already been over here today. But it just stays right here so I've got to get it out. When we spoke to CMS yesterday I left the

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room thinking to myself, we're at a crisis point. Our conversations with DOJ this morning, I didn't leave with quite that heightened a crisis feel, but didn't walk away very comfortable. And I would tell you in all candor that as we have progressed over the summer through all these hearings to your benefit a couple of terms in description of you come out. One is the word "caring" and the other is "knowledgeable." So let me ask a broad question of you, I guess. But I...how did we get to this point? If we're knowledgeable, if we're caring how did we, in your opinion, how did we get to this crisis point? We should have been dealing with long time ago. []

RON STEGEMANN: I agree. []

SENATOR ADAMS: So help me understand. []

RON STEGEMANN: I think you actually answered your question and when you said we should have been dealing with this a long time ago. If you look at the information on where major changes at BSDC have occurred, they have occurred because of outside influence, they've occurred because of the Horacek v. Exon case at which time the census at BSDC declined rapidly until about 1985. And then there's a period of time where the census at BSDC pretty much remains stagnant. There are some decreases, but basically the admissions and placements kind of balanced each other out for a period of time. There were changes within state government that occurred. I can remember a former CEO, at that time the position was the superintendent, saying when I lose control or the ability to be able to manage BSDC I'm done. And there was a period of time within my understanding that BSDC was appropriated an amount of money and they were allowed to spend that money as they saw fit ensuring that they were meeting all the conditions of participation and staying within the federal program. There was a restructuring that occurred at a level. Staff development no longer is controlled by BSDC. Human resources is no longer controlled by BSDC. They work with us, they do a nice job with us, but the reality of it is they have supervisors beyond me that are in Lincoln. So there's a piece of that that all kind of changed within that. I think after that

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period of time, based on the data that I've looked at, and we've looked at a lot of different information. There was a period of time of about 10 or 12 years where BSDC was pretty much on a holding pattern--not much in the way of change of census, not much in the way of outside pressure such as from DOJ, from CMS, from a committee such as this, from Nebraska Advocacy Services--which everyone is involved now. So this is another period of history in which BSDC is the focus of attention certainly within the state of Nebraska, certainly within our part of Nebraska. And so kind of in answer to your question was why weren't we paying attention during that period of time, there just didn't seem to be any clear direction for the facility. Possibly for DD services as a whole it was kind of status quo. []

SENATOR ADAMS: Yeah. []

SENATOR LATHROP: Senator Gay. []

SENATOR GAY: So, Ron, you know I think what you just answered was what we've all been thinking, quite honestly. So we have this disconnect. And I've got several questions. I want to go back to the Liberty recommendations, Department of Justice recommendations. It's an awful lot to give any manager, any company whatever. How did you go about prioritizing or how are you tackling this issue? I mean, they gave you 8 major things and then 144 other issues. How do you go about prioritizing and deciding what you're going to work on? []

RON STEGEMANN: What we do each time those came out, and for example CMS form 2567 that has 431 pages of citations on it or the DOJ report or whatever it is that we need to focus on and pay attention to we've sat down and looked, most recently, at the Liberty recommendation piece to see what it is we've done, what we haven't done, we're (inaudible) steps to limit implement is that we have a system in place and a structure now that I don't have to sit down and look at all of those pieces together. That can be disseminated out to the various department heads and people within those that have

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specific knowledge about each one of those areas. And we can bring that information together in a way so that leadership or a designated community can look at where is our progress within all of that. And that all results in what's called a QI plan for the facility or quality improvement plan. We now have developed a system whereby we are looking at, because we know what CMS wants to see, because we know what Department of Justice is requiring, because we know what the recommendations were that Liberty gave us, we can incorporate those into a quality improvement plan. We can begin to gather data on each one of those issues that are included within that and see how we're doing. So there is a lot there. But if you're in the business, so to speak, you can tell that there's not a great amount of difference between what CMS wants to see, what DOJ wants to see. And Liberty helps to give us a direction or a way that we can go to meet those things. So it seems like a lot all thrown at one time. And maybe because I've been in the middle of it for two years it doesn't seem a lot now, I know it did when we started back in 2006. But we have systems in place now to be able to work with and organize and coordinate the effort and are developing, I'm not going to say it's done yet, but we have developed a QI plan and system with data indicators to be able to track and follow how we're doing with those. []

SENATOR GAY: Okay. Now, do you feel...so you're doing that. Do you feel confident that you're empowered to make these decisions or, you know, decisions have to be made day by day... []

RON STEGEMANN: Yes. []

SENATOR GAY: ...and in your position I can only imagine. But do you feel that you're empowered enough to do that or are you limited? What limits you? And I guess, what obstacles are standing in your way right now that if you could just wave your magic wand and get rid of, I mean, what's out there. We talked about a major staffing problem. To me, I don't know, Senator Adams talked to you about how we got to this point. I think you're going there. But right now even when we went through that list of all these people

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you need, I mean, I don't know how you can...how this works. When you have so many clients that are there that you have to take care of and you're short that many staff, I'm still very concerned because you say you spent \$900,000 of the \$1.1 million on just temporary staff. We need to go hire quite a few people. I'm getting a little worried here because there's a lot of well, you know, the care we're getting and money and just doing the right thing. I'm throwing a lot at you. But I guess, what I'm saying, what obstacles are in your way? How are you going to get rid of them and get some of these things done, staffing particularly. []

RON STEGEMANN: The biggest obstacle, I think we've discussed, is how do we fill those positions given where we're at. Not everybody wants to come to Nebraska to work as a physical therapist. Not everyone wants to come to Beatrice to work as a physical therapist. So we have undertaken the process of beating the bushes to try to get folks that will come in, that have some DD background experience, that have those specialized skills to be able to give us what they can. So if they're not willing to work for us full-time, what can you do for us. So it is a definite concern. I don't know that the obstacle is anything within ourselves that's an obstacle. But there are deficient numbers of specialized services in the state of Nebraska, not at Beatrice, within the entire state. []

SENATOR GAY: So you're talking about psychiatrists, psychologists. []

RON STEGEMANN: Psychiatrists, neurologist. []

SENATOR GAY: And we've been...and that issue we've been dealing with that. I still, though, when you're talking about, and I'm not sure exact...the terminology, but you're talking about line workers. []

RON STEGEMANN: Right. []

SENATOR GAY: And then you have 66 managers you still need to get. []

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RON STEGEMANN: Yep. []

SENATOR GAY: And that was a question too. []

RON STEGEMANN: That's a new position, so we're... []

SENATOR GAY: That's a new position. So, I guess, on that if we can't get the line and you're going to get the managers, you know... []

RON STEGEMANN: Those managers will be doing the line work along with the supervision. []

SENATOR GAY: Okay. So they're actually hands-on, rolling up your sleeves, doing some work. []

RON STEGEMANN: Absolutely, you bet. []

SENATOR GAY: And that was one of the questions I had. I'm a little concerned of where that goes. []

RON STEGEMANN: Right there with them. []

SENATOR GAY: Can you explain the process of hiring the staff. It sounds to me like you're pretty much being creative and saying well, we're just going to...you know, you're not an employer, you're a contractor. You're a contractor, so you're circumventing the process in order to pay what we need to pay to be competitive, is that correct? []

RON STEGEMANN: At times yes. []

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SENATOR GAY: Okay. What is the process if you need to go hire 100 people right now? Walk me through it from the moment you put an ad in the newspaper or how...whatever you're doing. []

RON STEGEMANN: As an employee? []

SENATOR GAY: Yeah. Right now to go hire these people what steps do you have to go through? You said it's become, I think you're outsourcing these things. Who's helping you get these staff members? []

RON STEGEMANN: Well, those agency staff that I talked about and I think we didn't spend all of that \$900,000, I think it was a portion of that. Mr. Wyvill might be able to help with that piece. But those staff have all been excused. We're not utilizing those anymore. []

SENATOR GAY: Right. But we're still out actively looking for staff. []

RON STEGEMANN: Right. []

SENATOR GAY: You say we always are. []

RON STEGEMANN: Um-hum. []

SENATOR GAY: How do you go about that? Department of Administrative Services help you? I mean, did you hire headhunters to go look for people? How are we trying to fill those staff? []

RON STEGEMANN: Oh. We have contracts with four different radio stations. We continuously have radio spots that are on advertising for positions at BSDC, which includes the available \$3,500 incentive pay over the first two years and a starting salary

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that's above \$11.00 an hour. We use...pay for advertisement at some...mostly for some of the specialized positions. There is...DHHS has a Web site that has all available job listings on there. Many of the folks that come in and apply for positions, most of which when they tell us how did you...we ask the question, how did you first learn about this job. Typically, it's word of mouth, it's a friend works there, it's a cousin works there, my dad worked here for years. That's actually our number one contributor to folks coming in and doing an application. []

SENATOR GAY: Do you feel confident you're going to get these people hired? And I'm not talking...I know how hard it is to hire a psychologist, I...you don't have to (inaudible). []

RON STEGEMANN: Sure. []

SENATOR GAY: Do you feel confident you can get these hired? []

RON STEGEMANN: For the direct care positions? I feel very positive about the direction that we've gone in. I feel, while it is difficult for people that live in Beatrice and Gage County, some of the economic pressures that have happened recently, the reality of it is, and I've been in this business for about 20 years, when the economy as a whole suffers BSDC thrives in terms of being able to hire staff, bring people on board. So I think the outlook is very positive for us to be able to fill those positions. []

SENATOR GAY: Thank you. []

SENATOR LATHROP: Senator Adams. []

SENATOR ADAMS: Ron, if I may, I want to follow up on that same line of questioning. You, and reasonably so, you put a lot of stock in staffing to try to remediate these issues we have with CMS and DOJ. And I can understand that. And there's certainly spillover

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into some of these other areas of concern that we have. But recession aside, we're at a break point. What if we can't find these people? What if we find three months from now, six months from now we haven't filled these spots? []

RON STEGEMANN: We'll continue to... []

SENATOR ADAMS: What do we do? []

RON STEGEMANN: We will continue to reduce the census at the facility in order to make sure that we can provide adequate staffing at BSDC. []

SENATOR ADAMS: And would you tell me at this point again, I know we've talked about it before but it's been some months ago. What's the criteria for reducing that population? If we're going to reduce the population at Beatrice, I'm assuming, if I remember right there is some systematic way of doing that. There's an evaluation process of reducing that census. []

RON STEGEMANN: Relative it is. There is no one at BSDC who could not be served in the community given adequate community services. []

SENATOR ADAMS: Okay. Given adequate community services. []

RON STEGEMANN: Correct. []

SENATOR ADAMS: But if we're not comfortable there where does that leave us? []

RON STEGEMANN: Well, I guess, I was going towards your what's the criterion... []

SENATOR ADAMS: I understand. []

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RON STEGEMANN: ...piece of it. There's no assessment that you can do. There's no magic wand you can wave or anything else to say. Ron's ready, he's ready to go out to the community. The (inaudible) is, is the program ready for Ron. Are there adequate services across the board. Is there an occupational therapist there, if that's what Ron needs. Is there a physical therapist? Are there speech therapists? Is there a neurologist within 200 miles of where Ron is going? So that's the piece of it. It's not is Ron ready, it's is the program ready for Ron. []

SENATOR ADAMS: Okay. []

SENATOR LATHROP: Senator Wallman. []

SENATOR WALLMAN: Thank you, Senator Lathrop. Hello, Ron. []

RON STEGEMANN: Hi. []

SENATOR WALLMAN: In this census thing we need this many more employees, is that for the current residents there or is that down to 200 or... []

RON STEGEMANN: If we would get our census to approximately 200 people, what I have determined as an appropriate level of direct care positions would be in the neighborhood of 225 to 235 staff. So we're not that far from there. []

SENATOR LATHROP: You have some questions? Go ahead. []

SENATOR GAY: Well, you say what you determine. But it makes no difference what you say determine. It's pretty much what the CMS says, doesn't it? []

RON STEGEMANN: My determination comes from work with the Liberty staff. And there is kind of a national standard that indicates that for each staff person you need on

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board you need approximately 1.8. So they multiply it by a factor of 1.8 to 2.0 in order to cover vacations, sick time and ongoing training. []

SENATOR GAY: That's where we think we need to be. []

RON STEGEMANN: Yes. []

SENATOR GAY: And we won't know that until we get the report back, correct? We're under report. []

RON STEGEMANN: Well, we'll know that when CMS comes and says you have adequate staffing, you've met the condition. []

SENATOR GAY: Yeah. And you feel confident that's the number and we're going to get there. []

RON STEGEMANN: Yes. If I wasn't confident in that I'm wasting my time. []

SENATOR LATHROP: That does give me some questions to follow up on. You were answering some questions and you said somebody I talked to before that was...at this job before me said I'll stay at the job as long as I have control over essentially how the place runs. []

RON STEGEMANN: Right. []

SENATOR LATHROP: And then you talked about, well, now it's a different world. And we have some people in Lincoln that are going to do some of the personnel things, for example, that was your testimony. []

RON STEGEMANN: Personnel, staff development, financing. []

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SENATOR LATHROP: Okay. So those things aside, it kind of is your thing to succeed at, isn't it? []

RON STEGEMANN: Yes. []

SENATOR LATHROP: And you've given us a list of outstanding positions. And I got an uncomfortable feeling when you said, well, if we can't fill them then we'll just downsize the place until the people that we have there equal enough people to provide for the residents that we're down to. Does that make sense? Maybe it's not a good question. You're...when you said, if I can't fill the positions then what we'll do is reduce the census at Beatrice until the people that are working there are enough to take care of the people that are left. []

RON STEGEMANN: That's the idea of the right-sizing. []

SENATOR LATHROP: The alternative to...see, that strikes me as a crummy reason to send people to the community-based programs. Okay? I'm going to share with you my feeling about that because last month we had hearings on the community-based programs. And I, personally, have taken phone calls from people that have horror stories about the community-based programs. I know that CMS is watching over Beatrice and they have rules and regulations. And when people go to the community-based programs we don't have any similar oversight. And I don't have a sense, after doing these hearings all summer long, that we have community-based programs that are ready for these people. Okay? And I'm also seeing that you've kind of hit a plateau in reducing the census, have you not. You started out with a goal, I think, of reducing 100 people. []

RON STEGEMANN: Um-hum. []

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SENATOR LATHROP: And you said you've reduced maybe three or four since we were down there in July. You kind of got rid of the low-hanging apples, if we can call them that, the cases that were easy to move into the community. And now we're down to how many more if you're going to meet your goal? Fifty? []

RON STEGEMANN: 56. []

SENATOR LATHROP: Fifty-six more people, and you have just a couple months left. []

RON STEGEMANN: Right. []

SENATOR LATHROP: It's probably not going to happen, is it? []

RON STEGEMANN: Probably not. []

SENATOR LATHROP: And that tells me that we don't have the services in the community for the people that you need to have leave Beatrice to right-size it so that the staff that you're able to maintain there is adequate. Is that also true? []

RON STEGEMANN: I believe that's reasonable. []

SENATOR LATHROP: So now there's two ways to look at this. We can look at it as a right-sizing issue, which would be okay if we had the community-based programs and the oversight and regulation and the things we need in place to make that happen or we can look at it as what do we got to do to get the personnel there. And what's been frustrating for me, Ron, is that when we talk about Beatrice and we say, okay, it's Beatrice, remember we can't get a lot of people to move to Beatrice or it's not that easy, Senator Lathrop, to get a physical therapist down to Beatrice because they'd rather work someplace else. We don't have an alternative, it seems to me, because right-sizing has hit its plateau. We've gotten rid of and we've moved people out of

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Beatrice to the point where the community-based programs aren't available for the people that you need to move out to get to right-size. And the only alternative is to work at the personnel issue and say, we need to tackle it. So here's the question, I think, that we're all here to find the answer to, what's it going to take, because the answer, it's in Beatrice, Senator, and it's hard to find people for Beatrice, doesn't work because it's the only alternative left or we need to hurry up and get some regulations and some oversight and some community-based programs that aren't in place. Right? []

RON STEGEMANN: And the answer is it takes more money. []

SENATOR LATHROP: Okay. You said you asked for \$5 million more. Does that get it done for a two year period? Does that get it done? []

RON STEGEMANN: I can't tell you exactly.

SENATOR LATHROP: You are the CEO of the Beatrice Development Center. You are in charge of running it--and I'm not trying to be critical with you. I'm not trying to be critical with you, but we are...we are, as a committee--and I'm not just speaking for myself; I'm speaking for everyone up here I think, it is frustrating because we get, we'll we could right-size, we're going to right-size but we don't have the community services. And then we say, what do you need? And we hear, well, it's a tough place to hire. And our answer is, we're going to lose \$28.5 million of funding at Beatrice. We are going to lose \$28.5 million worth of funding, and is that because we're trying to save 50,000 bucks? How much do you need to...how much money is it going to take so that we have the staff so that we satisfy CMS, satisfy the Department of Justice, and meet the recommendations of Liberty, who we paid \$1.5 million to for a consulting fee?

RON STEGEMANN: I think that's a fair question but I can't give you an exact answer.

SENATOR LATHROP: You have looked at the number of positions and you know what

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the pay is for each of them, and you know what the hours would be. Have you added it all up?

RON STEGEMANN: I know what the average pay is across an area. I can't tell you specifically what an individual person would come to Beatrice for. We still have to find the person.

SENATOR LATHROP: Okay. And I'm not scolding me, believe me. It's my frustration that you're hearing. My concern is that we can't wait to fill those positions. When CMS last came through--we talked to them yesterday and I don't think they think we're putting in the effort that we need to, to make things right down there and to meet the conditions of participation. That's my take. I think that's a view shared by the people that are up here with me. And I would sure hate to lose the \$28 million--and we may lose it anyway--but I'd sure hate to lose it because we didn't say, let's make an appropriation to get the professionals--and I'm talking about money. And there are people down there that deserve to have the proper care. They deserve to see the neurologist, they deserve to see the psychiatrist. I mean, that's why they're there. So do you have any...? Who do I talk to? Is it John Wyvill? Is it Chris Peterson? Who is going to give me the answer on what it's going to take?

RON STEGEMANN: I don't have the answer. Perhaps Dr. Wyvill does.

SENATOR LATHROP: Okay. That may be fair.

SENATOR GAY: I've got a question.

SENATOR LATHROP: Okay. Senator Gay.

SENATOR GAY: I guess, Ron, I asked you before and I'm not so sure is...here's the deal. What obstacles stand in the way of hiring these people? Is it...? And I'm not just

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saying throwing money at the problem, but sometimes maybe money is...you said that; you said that yourself. What's it going to take? It's going to take some money. No one wants to just throw money at a problem. But I guess you're working one way around the hiring by doing contracts. You're doing contracts. You talked about the speech pathologist I think it was. So you're being creative on certain other ways. But I guess you've been there 19 years and you said, well, we've always been short. And maybe what you're saying is, well, we may not get this done. It's a lot of people to hire. But I guess what we're looking for is, who do we ask and how do we get this done? Is that what you're saying is that you can't answer that question? You don't know.

RON STEGEMANN: I can't tell you exactly what it's going to cost to get that done, to get those people in those positions.

SENATOR GAY: Forget that then. How do we get it done? How do you get the staff, first of all? Because I think...I think, and I'm just, you know, what I'm picking up...

RON STEGEMANN: You go to organizations like Liberty, you go to organizations like Guardian, and you tell them I need two physical therapists here Monday and they tell you what it costs.

SENATOR GAY: And we can't do that forever, obviously, but it would solve an immediate problem but not our long-term problem, correct?

RON STEGEMANN: We've done that. We have contracts in place, and hopefully we will have a speech therapist there, come Monday.

SENATOR GAY: Right, in one position. But long-term, you can't go and just...no business can run that way, and we certainly don't want to run that way where we're getting...we're running it on temps is what you're telling me.

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RON STEGEMANN: Right.

SENATOR GAY: So, longer-term, how long do you think it would take to hire these people? I mean...

RON STEGEMANN: We have to look at the pay structure that exists within the personnel systems, and we've done that with developmental technician positions, we've done that with some of our management positions. We did the five-state survey and we came up with equitable pay for those positions. I don't believe we've done that in the speciality positions, in the therapies and physicians, psychology, and in all those positions. I don't remember them getting a raise out of the last group.

SENATOR GAY: Okay. And that's some...but equitable pay then, we're at an equitable pay issue now. You think you're at that number. And if you're at that number then we would be hiring these people...just because you're equitable pay, I mean, that still doesn't mean they're going to come flocking to your doors. That's a tough job.

RON STEGEMANN: Because we're still in Beatrice.

SENATOR GAY: Okay, we're going there again, and plus it's a very difficult job. I mean, we all recognize that fact. It's a difficult job.

RON STEGEMANN: One of the things I will say about Beatrice though, and I say we're in Beatrice and for some people that's not a very attractive place, but the reality of it is with the three administrative positions I've been able to bring on board, they want Beatrice. They're coming out of large cities in Ohio and Florida, and they want to go to a smaller setting like Beatrice, so it's not that Beatrice...I love Beatrice. I've lived in southeast Nebraska all my life, I think it's great, so it's not unattractive to everyone. But to many people that can make great amounts of money--psychiatry, neurology--it's not as attractive financially.

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SENATOR GAY: Yes, very difficult. And I agree with that. I think everyone can agree on that because we're doing all we can do to try to train people. It's the line person that you need, to me. You're still...those are the biggest numbers when you read all those jobs that were open, those positions that were open.

RON STEGEMANN: Yes.

SENATOR GAY: And maybe we need to do something other than radio advertising or maybe we need to go look outstate and try to recruit people or...I don't know what the answer is and I guess that's what we're looking for.

RON STEGEMANN: I think some of it we're doing now. Because, as I stated, one of the biggest morale issues that we have is the fact that we are holding people for mandatory overtime. We're down to 28 hours for the last reported pay period. That's word-of-mouth. That goes from our employees back to people that they know within Beatrice and the Gage County area. We believe morale has increased at BSDC. When that increases on campus it gets converted to morale within the city of Beatrice itself. We know we had a period of time when we were bad-mouthing ourselves as much as the papers were. I don't believe that exists anymore. I believe we're turning that around. I believe that our staff are recommending BSDC as the place to work, and that's probably the biggest draw--we know that because they tell us that--to getting new frontline staff and to work at BSDC. And then it's my job, it's the administration's job, it's everyone's job within the organization to make that a place that people want to stay at and be a part of. And moving BSDC forward and making it successful and getting us through all of what we're in now, including--not that it's terribly bad--but my involvement with this group goes a measure towards making it a better place to work.

SENATOR GAY: So you answered the question. You're making strides is what you're saying and that's how you did it. And do you think that will continue on...

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RON STEGEMANN: I believe so, yes.

SENATOR GAY: ...to make it a better place, to I want to go work there. That's a good answer.

RON STEGEMANN: That's the biggest thing that's going to get frontline staff there.

SENATOR GAY: Okay. Thank you.

SENATOR LATHROP: I think that's it, Ron. I know it hasn't always been comfortable but you have educated this commission, you have given us information that we have asked for, and we know you are down there doing the best with what you've got and we appreciate that. So thank you for your testimony again today, and we'll have you step aside and make room for John Wyvill.

RON STEGEMANN: All right. Thanks to each of you.

SENATOR LATHROP: Thanks.

SENATOR GAY: Thanks, Ron.

JOHN WYVILL: Good afternoon, Senator Lathrop, members of the committee. My name is John Wyvill, W-y-v-i-l-l. I'm the director of the Division of Developmental Disabilities and I'm the one responsible and accountable for BSDC and DD services in the state of Nebraska. And there's a couple of items if I may, can address based on questions that have been asked for the committee, addressing (inaudible). For your information, we have been consistently working and looking for placement of folks outside of BSDC for some time now, part of our right-sizing initiative. We are currently what we do with Service Coordination and with Sue Spitsler, our transition specialist at BSDC, and with

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help from our community staff in Lincoln, and we work with Service Coordination twice a week to go over a matrix of clients that are being considered for community placement. Those individuals roughly equate to a number of 50. Part of that process that we're also working for is that we have identified 92 individuals that do not have a behavioral management plan or (a) on psychological or psychotic medications that we have identified that would be appropriate for community placement right now, but for guardian opposition. Twenty of them can move into the community today if we did not have guardian opposition. The others have smaller obstacles or barriers relating to health or accessibility that can be easily worked with the provider and take a little bit longer transitioning. As a general rule, if a guardian or a loved one expresses their intent or interest to go into a nursing facility, that can be done fairly quickly. If it is a community placement, it takes up to a month or a month and a half or two months working with the provider to ensure that there's a safe and appropriate placement into the facility. The second, the issue brought up about the budget for recruitment and retention, that is in the...the budget for that is outlined, I believe, in the six-point plan. That is how we are allocating the money and that will be the best way to describe some of the efforts as was gone into hiring of the temporary agency folks and hiring them, and made a decision to allocate additional resources, so we don't want to create the mistaken impression to the committee that we have used the vast majority of the money for temporary agency folks. I think the guideline for that, if you have any questions, is in our plan as to how we use to spend the money. And we do want to say right now as a result of the action by the Legislature and the Governor in this particular thing has yielded some wonderful benefits and opportunities for us. We had previously provided, I think last week, a document of a letter transmitted, dated October 8, that we refer to that announces a lot of the changes that we have made doing staffing. One of the things that's very significant is that we have an orientation facilitator that's on board that is helping with orientation, and a meeting with, I believe with Senator Harms, our staff had indicated that that individual alone was responsible for retaining eight direct care staff that were contemplating quitting during the orientation process, and they were able to intervene. So also in addition we are working very closely and hope to have an

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announcement soon on four mentors that will be assigned responsibility for the new direct care staff, working side-by-side with them as well as providing assistance. That is a direct benefit of the recruitment and retention plan, and I just wanted to share that success with you. I know the committee has a variety of questions that they want to ask me so I think I will stop right here and let you get to the heart of the matter.

SENATOR LATHROP: John, thanks for coming. You have been at almost every single meeting, and we appreciate your continued interest and the efforts that you've put into this. We'll see if folks have questions for you, and we'll start with Senator Harms.

SENATOR HARMS: John, you were present for awhile at that meeting that we had with the staff development people. Have you looked at and have you reviewed the actual material that they have in their training program for the staff? I'm coming back to what CMS had mentioned to us yesterday. It bothers me just a little bit that we might be using material that's antiquated and not appropriate today, and I just wondered where that check and balance is and who reviews that so that it's appropriate.

JOHN WYVILL: Senator, I have reviewed a lot of documents. I know at one point that I have reviewed the training, and one of the things that Liberty and others have said is that we need to have training consistent with best practices of ICF/MRs across the country. And I believe in the materials that we have given we have individuals that are coming on board that will be providing that training, if not already, also in areas. I think you'll see in there Michael Small (phonetic) is going to be providing People First-centered training. We also have other just-in-time training. In addition, we also...my staff had shared with me your thoughts about some of the possible other training, and we're very intrigued about that and about that possibility.

SENATOR HARMS: I can tell you if you can get it done it will make a difference for you and also make a difference for Beatrice, and may even other parts of government.

There's some great opportunities there. John, I wanted to ask you about Liberty and the

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\$1.2 million or whatever the amount is. Where did that money come from?

JOHN WYVILL: I believe it came from federal "turn back" money.

SENATOR HARMS: Okay. So it was money that we didn't...explain to me how that federal "turn back" money works.

JOHN WYVILL: I believe that we have money that we have available that the federal government gives us back in reimbursements, and then we use that money to fund Liberty Healthcare.

SENATOR HARMS: Okay. In regard to the budget, Ron had mentioned that \$2.5 million for each year which is \$5 million total. Do you really think that's adequate to...? With the issues that you see at Beatrice, do you really believe that \$5 million will really make that much of a difference to help you? I mean, what's it going to take to address the issue, because when I look at that and I look at your waiting list, look at all the other kinds of things that are there, it doesn't look like to me that \$5 million is appropriate.

JOHN WYVILL: Senator, based on the information we have now I definitely think that it's adequate to address the challenges at BSDC. I think the challenges now at BSDC are not a resource issue, however we could eventually have to reevaluate based on whatever recommendations that this committee gives us to consider for other ideas that we have not thought of.

SENATOR HARMS: So based on the best information you have, could you share that with me? What is that?

JOHN WYVILL: That is, I believe, on...I don't know the exact (inaudible) and we can certainly share that budget with you.

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SENATOR HARMS: You're talking about the budget of \$5 million. Based on your judgment of the best information you have, that's adequate, so I'm trying to find out what is that best information that makes it adequate.

JOHN WYVILL: Okay. That is based on our consultation with BSDC staff, with our attorneys, with our budget office and analysts of the information that also takes into account a variety of different factors so they can give us the dollar amount.

SENATOR HARMS: John, in regard to the community-based programs that we have--I think probably the majority of us here probably have a concern about that--what's the savings by taking one of the clients and moving them from Beatrice to a community-based program? What is the actual savings to the state or what's the difference in the transfer of dollars? What is that total up to, do you know? []

JOHN WYVILL: I'd have to look that up. I think I provided that to the committee previously and I don't want to hedge on that, but there is a significant savings if someone goes into the community, because I think BSDC with all the costs associated per client is significantly higher than one would be in the community-based setting or one in a nursing facility.

SENATOR HARMS: So we wouldn't be moving them to save money, would we?

JOHN WYVILL: That's not the issue you've heard. You've heard the debate about appropriate community settings and what would be the best interests of the clients and the availability of choice. One of the things about the system of care for developmental disabilities is outlined and it's made it very clear among everyone that we've heard that BSDC has a place in the system of care in order to effectively and best able to do its job, and we feel that there are individuals out there that have opportunities to do even better in the community. We respect the choice to make that decision. One of the other issues here that we have slowly and steadily signaled a shift in our philosophy, is the

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philosophy is they're talking about the community placement in terms of Homestead more so than the necessity for our staff because we feel very comfortable (inaudible) how we're progressing and implementing our plan, and our plan is just very simple. It's skilled leadership, establishing an effective organizational structure, continued right-sizing the facility, and recruitment and retention and training of staff, and successful community placement.

SENATOR HARMS: In regard to the community-based program...no, I'm going to leave that alone, John, for right now, so I'm...

SENATOR LATHROP: Greg. Do you have any questions you want to ask before you leave?

SENATOR ADAMS: I'm going to have to leave here in a minute so if I could...

SENATOR LATHROP: Right. Go ahead.

SENATOR ADAMS: John, correct me if I'm wrong. A moment ago did I hear you say that you believed the situation specifically at Beatrice is a resource issue?

JOHN WYVILL: It is not a resource issue. It's not a money issue in my opinion.

SENATOR ADAMS: Is not a resource issue. Okay. So let me ask you the obvious then. I asked the same thing of Ron. If it's not a resource issue, how did we get to this point? What's the issue?

JOHN WYVILL: I think--first of all, I'm glad you asked that question because obviously that is the question for everybody on the committee--I think based on my review and based on my opinion I think there are several contributing factors. The problems at BSDC were long in the making and to get to the point that we got where the 12 federal

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surveyors showed up on our doorstep in September 2006, and I think there are several things that have contributed to it. I think first was an organizational change. I understand that in about 1997 BSDC was under DPI, I think was the Division of Public Institutions, and from what I understand from talking to a variety of people that there was a lot of loss of brain trusts or whatever when they had turnover during that organization--not a criticism of what the decisions back then were made (inaudible) I think that was one contributing factor. I think another contributing factor was after we heard this Horacek v. Exon lawsuit. I think you've heard Bruce Mason come before this body and talk about that when he was practicing I think in 1972 or something like that where he was talking about the facility was over 1,000 individuals, and after it reached a certain point in reducing the census it kind of got stuck in terms of having no clear purpose or no clear goals and objectives, and I think that contributed to it. I think also some of the other factors I think was the organizational structure. I think it was the Department of Services at one point, in which one director, I think someone like me, would be responsible for children and family services, DD, veterans' home, and behavioral health, and I think that caused the director to be in a crisis management mode. I think obviously if you look at the survey results, if you look back from 1999 on, there's been some consistent challenges at the facility. It appears to be, in talking to staff, it's unclear as to whether or not the higher-ups knew about it because there wasn't a mandating reporting of those kind of information, so some of the problems that we're experiencing in 2006 were there in the survey findings in 1999 and '98. And then also, as expressed by staff--not as an excuse--is that some of the expectations of CMS over the years may have changed, and I say that just that a lot of it can be subjective. That's not a major contributing factor but that is one element that has to be taken into effect because the question comes is why weren't we hearing about this before 2006. And that, you know, you kind of wonder is everybody correct or what's going on. So I think all those, I think, played significant factors. Also with the stagnation at the facility, the facility didn't keep up with the contemporary practices of ICF/MRs and kind of lost its edge. But I do want to share one thing while we're talking about the problems that I've already mentioned, what we're doing to fix it, that we have, that you have seen here that we have extraordinary

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individuals doing extraordinary things down at the facility. We have people that are there 24/7. We have individuals on weekends and holidays, and when you're at home for Thanksgiving or whatever you're doing Thanksgiving, that we have our direct care staff and our staff working side-by-side with the clients. The client, the staff, had put up with being suspended for allegations or false allegations, and time and time they've come back, and they don't quit, they don't give up despite the negative publicity and I think you've mentioned with that, and they still have that eagerness to learn, eagerness to incorporate new ideas and new ways. And that's what our job is to do, is to help fix the problems. And part of that problem in the past was a disconnect between management and direct care staff. And I think all those factors together contributed to where we are, Senator, and we have and we believe that we have a plan that is fixing and addressing those problems, and we certainly welcome any additional suggestions. I know I can speak for Ron and Chris Peterson. We take no pride of authorship, that if someone has a good idea, the committee has a good idea, well, you know, if we haven't thought about it we certainly want to embrace it. It might be embarrassing that we didn't think about it, because that's what we're paid to do, but at least it's said, give it to us and then we'll see what we can do to go from there. So hopefully in a nutshell that outlines what I think got us where we have.

SENATOR ADAMS: Thank you. That's very forthright. One of the things, and you've been here, John, to hear this, that we've heard fairly consistently from the guardians and the parents of some of the clients at Beatrice is that there was a time in the 1990s when we had a top-of-the-line facility, a cutting-edge facility, a model, and we've lost that. And maybe your description explains potentially why we have lost that and we are at the point where we are now. Appreciate that.

JOHN WYVILL: And also we don't want to confuse two things so that our lawyer doesn't kick me in the chin under the table here, is I'd point out is that when we are outlining the things that we're doing, is that our goal is not just a minimum condition to participation, is to be the best facility in the state of Nebraska and return it back to where it was, and

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that is our goal. And that's why we have made a concerted effort to get skilled leadership there to revamp an organizational structure, bring in the experts that tell us what we need to do, and continue to do what we're doing in addressing recruitment and retention and training staff. And we've gotten a lot of input and suggestions from a lot of different folks, and I can't think of anyone in this room that wants us to fail.

SENATOR ADAMS: That's right.

SENATOR LATHROP: Senator Wallman.

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you. I too agree. I'm thankful you're on board; and direct care staff, I'm proud of them probably 99.9 percent; and also the parents' group. As we get down here, is you've got empty space at BSDC buildings as we've downsized?

JOHN WYVILL: We will have vacant space, Senator. We also have as part of our long-range plan, for example, the administration building I think has some foundation issues with it and we anticipate that we will be moving that to the what's referred to as the hospital annex. And I think that is going to be well-received because I think in addition that puts a lot of our administrative staff right in the middle of our direct care staff and interaction with our staff, and I think also helps address one of the feelings from direct care staff that sometimes the management is not there to support them.

SENATOR WALLMAN: I think that's good too. Is there any other buildings empty or just that one or...?

JOHN WYVILL: I think...I'll have to check with Ron. I'm drawing a blank right now. But we just recently, I think earlier this week, were closing a building to renovate it for making it more accessible to move a different client population into one of the cottages. I think the role is to get out of the dormitory-style housing into the more

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community-friendly cottages or living spaces to replicate living in a community, and remove that stigma of an institution not just for the sake of that but to give the clients the opportunity to have meaningful days and have the fullest opportunity to them.

SENATOR WALLMAN: Thank you.

SENATOR LATHROP: Senator Harms. (Laugh) John. It's getting late.

SENATOR HARMS: Yeah, it is getting late. Thank you, Senator Lathrop. John, just a question I wanted to ask you about the waiting list. Yesterday we had testimony here about the waiting list. It came up and it was pretty evident...I left here yesterday almost depressed and with a heavy heart, listening to the parents and guardians and loved ones, a son or daughter who they have that's on the waiting list. And they're in the aging process and they can see that in time if something happens to them there may not be anyone here to really help take care of that son or daughter. And the waiting list is a big issue with a lot of people. You have a lot of people on the waiting list. And they also brought forth information that we have people, parents who are leaving Nebraska because they don't see any hope of services for their son or daughter in the very near future. How do we address that issue, John? I know it's expensive, but, you know, somehow we're going to have to come to grips with that issue.

JOHN WYVILL: Well, you know, obviously any director would love to have additional resources and additional funds. One of the things that you'll find out is that we have the legislative resolution, LR156, which Mary Gordon is assisting on, to do recommendations, as well as give you some of the information that can assess the true extent and scope of those people that are waiting for services.

SENATOR HARMS: So what is your estimate of the cost to address that issue?

JOHN WYVILL: I think right now, and Senator Lathrop has asked me to update and give

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you the most updated information, so obviously we'll supplement that to give you the most accurate information, but I think right now there's about roughly it might be 1,900 people waiting for services that might have over 2,400 requests for different services. That might be respite day services or habilitation and that. That number that we have given a little bit earlier, right now best projection is \$80 million, and that's not factoring in any...that's based on the requests and based on the their date of need of services, and that doesn't account for other individuals that were requesting services right now in anticipation of future time. And I think given that amount total, I think you're looking at over \$136 million.

SENATOR LATHROP: Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Lathrop. Thank you, John, for your information. A concern that I have is when CMS found areas that they were not satisfied with, have they given or indicated anything as to what it really takes to make them satisfied? I mean, you have your plan to fix the problem. Is your plan going to be satisfactory to meet CMS's anticipation?

JOHN WYVILL: Senator, we think so, but one of the challenges that we have is--is not a criticism of CMS, it's just the way that they're structured--is that they're not structured that they can also provide us technical assistance, and we can't go to them and say, will this work, will this work, will this work. They say, here's the problem, here's the issue, you need to figure out how to fix it. In working in other branches of state government where I've worked under the Department of Education, they do afford technical assistance. So sometimes that creates some of the challenges, is how do we know that we're addressing it to meet their expectations and needs. And ultimately they're the ones that make the decision, and it's not meant to be a criticism, it's just that's just the way it is.

SENATOR STUTHMAN: That is the concern of mine, because, you know, they say,

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well, this practice is not acceptable, but that's the end of the conversation. You say, well, we're going to fix it in this way, but that's not acceptable either, and then you...

JOHN WYVILL: Well, they may not say it's not acceptable or they may say, yeah, it's acceptable or things like that, and that's why sometimes we have to resort to nationally recognized experts to assist us to make sure, based on that, to make sure that we're meeting it. And I am very confident we've been very fortunate and blessed to have Liberty Healthcare. We currently have a person that's helping us with that quality assurance with Liberty Healthcare, that's working with us, and we have our attorney, Tom York and Jodi Fenner, and doing our best.

SENATOR STUTHMAN: And there's still no guarantee that's it's going to be acceptable.

JOHN WYVILL: No. It's their call, not ours, and they've made that clear many times, and that's just the way it is in a regulatory environment. I'm not criticizing it. It is what it is.

SENATOR STUTHMAN: Okay. Thank you.

SENATOR LATHROP: Senator Gay.

SENATOR GAY: John, when you did you start here?

JOHN WYVILL: September 17, 2007, and I think in my first month on the job I think federal surveyors were at BSDC I think 17 out of 21 days. []

SENATOR GAY: Is that right? Yeah, so welcome to Nebraska. (Laugh) []

JOHN WYVILL: And for the record, I am still in the dog house because I had to be at BSDC on my wife's fortieth birthday dealing with the Department of Justice. (Laughter) And hopefully I'll be able to make it up to her this year. []

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SENATOR GAY: Well, I guess looking at this, I remembered you've been working on this and now we have a committee looking into it. Senator Stuthman and I have been hearing about these problems for awhile. At some point we are going to correct...we will correct this Beatrice problem. I mean, we'll get it done, do what needs to be done. Senator Harms talked about long-term, we talked about waiting lists and some of these things. I guess, real quick, what's your vision of...? And then we...well, where I'm going, we talk about...Senator Stuthman just asked you, well, how can we satisfy CMS requirements, and you said, well, we don't know, we don't know. But I think what they're saying is be proactive, not reactive. And we're looking for a fixed list, a punch list, saying if I do these things I'm in the clear. Well, that's fine, you're done for now. But we talked...Senator Adams talked about how did we get in this mess. And over the course of years we've just been letting things slide it kind of sounds like. I'm not pointing fingers at anybody, but probably everybody, you know. You had talked about how the changes of which department it was in and all these things. In the future though, how do make sure--as a committee we were struggling with this--how do we make sure that things are being done and things are being tended to? What's your vision of once you get past this crisis, what's your vision of the DD community in Nebraska? Where do you want to go in...? []

JOHN WYVILL: Okay. Well, obviously, Senator, first we want to remove the cloud of uncertainty hanging over all of us about the federal funding relating to CMS. But I want to first and foremost let you know, members of the committee and everyone else here, that we take that very, very seriously, and I think we're doing our very best. But I think the thing I'm reminded in preparing for this hearing, there is an old proverb out there that says, remember history, lose an eye; forget history, lose both eyes. And I think it's very critical that we have to be, first of all, aware of the history of how we've gotten where we are, and then where we'll go. The vision for community-based services, I see it first of all is successful implementation of the DOJ agreement, successfully navigate the minefield post with BSDC relating to federal funding, and then establish and reestablish BSDC as

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a premier facility in providing care for those with developmental disabilities, specifically in the area also of ITS, which is intensive treatment services. If you talk to any provider, and they will say if they have anything they want, obviously besides more money for their rate, which is, by the way, included in our budget request. We have a 2 percent budget increase and I think we're the only division that has a 2 percent increase. I think everyone else has 1 percent rate increase--is to make sure that we have ITS, expand their capacity for intensive treatment services, make sure that we increase and enhance our oversight responsibilities on the community-based side, which we are doing by...we are...I had pulled back the 404 reg, which you may have heard about, that I think were in hearings in September 2006, to reevaluate those specifically based on the lessons learned from the Autism Center of Nebraska thing, and then we are evaluating how we can improve our oversight either by contract management or enhancing staffing to make sure that, as a community provider, that folks in the community feel that they have the same level of scrutiny. I think to give you a picture of BSDC, in a typical week we could have someone from Public Health, from Regulation and Licensure there on a complaint, and we have Nebraska Advocacy Services, we have the independent expert, we have our own (inaudible), we may have Senator Wallman there on a regular basis. So there are times where people are tripping over themselves, and that's a security and comfort that BSDC has. And all of this is to say is that people are saying if they feel that the clients are safe here, they want that kind of assurance and safety in community-based programs then. We're exploring and evaluating ideas about how we can make the general public or the Legislature aware of incidents like in BSDC, for example nowadays at BSDC if something bad has happened or something newsworthy, that's in the paper. You don't hear anything about that with the community providers. That's a division that we want to do, and we're also working on a couple things relating to expanding capacity. We're working with one provider to expand the capacity for at-risk clients at BSDC for community placement, and that could result in several individuals moving out of BSDC. In addition, we're exploring expanding some other programs through pilot programs. So I think we're constantly moving, constantly striving for excellence. So hopefully that gives you a little flavor of our vision for DD. []

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SENATOR GAY: That does. And, you know, I've said many times, I think we have some excellent people, and you stressed that and we all agree I'm sure that what goes on, there's some great employees down there working very hard and none of us are criticizing that fact. I'm just...it's...we kind of need to know, I think, that there is a vision and something beyond this, and we need that comfort to fix this problem and that you're going to move on down the road. So I feel fortunate to have you, so. But thanks for answering that question. []

JOHN WYVILL: Okay.

SENATOR LATHROP: John, I have a few questions. []

JOHN WYVILL: I knew it was coming.

SENATOR LATHROP: Well, I do want to...you made a remark and I want to comment on that, that you have extraordinary people at Beatrice. And, you know, there's a lot of people sitting behind you who are friends of Beatrice, who have family members in Beatrice, and they've all been up here and told us exactly what you've just said, which is there's a lot of great people working down there. And when we went to Beatrice, there were a lot of wonderful people, committed people to a challenging population, and couldn't agree more, and that's a credit to the community of Beatrice and to the organization. I also, for the benefit of the people who are here and who were not in Beatrice when we held hearings there, even the employees had good things to say about you.

JOHN WYVILL: That's kind of them.

SENATOR LATHROP: So that's been my experience in working with you, too, and so I don't want you to misinterpret my questions as a criticism, John, but I do want to ask

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you some questions about or talk about the CMS for a minute. When CMS...they're basically the agency that oversees what we do and are we doing the things the right way as long as we're getting Medicaid money or federal money. Is that basically true?

JOHN WYVILL: Yes. If you participate in their program you've got to play by their rules. []

SENATOR LATHROP: Okay. So if we want--and we do--we pay for about half of the cost of running Beatrice with federal dollars, and that's basically Medicaid money, and so CMS comes in and does surveys or inspections to make sure that we're following the rules. []

JOHN WYVILL: Very important and a critical part of this process. []

SENATOR LATHROP: Right. And since we're using and taking their money to help fund Beatrice, they dictate the rules. And the rules are pretty clear, are they not? []

JOHN WYVILL: Yes. []

SENATOR LATHROP: Okay. That's not a...it's not like we don't know what they are or they keep changing. There are...and the structure of the rules when you take federal money are these. You have conditions of participation and there are eight of those, am I right? []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: And those are the overarching criteria for providing good care, providing a safe environment, having enough people there. They are the eight things that are the big-picture items, am I right? []

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JOHN WYVILL: Very similar to like, for example, the federal rules of criminal procedure and civil procedure, and the rules of evidence. Those are the rules. []

SENATOR LATHROP: They are the rules. And beneath those or perhaps in greater detail are a whole bunch of standards, am I right? []

JOHN WYVILL: Standards and indicators. []

SENATOR LATHROP: Standards and indicators. So if you violate something, some of those standards, and somebody is in immediate jeopardy, we can find ourselves out of compliance with the conditions of participation. []

JOHN WYVILL: Yes. There is a possibility if...there is a determination by a CMS surveyor on site that there's an immediate jeopardy, that could put us out of condition for whatever it is. In addition, the governing body is out of condition. And then what we have to do is, in the terms of art and the CMS regulatory environment, is that we can give them what's called a letter of abatement, which is to say we may not necessarily agree with you but here's what we have done to address this issue. And then they can determine whether or not that condition has been abated, and I think you have 21 days, I think, in order to get that IJ, immediate jeopardy, abated. []

SENATOR LATHROP: Okay. So we can find ourselves in problems with those conditions of participation either by having an immediate jeopardy that rises to the level of violating a condition of participation or we can also get there by a thousand small cuts, can't we, by violating several smaller standards to the point where they just say, you know what, you're not meeting a condition of participation. []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: And those are thing like governing body and management;

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another one is client protections; another is facility staffing; another is active treatment services; yet another is client behavior and facility practices; two more, healthcare services, and finally, dietetic services; and then there's an eighth, is there not. []

JOHN WYVILL: Yes, there is. []

SENATOR LATHROP: So those are kind of things that they say: If you're not meeting those we're going to take you out of compliance; you don't fix it, and we're taking away your certification. []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: Now when we met with CMS yesterday, they gave us a sheet and I had the page put a copy of it in front of you, which is kind of their summary of how things have gone since September 2006. Can you see that? []

JOHN WYVILL: Yes.

SENATOR LATHROP: And in the column on the right side it has conditions of participation which have not been met. Do you see that?

JOHN WYVILL: Um-hum.

SENATOR LATHROP: And they go through each date they were here either for a survey or a follow-up or an incident investigation, and they say when they left how many of the eight conditions of participation had not been met when they left. Is that right?

JOHN WYVILL: Um-hum.

SENATOR LATHROP: And that's essentially...not fixing those is essentially what got us

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decertified by CMS back in December. Am I right about that date? Is it December or January?

JOHN WYVILL: We got...I think or recently we got our citations in September 2006, and then in April that's when we should have gotten our termination letter but we didn't because it's my understanding they liked the progress that was made from September to April 2007. And I think there was only one condition of participation out, but because there was client protection, that automatically knocks out governing body. And so you're talking about being out seven of eight, all the way to one. So they liked what they received. And then in October they came back and then said, no, you didn't make it. And we had them...they have commented on both times, especially when I was there in October, a comment in there, we made significant improvement but they felt that it didn't meet the conditions of participation, and then that's when we got our technical termination letter. And when they came back in March 2008, '08 I think, that's when they said, nope, you're still out and we're going forward with the termination. In the meantime we had already filed our appeal and appealing their determination from October, saying that we disagreed and we have alleged substantial compliance, and we felt even though we had...notwithstanding their opinion, we felt that we were in compliance. []

SENATOR LATHROP: Okay. Well, I want to...I'm looking at their sheet, and you say we're down to one. And I'm looking at March 2008... []

JOHN WYVILL: No, that was back in April. I'm not...

SENATOR LATHROP: ...and they still have four conditions of participation that they say were out. We met with these folks yesterday. And for the benefit of people who haven't been in the middle of all of what you and I have been involved in, the agreement with CMS is they come in because there's some outstanding litigation. They come and have a private conversation with or an unrecorded conversation with members of the commission. We did that yesterday. And we have an appeal pending, and after they left

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I don't have a lot of confidence that we're going to prevail in that appeal. Okay? And I'm not...I have a lot of concern about that, because as I listened to and as I look at the conditions of participation, almost all of them--and maybe you can agree with me on this one, John--almost all of them go back to our personnel. I mean, if you look at whether we're providing protections and safety, or governing body and management, it ultimately comes back to whether we've got the right people and enough of them there. Would you agree with that, that most of our problems with our conditions of participation go back to personnel issues and staffing issues?

JOHN WYVILL: I think the challenges that we have involve staffing and active treatment. []

SENATOR LATHROP: We have an appeal pending, and I...you talk about--and maybe your counsel can stop you, I don't want to try to jeopardize our appeal whatsoever--but basically that process is, we kind of submit things and say if we've given a chance to present testimony we'll say these things and we think we are in substantial compliance. []

JOHN WYVILL: We believe we're in substantial compliance and we have outlined in this book that we have provided you that we made even significant enhancements above and beyond what's required by the minimum requirements imposed by CMS. []

SENATOR LATHROP: Okay. But every time we don't fill positions, if we don't have a psychiatrist or a neurologist or we don't have enough of those people, then we're not providing all of the cares that we need to and that places us in problems with our compliance. And so we have facility staffing problems, which is a condition of participation, and then ultimately it kind of rolls up into a governing body management issue, as well, am I right? []

JOHN WYVILL: Correct. []

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SENATOR LATHROP: So with \$28 million at stake, and--and I feel kind of crumbly talking about in terms of money because there are people whose care and whose level of care we're talking about--but just for the moment we talk about the funding. We have openings that have remained open, that go right to the very things that CMS has been critical of. And it's like I feel like we're being penny-wise and pound-foolish. What do we have to do to get these positions filled so we can provide the care and avoid losing the \$28 million? []

JOHN WYVILL: Okay. Senator, there are a couple things that we feel that are going on to give the proper context. When...and the purpose of the appeal is that in October when they showed up there were 332 clients at the facility... []

SENATOR LATHROP: What year? October of what year, John?

JOHN WYVILL: October of '07. Three hundred and thirty-two as of October 1. As of October 1--I don't know what the census was when they came and visited in October--but 332. October 1 of this year we were 256. So we have made significant changes when we made a change in philosophy to right-size the facility in December, so...and we have, since September...I mean since October of last year, and we've had the census of the facility dropping. And we have, based on here, the level of our staff enhancing. We also have professional staff enhancing. We have challenges in two different areas that we feel that we have addressed. Number one is in the area of direct care, with the help from the Legislature about recruitment and retention, and then we also have the professional staff. If we cannot get professional staff to work for us, we contract with them. It's that simple. In the market out there we have seen, with the professional staff, that the speech therapists, the occupational therapists, and others, it is a buyer's market for them. They can pick and choose. So when they're in that situation, then we contract with them if they're not willing to work for us. That's just the environment. There are some individuals that are making too much money in the private

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sector or don't want to dabble in this. But the very risk also in the professional sector, which is a challenge that we're addressing, is that individuals with professional licenses are unwilling to put their license at risk to work with the DD population, because if they get an abuse and neglect allegation against them, their license and they're hearing from Public Health, because then that's a mandated reporting requirement and then that creates a challenge for them. So we have individuals, globally, that would say, yeah, I'd love to help you out but I'm not going there. But don't mistake that, the challenges is they're talking about this is the gold standard that we're going and shooting for is we want to be the best facility. And we feel that even now, even (inaudible) and we've made our case even better with all the enhancements that we've made since December, saying that. But ultimately it is the decision for the administrative law judge, it's a decision for CMS that we meet their needs. And we have alleged compliance and we think we are in compliance and we're moving along, and we think...

SENATOR LATHROP: John, I believe that you are shooting at the gold standard, okay. I mean you and I have worked together on this since last spring. I believe you're shooting at the gold standard. Has Ron Stegemann made a recommendation to you about how much more money he needs compared to last year to make this happen? []

JOHN WYVILL: He has all the resources available that he needs. []

SENATOR LATHROP: My question though, John, was whether he asked you, as...you're the person he would report to, am I right? []

JOHN WYVILL: That's correct.

SENATOR LATHROP: Has he asked you for a particular dollar amount to add to his budget so that he can put on the people, by whatever means, contract or by retaining them as employees, has he asked you for a particular amount of money?

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JOHN WYVILL: Not specifically, but I asked him, is there any additional funds or resources? And he said he's got it all. []

SENATOR LATHROP: So he doesn't need what? He was here a little bit ago and said... []

JOHN WYVILL: Money is not an object. We have the resources. []

SENATOR LATHROP: So we have appropriated and we are asking for enough money to fill these positions. []

JOHN WYVILL: I believe so, if you approve our budget request. []

SENATOR LATHROP: Pardon me?

JOHN WYVILL: If you approve our budget request.

SENATOR LATHROP: You mean, the Legislature?

JOHN WYVILL: If the Legislature approves our budget request.

SENATOR LATHROP: Okay. Okay. So you think with whatever you've requested you can fill all the vacancies that Ron just went through with us? []

JOHN WYVILL: We'll fill the positions that we feel that will be needed. We don't want to get hung up and confused, even though we have vacant positions that doesn't necessarily mean those positions need to be filled, because we have an allotment, for example, that may be projecting facility staffing, for example, based on the first part of the biennium. And as the census goes down, if we don't need that, when you heard about the 100 that we were looking for, it's now down to...we're actively recruiting 27

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direct care staff. And what we will have here is very soon and we're also getting is that we have our direct care staff complaining now that they're losing their overtime, and which we think is a good complaint. []

SENATOR LATHROP: Well, so do I. So do I if that's going on, because that's a long ways from where we were a year ago. It sounds like we are...I want to make sure that we're talking about the same thing, because I asked if you were going to have the resources to fill these positions, and I think you answered my question a little bit differently than I asked it, and that was we'll have the ones that we think we need to fill. That's different than whether you're going to fill them all, am I right? []

JOHN WYVILL: That's correct. There may not be a need to, and that goes back to a question you had before, is the question if we go out and fill a whole bunch of positions and then our census goes down five or six more, as we project to do, we don't want to be in a position then of spending our time for recruitment, spending our time for training, and then have to say, oh, by the way, two months from now we're going to have to lay you off because we don't need you anymore. []

SENATOR LATHROP: And I couldn't agree that that would be a miserable personnel practice, and the state doesn't want to get involved in that. As you target what you think you're going to need as opposed to all of the vacancies that Ron told us about, what's the census at Beatrice that you think you'll be at? You're making an assumption about your census, am I right? []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: Tell us what you believe your census will be when you calculate what your needs are going to be, as opposed to filling the vacancies that we just heard about.

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JOHN WYVILL: I think we constantly evaluate that on a monthly basis, and we're waiting right now for Dan Hyman, who is the head of Neighborhood Services, to finish his review and evaluation, and then I think we'll be meeting fairly shortly with him and Ron to discuss what the next steps are in terms of staffing. And I think as our census goes down, we're constantly reviewing and evaluating it, and right now evaluate that, as we are going down, that we'll be looking at other areas of non-direct care staff that we may not need.

SENATOR LATHROP: A minute ago you said that there are...you made the distinction between the openings that are there right now and what you expect to be your needs, and you said we're not going to try to fill all of the openings because we don't want to lay people off when we find out we didn't actually need them, so you must have some assumption about where you want to take the census at Beatrice. []

JOHN WYVILL: Well, our goal is 200 at the end of the year, Senator. []

SENATOR LATHROP: And you have how many there right now? []

JOHN WYVILL: We have 256 and we have three already scheduled for discharge in the next week or two, and then we are working with ILC, which is a... []

SENATOR LATHROP: What is ILC, John? []

JOHN WYVILL: Integrated Life Choices. It's a provider that we're looking for to establish a pilot program for at-risk clients--that's just a term that we use--working very closely with John McGee, the independent expert, to make sure that we have the appropriate transitions and safeguards in place. []

SENATOR LATHROP: Is this a new provider? []

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JOHN WYVILL: This is a provider I think has been around for about five or six years, I think.

SENATOR LATHROP: In Nebraska, John?

JOHN WYVILL: In Nebraska. And they spun off I think of DSN. []

SENATOR LATHROP: What's DSN?

JOHN WYVILL: Disability Services of Nebraska. I think that's Roger Stortenbecker's group. []

SENATOR LATHROP: This...what's it called, the group? []

JOHN WYVILL: ILC.

SENATOR LATHROP: ILC. Where are they located or...?

JOHN WYVILL: I believe in Lincoln.

SENATOR LATHROP: Do they have a facility? []

JOHN WYVILL: I think they have a large number of clients. I'm drawing a blank on it right now--kind of stressful. []

SENATOR LATHROP: Oh. (Laughter) I'm not trying to make this stressful, John. I'm just trying to understand...

JOHN WYVILL: I know, but...

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SENATOR LATHROP: ...because this is our last hearing and it's really my last chance to ask you these questions. The ILC, is that a community-based program?

JOHN WYVILL: That's a community-based provider. That's correct.

SENATOR LATHROP: Is it going to be an ICF/MR?

JOHN WYVILL: So tell me what...? Have you entered into a contract or you're discussing entering into negotiations?

JOHN WYVILL: We're in the process of amending a contract right now. We've been working very closely with them to take on, as a pilot program, several of our clients, and then when John McGee came on board, the independent expert, that was one of the first visits that he visited with, and offered some very positive suggestions as to what we need to do to address those issues for community placement. []

SENATOR LATHROP: When you called it a pilot program, can you describe this program? []

JOHN WYVILL: It's a pilot program that deals with what's classified at-risk. They may have some behavioral issues that, quote, the ordinary individual may have, and with this pilot program we're going to see if those individuals can be better served in the community because they have expressed a desire to be in the community. So we are looking for a rural residential setting for those clients. []

SENATOR LATHROP: Did you say a rural residential... []

JOHN WYVILL: A rural residential--out in the country. []

SENATOR LATHROP: Out in the country. So is it going to be an institution? []

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JOHN WYVILL: No. It's a community-based... []

SENATOR LATHROP: How many people are they going to take?

JOHN WYVILL: I don't have the number right off the top of my head. I would have to confer with Jodi Fenner and our staff.

SENATOR LATHROP: Okay. But you were...just...I'm not asking you to get it down to the like the person, but you're talking about moving 50 more people out by the end of the year? []

JOHN WYVILL: Not with them, no. []

SENATOR LATHROP: Okay. So how many of the 50 that you think you're going to move? []

JOHN WYVILL: I think it would be under 10, but I think once that happens that might have a snowball effect on some of the other providers. []

CHRIS PETERSON: Twelve.

JOHN WYVILL: Oh, 12. I'm sorry. []

SENATOR LATHROP: Okay. With the help of Chris Peterson, now we've got...the number is 12. Do you have 12 volunteers? []

JOHN WYVILL: I believe so. []

SENATOR LATHROP: Okay. Do you have a strategy for the balance? That would still

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leave 40 people that you want to try to integrate into a community setting. I guess...give me your thoughts or your strategy or your idea, because we have some concern, as a group, about the community-based programs. We heard some things about them not being well-regulated and not...they don't have the oversight. And so give us some comfort that if you move 50 people that it isn't a right-size move, but we are taking a chance with these lives as we move them to the community. []

JOHN WYVILL: Well, we are working on a couple different strategies as I mentioned before, that we are working with a matrix of 50, I think around 50 clients that we have identified for community placement. And we're working individually with those, and those developments can change daily based on the information we provide to the guardian and putting the right provider in or meeting those specific needs. In addition, we also, as part of the DOJ agreement and others, we have implemented a mentor program with a lady by the name of Joyce Werner who is our client advocate that is based in our Lincoln office, who is creating a structure of a mentor program reminiscent of an older program in the olden days with The ARC of Nebraska, that hooked up potential guardians of people who are wanting to be placed outside of the community with a person that's either successfully placed in a community or someone who is going to. And our next step is then to go back and talk with them, because as we have heard from the Department of Justice and our independent expert is that some of the barriers to the guardian opposition may be something very simple as getting the right people, the education of them of what is available to them, and also explain it by someone other than a, quote, state employee so they can have someone that has a, quote, no dog in the fight or it's not their job so they can get a realistic... []

SENATOR LATHROP: That was kind of a recommendation of Liberty, too, wasn't it, to have that a person that... []

JOHN WYVILL: I believe so, yes, and they've had tremendous experience and success outside the state, so that's what we're doing and we have established a small pilot

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program. And then we start going back...I think we're going to be identifying of those 92 that I mentioned to you and we're going to start going back to address, for example, the 20 that can be placed right away and then sit down with them on a case-by-case basis just to see it. Now there may be some that says BSDC is the best place on the face of this planet for our clients and for our loved ones and we may... []

SENATOR LATHROP: I was going to ask you, out of that 50 how many of them are willing or how many do you think you're going to have to have a hearing and get in front of an administrative law judge and... []

JOHN WYVILL: I think right now we're honoring the client choice of the 92 that we're looking at. The other 50 that we're working on has already in some form or fashion indicated consent, so we're working with them, but we want to make sure that we have the safeguards. And we should have, you know, realistic pictures. I mean, that can change daily in terms of... []

SENATOR LATHROP: Okay. I think I've ask you this. You've not seen a report from Expert McGee--Dr. McGee. []

JOHN WYVILL: No. []

SENATOR LATHROP: Okay, because he was supposed to come up with one or he had 90 days or a quarter, and that would have ended... []

JOHN WYVILL: Yes, he's supposed to give us one after the first quarter, and I think the agreement spells out how that's communicated, I think, but we haven't seen it or I haven't seen it. []

SENATOR LATHROP: Okay. He's just writing it at this point in time. []

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JOHN WYVILL: I would assume so. []

SENATOR LATHROP: Okay. Do you have any kind of a strategy for or do you have any intention of addressing, by delivering more services to more people, addressing the waiting list? []

JOHN WYVILL: In terms of that we are holding off on anything because we don't want to substitute or superimpose our judgment of this committee or the LR156 committee that's giving their recommendations by the end of the year. []

SENATOR LATHROP: You've made budget requests for Developmental Disability Services. []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: Did it include any additional...requesting any additional monies for eliminating some people off of the waiting list? []

JOHN WYVILL: No, sir, it does not because of the reasons I mentioned. []

SENATOR LATHROP: Which is you're waiting for the LR156 committee to tell you how many people are on the list? []

JOHN WYVILL: I'm waiting for the recommendations of this committee and the LR156, and I didn't want to prejudge or presuppose the work of either one of the groups. []

SENATOR LATHROP: I think that's all I have, John. Let's see if anybody else has any additional questions. It doesn't look like it. []

JOHN WYVILL: Okay. Thank you for your time. []

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SENATOR LATHROP: As always, thank you for your candor and being here today.

CHRIS PETERSON: Good afternoon, senators. I'm Chris Peterson. I'm the CEO of the Nebraska Department of Health and Human Services. I'm glad to have the opportunity to come before you today. I know this is the last of your hearings so I welcome the opportunity to have this discussion with you and I'll try to answer all your questions that I can. []

SENATOR LATHROP: Senator Gay.

SENATOR GAY: Thanks, Chris. Chris, Ron was telling me earlier, I was really concerned about the numbers of the staff we've got to hire, okay. Then I'm listening to John Wyvill and he's saying, listen, if I can get these programs in place we're going to right-size our number possibly down to 200. If those all come and those are successful in a way that takes care of the safety and needs of those clients and not push them out the door--and I know you won't but--so those numbers that Ron was throwing out will reduce dramatically then. We won't have 160 different positions that we need at that point. Am I understanding this correctly? []

CHRIS PETERSON: Yes. And I think the way to clarify it is the numbers that Ron is looking at, we're building on top of what's already there. We might get to the point when we get down to 200 there would be some attrition that we wouldn't fill if we continue to have the vacancies. But right now, where we're at is we're maintaining the same level of staffing we had with 300 people but we're taking the census down, because we want to get to the point where--I think our ratio has gone from 1.35 down to 1.2 so we're making some progress on that. It's not easy to find people, obviously, and I appreciate what Senator Lathrop said about whether it's Beatrice or whatever. But it's not just the salary. There are a variety of other issues. It's a tough job; mentoring helps for that. We're looking at the recruitment and retention that the Legislature authorized has helped for

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that. I think the fact that we've consolidated some of the buildings and we've put more staff on the units has helped. All of those little pieces, as well as the training, as well as the interest in the Legislature, and also just pride that we have in people that have worked there wanting to make it right, we are slowly chipping away at that. We're not there yet. We'll get there but it will take awhile. []

SENATOR GAY: Um-hum. So, okay, it's late Friday. You're telling me then if we get down to 200 residents there that I will or I will not need all these employees that we were talking about earlier with Ron. []

CHRIS PETERSON: At 200 we will not need all of those employees that are there. []

SENATOR GAY: Okay. How many would we need do you think? Just ballpark. You don't need to be...a third of those? I mean, because we had...I mean...and I'm more interested in...that's a lot of direct line shift supervisors. The speech pathologists and some of these harder...you know, that's problems statewide not just Beatrice. []

CHRIS PETERSON: Yes. []

SENATOR GAY: But some of the direct line people will go down tremendously then if we right-size to 200 residents. []

CHRIS PETERSON: Senator, I wouldn't say...let me put it a different way. Let me just start all over. Yes, but it won't be because they're laid off. It will probably be because of attrition with the turnover that we have. What I'd like to get for you is... []

SENATOR GAY: Okay, so we're accounting for turnover then because staff... []

CHRIS PETERSON: We will have...we're going to have continual turnover. We will do that. []

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SENATOR GAY: Okay. So that's why the numbers are so high then.

CHRIS PETERSON: Sure. In addition, we've...

SENATOR GAY: You're anticipating turnover, getting...

CHRIS PETERSON: We want to be...yeah, we're forward filling. I mean we call it. We're forward filling. We're assuming that we're losing people off the back end and so we're moving forward, bringing them in and training them at the same time. It takes awhile to be completely trained as a DT tech.

SENATOR GAY: Yes. How long? []

CHRIS PETERSON: I think six months. Ron would have a better idea of that but it's...you do up-front training for a short period of time, less than a week, but then it's over six months. []

SENATOR GAY: Okay. So we're stopping the flow out, hopefully, with some of the retention things that have been done... []

CHRIS PETERSON: Absolutely. []

SENATOR GAY: ...the confidence in what they're doing, and they're all good employees. So what I'm considering maybe is not such a crisis situation as I was originally understanding it, or I was getting very worried. You're being proactive to cover those positions. . []

CHRIS PETERSON: Yes. Yes, we are. []

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SENATOR GAY: Okay. And then real quick--it doesn't have to be quick I guess but --where is your vision of helping John, the concern is and Senator Lathrop discussed this, we don't want to just, for our convenience, right-size. We want to right-size for the right reasons--for quality of life issues for those residents--for the right reasons. But I guess down the road is the how do we make sure that these people are secure, they're safe, and that they're going to get a better quality of life in the community? How can you assure us and then we could go assure our colleagues that (a) we're doing this and ongoing monitoring of those programs? []

CHRIS PETERSON: Two things. I think first is the assurance that we won't find ourselves in the same situation that we were at with BSDC two or three or four years down the road, and then the second is that you're asking for assurance of the oversight when people move out into a community program. And I think that both of those are issues that are going to require a lot of collaboration. We have good providers out in the community. We actually have service coordinators that are staff that go out and work. Probably our best eyes and ears many times are the relatives and guardians that are there. We need to have a coordinated way to do that. Whether it's through a partners' council that formulates some way of regular checks, whether it's working with...we're going to be moving people. For the first time, we have the service coordinators and BSDC under the same core function, the Developmental Disabilities division. We're going to be able to assign with the new rules and regs we're going to have some openings in some of our positions as well as Public Health, so I think with the efficiencies that we can achieve we'll be able to find some people to take care of looking at going out in the field, doing those spot-checks, making sure that they are getting the service. Contract oversight is an issue that we're going to try to deal with across the whole system, and how we do that, whether we hire someone to do it, whether we use our own staff, and through efficiencies that we don't need them for one thing, put them over there, but we'll have to manage that. So I don't have it directly exactly how we're going to do it but we will make sure that people are monitored in the community and we'll do with the assistance of the providers, I'm sure. They've always been willing,

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collaborative on that. And in terms of how do we make sure BSDC doesn't happen again, one of the things that I wanted to touch on just quickly was something that Ron brought up, as well as John. When the original reorganization happened I think you've been at the hearings where they've said it stopped before it went all the way through because you ended up with three separate agencies instead of the one. And so through this Legislature's work, with the administration, we now have the structure that the original "reorg" was supposed to have. I think that's essential to remember that in terms of accountability, because there were times when the CEO reported to a director, reported to an administrator, reported to Behavioral Health. And I think by passing the reorganization bill and putting the core responsibilities of DD in one place under one director, with both the service coordination and BSDC, for the first time you're really combining the two. Back in the '90s when people were saying we're the best we ever were, that was really when the Community Developmental Disabilities Act was passed was in 1991, and the focus then was in the community. Beatrice was held separate from that. There was no real connection made and that continued throughout. They have to work hand in hand. Beatrice should be seen as the place where the expertise is at. When we get our providers and our people out into the field I would like to see Beatrice as the facility that takes care of the people that have the toughest challenges. It's also where people who are in the community, if they need to come back and have more work with the experts that are better there, they'll do that, but for the most part people will be served in the community with adequate supports there, monitored both by providers and the state with the best practices and their safety always first in mind. []

SENATOR GAY: And the monitoring, how long do you think that vision takes? []

CHRIS PETERSON: Monitoring has got to start right away, Senator, so as we're putting them out there now, we're going to have to increase the oversight that we have of them.
[]

SENATOR GAY: And you're developing that now but you can't speak... []

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CHRIS PETERSON: Right. []

SENATOR GAY: ...right now exactly.

CHRIS PETERSON: No.

SENATOR GAY: That will be continued to be worked on.

CHRIS PETERSON: Yes.

SENATOR GAY: Thank you.

SENATOR LATHROP: I do have a few questions, Chris, and thanks for being here. I know this isn't easy for your office and your agency, the whole Beatrice Development and the problems, but I've got to ask a few questions because today is kind of the first I learned that we still hope to have 50 people moved from Beatrice by the end of the year. And that gives us two and a half months, right, to move 50 people. That's a significant number, a significant part of the population, and it makes me recall the comments of Liberty when they said I understand you want to move 100 people out; that's really aggressive and you need to make sure you've got everything put together and all your ducks in a row before you do that, and you need a service coordinator to make that happen. So I've got a question for you that maybe starts with these 12 folks that are moving from...you'd like...these are behavioral folks, so in the spectrum of people with developmental disabilities these people have some cognitive difficulties but they also have behavioral difficulties. Is that right? []

CHRIS PETERSON: Yes.

SENATOR LATHROP: That's the population of people that make up the 12 that you

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want to move to...and is it a farm?

CHRIS PETERSON: You know, Senator, they do have a building picked out. I'm not sure if it's considered a farm. It's a house.

SENATOR LATHROP: I think you said a rural setting. Is it out in the country?

CHRIS PETERSON: Yes.

SENATOR LATHROP: Is it...because Lincoln isn't on the farm so it must be out in the rural area out on a farm somewhere, is that right? []

CHRIS PETERSON: What I can tell you from what I know--and Jodi Fenner has had the specific discussions with them. In fact, I think it's been decided today how to finalize that. It's in a rural setting--it's not in a city--with the understanding that it will provide services on site for people that have some behavioral health needs that they had from a behavioral health plan when they were at BSDC.

SENATOR LATHROP: Okay. Now we're doing this so that the number...the employees...the staff that we have is going to work for the number of people you want to get down to. That's sort of the strategy.

CHRIS PETERSON: You know actually, Senator, that's probably one of the reasons, one of the benefits that we're looking at. I shouldn't say reason. When CMS came through and when the Department of Justice came through, it was very clear that they felt there should be people served in the community. And so ultimately the people that we're putting out into the community, moving into community transitions, it's with the understanding that they will be in a less structured atmosphere. It's a deinstitutionalization. That's always been a goal.

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SENATOR LATHROP: And what I want to express to you is I don't have any trouble with that philosophy. The idea that somebody that wants to be in the community can get there through community services sounds like a...who can argue with that? Here's my concern. []

CHRIS PETERSON: Okay []

SENATOR LATHROP: You take somebody from Beatrice, and the fact that it's an institution means it's separated from the community, and we're now going to put them on a farm, and they're not exactly going to be able to walk to the barbershop from the farm, right?

CHRIS PETERSON: No.

SENATOR LATHROP: And so it's not really putting them in the community in the sense that they can go shop, they can walk and they can go do things and interact with the rest of the community.

CHRIS PETERSON: They will, I'm sure, as part of their individualized plan. They will be transported or drive or whatever, but they'll have sufficient staff with them to allow them to do that. []

SENATOR LATHROP: Okay. This whole developmental disability thing is new to me so I'm asking some questions and I'm not...it's because I really don't understand all of it. And it seems kind of basic that if they're at Beatrice and CMS says...and the Department of Justice and the agreement we reached with them says you'll have psychiatrists, you'll have neurologists, you need speech therapists, occupational therapists; you name it, the specialists are all going to be there for them. If we move somebody from Beatrice to the community, have you made sure that these 12 people will be evaluated by psychologists, psychiatrists, medical doctors, good dentists, and all

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the therapies just as they would if they had remained at Beatrice? []

CHRIS PETERSON: Yes. []

SENATOR LATHROP: How are we able to do that if we can't hire the staff at Beatrice?
[]

CHRIS PETERSON: You have the ability to take people as they do now. I mean they are not getting people who are in the communities now that are developmentally disabled are coming to Beatrice to get their services there. They're like you and I. They can go to anyplace. I mean, they're all Medicaid-eligible so their bills are all paid through the state and so they would find a provider like that. I am assuming that we would be working closely with the providers to ensure that, because that's part of the responsibility of the provider to ensure that that person has those services available to them. []

SENATOR LATHROP: What...if...I'm kind of struggling with this and it is late and I know everybody is getting tired but I'm going to ask these question anyway. []

CHRIS PETERSON: Sure. []

SENATOR LATHROP: You have somebody that's at Beatrice, and CMS is looking over your should and they're saying and the Department of Justice is saying, this, this and this and this have to be done, and I really don't have a sense that if you take somebody from Beatrice where there are people looking over your shoulder and take them to a farm or take them to a house or take them even to an ENCOR which is a program I've got a lot of respect for, that anybody is going to say, you know what, it doesn't look like this guy has seen a psychiatrist or he hasn't seen a neurologist. Who's making sure that once they leave Beatrice that the people, these clients, are actually...somebody is assessing who they need to see, that that's getting done? And if it isn't, how do we find

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out that it isn't?

CHRIS PETERSON: A couple of things.

SENATOR LATHROP: Are we just going to wait for the guardian or the parent to go, my daughter hasn't seen a doctor in two years?

CHRIS PETERSON: No. First of all, BSDC will be tracking them, I believe, up through 90 days to make sure that the placement is working, that everybody is happy. You're aware that all of these placements are voluntary on both sides. The provider...it's voluntary on the provider's side; it's voluntary on the client's side, so they can change at any time. The second thing is they still have a service coordinator which is, in essence, case management. That's the person. And each person has case management service coordination. That's actually one thing that anybody that qualifies for developmental disability services gets. That person is the monitor to make sure that they're getting that. They have a team that is to be evaluating them. And so I would say, Senator, the pieces are in place. What we have to do is monitor to make sure that they're done, and we do that the same way we did when we had caseworkers with our child protection services. We have to have the supervisors check to see how many times the cases are being monitored, once a month, how often do you visit them. We set benchmarks and then we hold people accountable to that. []

SENATOR LATHROP: Is that just in the first 90 days after they leave Beatrice? []

CHRIS PETERSON: Um-hum.

SENATOR LATHROP: Because I'm not getting the sense from our meetings or our hearings last month that somebody comes by once a month and checks up on the guy who's in the community-based residential setting. Are you telling me they do?

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CHRIS PETERSON: I'm going to just...I'm going to have to let me get back to you on that. But for the most part I do believe that there is a 30-day to 60-day check. Yeah, I think so. []

SENATOR LATHROP: A 30 to 60-day check from... []

CHRIS PETERSON: A service coordinator.

SENATOR LATHROP: That's a window of time that they check up on them after they leave Beatrice, or you think a service coordinator checks up on everybody, and John and Jodi and even Lawyer York is shaking his head yes.

CHRIS PETERSON: Would it be inappropriate if I turned around and got clarification for those two questions?

SENATOR LATHROP: I think it would be helpful.

CHRIS PETERSON: Great. Ron?

RON STEGEMANN: For BSDC a social worker (inaudible) checked every 30 days. (Inaudible) minimum of (inaudible). []

CHRIS PETERSON: So the social worker will do a check for the 90 days after they go out to their community placement.

SENATOR LATHROP: That I kind of understood.

CHRIS PETERSON: Okay.

_____: (Inaudible).

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_____ : After that the service coordination does spot-checks for as long as that person (inaudible) services. Part of the DOJ agreement with people leaving BSDC is they have to have a limited number of individuals assigned to the service coordinator for those individuals. And John McGee, the independent expert, actually has jurisdiction over those (inaudible).

SENATOR LATHROP: I got that much, and that was sort of the window after they leave Beatrice there is some coverage, there's some checking up on them, there's some follow-up, and there may be a legion of people following those folks, but after 90 days then we're left with...is that where we fall into the oversight or lack of oversight that we heard, which is, well, we check up on those providers once every four or five years?

CHRIS PETERSON: I think those were the people that were...the licensure people, and they had to do an annual recertification. []

SENATOR LATHROP: Maybe that's the question. Is there somebody besides the licensure people?

CHRIS PETERSON: Yes. The service coordination people.

SENATOR LATHROP: And they do what? Spot-checks? []

CHRIS PETERSON: Yes.

SENATOR LATHROP: And do you know the frequency of the spot-checks?

CHRIS PETERSON: I don't, Senator, but I will get back to you on that. []

SENATOR LATHROP: Okay. That would be helpful. Do you think that the

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community-based providers are ready for the 50 people that you want to move from Beatrice?

CHRIS PETERSON: Our goal is set for 50 people. If we don't meet that, we'll continue to work towards that goal. We're just not going to...we're not going to not continue to work towards our benchmark. Part of the reason that people are not going out into the community so quickly is...there's several reasons. First of all, like you said, some of the easier ones to be placed, are placed. The next easier ones, maybe those have a guardian who is opposed to that, and we're certainly not going to change that. In addition though, the special monitor has asked us to take a little more time and make sure that some of these placements, there's more overnight stays, there's more visits during the day so that we're more comfortable with that happening, and I don't see any drawback to that. We also run into a couple of issues where people need adaptive things done for them, wheelchair ramps, accessibility, like that. So through one of the waivers that we have, we're in the process of making those connection to build the ramps, build the ADA accessibility pieces. And then the last one is similar to the ILC. We have some services that just aren't there so that we have to work with the provider to bring those up, and that's probably why the first 50 that we worked with, they were easier to set up. These are a little more of a challenge. It's going to take a little bit longer to do that but the goal is still the same. []

SENATOR LATHROP: Do you have...to get to...to place the 100 people that you wanted to place, do you have to have anybody who isn't agreeable to it get involved in a hearing over whether it's in their best interests, whether you disagree with the guardian?

CHRIS PETERSON: Part of what we've seen with the placements that have been out there, people are coming back to visit BSDC and saying I'm good, I'm doing all right. I think that we will eventually, as it becomes more prevalent or more well-known, we'll have some guardians that will be interested in taking a look at it. At this point, no, we don't want to force anybody to do that. []

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SENATOR LATHROP: You have no plan or expectation or long-range goal that will involve trying to move people from Beatrice who are unwilling?

CHRIS PETERSON: No, we do not.

SENATOR LATHROP: Do you have...I asked John this and I think I'll just ask you, to give you an opportunity to address it if you care to or if you have anything to say that John hasn't, and that's the waiting list. We've heard testimony yesterday and when we took up the waiting list previously that essentially the waiting list is static unless you become a priority one, and you become a priority one by essentially having either both your parents die or whoever is taking care of you leave you somewhere. Do you have any...you, director of Health and Human Services, do you have any strategy for or plan to reduce the waiting list for DD services?

CHRIS PETERSON: Senator...and I think John answered it the way I would. There are two pieces going on right now. One is LR156 which is going to come forward with recommendations for the waiting list, and then second is what we saw this commission also doing. And so, no, we did not put anything into our budget specifically related to the waiting list.

SENATOR LATHROP: I was...somewhere along the way somebody said, well, you know, they had a statute that said you have to get the waiting list down to zero at one point, and we moved it and we moved it and I never run into it, but I found it.

CHRIS PETERSON: Yeah, we moved it. It was our recommendation to do that because the last...

SENATOR LATHROP: I found it--83-1202.01. It's an appropriations statute that says it's the intent of the Legislature to pursue full funding of community-based developmental

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disability programs in a reasonable time frame and the Legislature commits itself to a goal of providing services to all eligible persons by July 1, 2010. Are we...anything in the works to make that happen? Are you going to...

CHRIS PETERSON: No, sir, not from the department.

SENATOR LATHROP: ...tell the Legislature how much money you need to make that happen?

CHRIS PETERSON: I think we have--\$80 million. []

SENATOR LATHROP: Are you requesting that... []

CHRIS PETERSON: No, I'm not.

SENATOR LATHROP: ...or have you made that request for that appropriation?

CHRIS PETERSON: No.

SENATOR LATHROP: I mean, I'm just trying to find out because this is our last opportunity, Chris, and...

CHRIS PETERSON: Senator, I think it's fairly clear. We told you how much the waiting list is going to cost. We also know that DD services are not entitlements. You've seen what happens with Medicaid. We're constantly trying to control the growth of that. We do have a system in place that people, if they are a priority one, they will get the services. All of the new, young adults that come on at 21, they're built into the base, so we're bringing it in forward from the back end.

SENATOR LATHROP: And they get day services.

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CHRIS PETERSON: Yes, they do. (Recorder malfunction--some testimony lost.)
...contract. Take the people out to get it, and we're working with Liberty and Guardian to try to do that, and we've filled I believe three positions, and we have one close to fill. In terms of the DD staff, that is set by...as Ron explained, that is set by the CIR ruling and the negotiations that we do with DAS. Now I took it to mean that he felt that he should be paid more. That was purely my...the way I read it.

SENATOR LATHROP: Who is he?

CHRIS PETERSON: Ron that we were talking about needing more money.

SENATOR LATHROP: Okay. And they being the techs.

CHRIS PETERSON: They being the DD techs. Yes. That being an issue, that is really outside of our purview. That's going to be a negotiated settlement. What we're working on, it's negotiated between Labor and DAS and they start in...

SENATOR LATHROP: Yeah, but I thought I saw that contract got tossed around the floor when this came up the last time and there is a provision right in there that said you're free to pay whatever you have to pay to hire the next guy. There is not a prohibition in the union contract that prevents you from paying additional dollars. You just can't pay less.

CHRIS PETERSON: Absolutely there's not. There's no prohibition at all on any of that.

SENATOR LATHROP: Okay.

CHRIS PETERSON: And what I would say is I think that with the latest ruling that the wage is comparable to the area market. I think it's other things than just the wage and I

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think we've seen that in the last two to three months... []

SENATOR LATHROP: Wages certainly aren't the only thing. We're hearing that consistently.

CHRIS PETERSON: Yes. People that work there are very special, and if they feel appreciated and if they feel that they're going to get a weekend off or they feel they're not going to have to miss some special thing because of a mandatory overtime, those are the things we can fix and we're trying to fix. One of the ways we're doing that is working with the union on the interest-based bargaining, and I think we just finished up last week. And everything that we had, including our time and attendance policy, we came to agreement on. Some of those we'll be implementing, like the staff rolling over in terms of full rotation. There's ways to get this done without just putting the money in it, I believe, and that's why I feel that we have the resources to do that with the two and a half for both years.

SENATOR LATHROP: What's the two and a half buy you? Is that...?

CHRIS PETERSON: I don't have the list.

SENATOR LATHROP: In other words, if you we took last year's budget or the last two year's worth of budgets--and now I'm wandering into John's area which is appropriations because I'm certainly not an expert on the appropriations process--but if we took the Beatrice budget for the last two years, are you asking for \$2.5 million more a year from that base?

CHRIS PETERSON: I believe the base rises itself based upon the budget instructions on the facility costs. That's part of your budget instructions when you do it. There's a formula that builds in to each of the 24-hour facilities, and it takes care of maintenance and depreciation and all those things.

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SENATOR LATHROP: So in addition to that you're asking for \$2.5 million a year.

CHRIS PETERSON: Yes. Two and a half on that.

SENATOR LATHROP: And that is not for increasing the techs but it is for hiring the people other than the techs--the professional staff.

CHRIS PETERSON: No, the new 66 supervisors are in that \$2.5 million, too. The techs will already be funded.

SENATOR LATHROP: So you're hire 66 supervisors.

CHRIS PETERSON: The techs will already be funded because they're built into the base.

SENATOR LATHROP: Okay. I'm going to have to trust John will figure that out in Appropriations. But you think you will hire all the people you need to hire so that we're not in the box we're in with CMS.

CHRIS PETERSON: We are doing everything that I believe we can do to do that, but beyond just the hiring--just the hiring--we have to find other ways to also get at the points CMS have, which is active treatment as well as client protection. We can hire all the people in the world, and if the attitude and the culture and the training is not changed, we're just going to continue to make the same mistakes over and over and over again. So, yes, we've put in the money so that we can hire these new staff, but in addition to that we have to get to the training aspect which goes back to what Senator Harms was talking about. Ethics, cultural changes, all types of different groups are out there to come in and that's one of the proposals I have, looking at not only to bring in a group like that but also to maintain the recruitment and retention on past when it runs

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out with the Legislature with those federal draw-down dollars that we will have. In order to continue to recruit, I've got a proposal in to Dennis Baack from the community college that he's going to get back to me so that we can grow our own, starting with RNs, LPNs, and put that together. We actually have the unemployed people, Employment First, so we're looking at putting a subsidized program. We have the unemployed people; we have the facilities that need them. So I've asked the staff to put together programs that we will link upwards of 10 people at each facility with our own Employment First program in our facilities. So there are other things going on than just the money in order to try to get to where CMS is at--where they need us to be, I should say.

SENATOR LATHROP: Okay. Senator Wallman.

SENATOR WALLMAN: Thank you, Senator Lathrop. Thank you, Chris, for being here. Say that Senator Stuthman and I have an abandoned farm place and we're going to set up...we want two or three challenged young adults. What would we have to do to get a license and how easy would that be or how hard?

CHRIS PETERSON: It's complicated. It's complicated. You have to do a certification licensure process through Public Health as well as through the Division of Developmental Disabilities. And actually, the packet to apply, you have to meet certain standards, qualifications, accreditation, the staffing, the training, things like that. So, yes, you'd have to do some hoop-jumping.

SENATOR WALLMAN: And what would that cost us?

CHRIS PETERSON: Oh, the cost for a license? That I don't know.

SENATOR WALLMAN: Okay.

CHRIS PETERSON: But no, Senator, you can't just go open up a farmhouse and put

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people out there.

SENATOR WALLMAN: Thank you.

CHRIS PETERSON: And probably it was an inadvertent use of the term "farm" but I believe that's what they're looking at. It's in a rural setting.

SENATOR LATHROP: Senator Gay.

SENATOR GAY: Chris, you brought up a fact just there in the end or kind of an idea of what you're working on. Senator Harms and I have been working on the work participation rates and actually we're going to go try to talk to the community colleges, as well, to find opportunities for work study. We would like to talk to you, just that you mentioned that and I'm just saying this because I know we're going to be talking next week.

CHRIS PETERSON: Absolutely.

SENATOR GAY: But I think that's a great opportunity where we need to plan for the future. And if you are talking about community-based services, we train for those shortage areas we have in the medical community, and this would be with DD. But if we can get them trained, this is a great idea...or we want to work with you on that because I think that's going right to where we were looking, too.

CHRIS PETERSON: Absolutely.

SENATOR GAY: So that's something that's marked on our to-do list, and thank you.

CHRIS PETERSON: Okay. You bet.

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SENATOR LATHROP: Are you sure, John? I think that's it, Chris. Thanks again for coming down.

CHRIS PETERSON: Thank you, Senator.

SENATOR LATHROP: We appreciate the information.

CHRIS PETERSON: You bet. Thank you

SENATOR LATHROP: Anyone else here prepared to testify or have we seen the last of our witnesses? That looks like it's it. I want to thank the folks that have testified today. They have...you may have seen them testify. They have testified at probably two or three hearings apiece at least. John, maybe more than that. They have been responsive when we've asked for material, and we've had a lot of conversations with them that have been beyond here, and I appreciate the time they've taken to educate me and to provide information to the commission. So anyway thank you all for your participation and for your interest in the subject matter, and I guess now we're left to write a report. So thank you.