[LR283]

The Developmental Disabilities Special Investigative Committee met at 9:00 a.m. on Tuesday, June 24, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska. Senators present: Steve Lathrop, Chairperson; John Harms, Vice Chairperson; Greg Adams; Abbie Cornett; Tim Gay; Arnie Stuthman; and Norm Wallman. Senators absent: None. [LR283]

SENATOR LATHROP: (Recorder malfunction)...today, we promised it would be the day we talk about money and the fiscal side of this by way of background. But John has asked for an opportunity to us to visit with us about the waiting list and some of those issues just to clarify some of the testimony yesterday. So in the interest of having the record complete, we're going to let John Wyvill speak on the issue of the waiting list and the priority system for the waiting list. Is that the case? [LR283]

JOHN WYVILL: Okay. Yeah. [LR283]

SENATOR LATHROP: Okay. [LR283]

JOHN WYVILL: (Exhibit 1, 4) Senator Lathrop, members of the committee, my name is John Wyvill, W-y-v-i-l-l. First of all, I want to thank Senator Lathrop for the courtesy of allowing us to come forward today to give you some additional information that might be helpful to the questions that were generated yesterday. In front of all of you, you should have a little handout that we have--Senator Harms, I think it's under your coffee mug there--is a sheet. And I will work through this for you to help work on it. The heading of it is historical usage of priority one funding by fiscal year. The state Legislature had dictated by statute the priority of our department in terms of if there is a situation for a person that has immediate need, which ensure that all such persons have sufficient food, housing, clothing, medical care, protection from abuse and neglect, and protection from harm. So when you heard the discussion yesterday about the waiting list, there is a waiting list. But there are circumstances in which if they meet the statutory criteria, they will jump up to the first. So for example, if a DD client has suddenly become homeless or they've been in a very unsafe situation that requires immediate action, they will jump immediately ahead of those on the waiting list. And historically we have outlined by fiscal year starting from 2002 in the last fiscal year. In 2007, there was 118 clients that became priority one that was served. On the second sheet we have for you for your review is attrition. That gives you the idea of the number of individuals that are currently receiving services, and historically have moved off for the a variety of reasons; they may have passed on, they have moved out of state or they may no longer have been in services. And that gives you a historical perspective for you the idea of when they move off from services. Basically, with the statutory framework with the two obligations that we have to meet first. First, are the priority one and then those that graduate from high school. The next chart shows you the budget funding for students exiting out of

Nebraska high schools who are 21 and older. And the chart down there you will see the dollar amount projected for 2008. It shows that we have 180 new students, and then 110 leaving services, reflecting a net increase of 70 additional students. And then on top of that in a 2009, we have 40 additional students. So that gives you the idea of those individuals. And that goes back to, Senator Lathrop, I think you question about the people who, in the next chart, people who have been served from the waiting year by fiscal year. And that gives you a breakdown statistically what we have in our department, the information in terms of graduates, priority ones, state wards or others that we provide services, so you get an idea of the people that ebb and flow. To follow up also, I think there was a question you were asking. A potential client may come to us through service coordination and may request services. They do a determination to whether or not they're eligible. And if they don't meet the criteria of priority one, they go on what's called the waiting list. Now, there's some circumstances that will cause them to go off the waiting list. That is determined circumstances change and they become a priority one or second is the time comes up. And what's significant when you look at the statutory framework that set us up is that the Legislature or your predecessors have said that this program is not an entitlement program, this is one based on need. So we show the most vulnerable first, and then everybody else. So when the day comes that they get the call that they're getting services, then you have to do a determination in terms of, I think what you're looking for, ability to pay or shared cost. And so that if some one family is making $150,000, they may have to pay a portion of the bill or fiscal responsibility, and that allocates that, and then it goes down to the next person. So it just goes, so sometimes it's a moving target in terms of how much money people get based on the fiscal pay. That goes to the last question, Senator Lathrop I believe asked. If you're looking at the waiting list, if you were to waive the proverbial magic wand and eliminate the waiting list, we have crunched the numbers yesterday and a conservative estimate combination of federal and state dollars would be $83 million to... [LR283]

SENATOR LATHROP: Say that again. [LR283]

JOHN WYVILL: ...$83 million, combination of federal and state funds. And then I have Don Severance here and myself if you need any additional questions for further on the waiting list issues or how we came up with that number for an estimate, and emphasize that's conservative and that obviously could change. [LR283]

SENATOR LATHROP: You are...and this morning you've taken this opportunity to clarify some testimony from yesterday, and as I understood the waiting list, basically you said we have people that graduate from high school and we've made a policy decision to plug them into this system and provide them with services. And that's typically... [LR283]

JOHN WYVILL: State law. [LR283]

SENATOR LATHROP: Pardon me? [LR283]

JOHN WYVILL: I believe that's state law. [LR283]

SENATOR LATHROP: Okay. State law, and that number is close to 200 each year. And the attrition rate that we see is close to 200 each year. So there's sort of a wash and basically what we have left is to take priority ones, which are sort of emergent cases. [LR283]

JOHN WYVILL: Yeah. But if you look at the chart, it just depends on the level of services that they need. So in the last several years, on that chart here was that person... [LR283]

SENATOR LATHROP: What page are you on, John? [LR283]

JOHN WYVILL: Oh, I'm sorry. The second to the last page, "Persons served from the waiting list by fiscal year." That just gives you a number that we took 176 graduates, 86 priority ones, 17 state wards, and 117 other. That just gives you a flavor of the kinds of transition that is moving in and out for lack of a better term, revolving door, in terms when people leave and leave, and it's not an exact one-for-one. [LR283]

SENATOR LATHROP: And that number is higher than 200 obviously. And what I understood you to say yesterday is we have about 200 people leave the system, and we have 200 graduates come in. So where are the...and you're talking about a revolving door and people coming and going. Are there some people that know, besides the 200 you said that are part of the attrition rate that are leaving or don't need services. And if we look at all the people we're providing services to, it's more than the 200. [LR283]

JOHN WYVILL: That's correct. It's very possible that the people leaving services may have a higher cost of services, and that the people coming on board may not. It may be helpful for you, just very globally and a round number to give you an idea is that for example, the average income for a Nebraskan household, I think, from the census numbers is roughly around $34,000. A person receiving DD services, they could have a total combination in average of $55,000 annually. And that is broken down by service coordination, specialized DD services, as well as room and board or medical costs, which (inaudible). So globally painting a broad brush, there are the clients that are on the waiting list, it is very conceivable and possible that they may be receiving other services, such as SSI or other government services on a federal or state level while they're waiting or requesting services. So it just depends case by case. So I don't want to overstate or understate, but there is also a possibility that those that are waiting for services are getting other services. They my not be getting the services that they're requesting. [LR283]

SENATOR LATHROP: Okay. Going back to your point, if we have 200 graduates coming on and 200 people leaving every year, the additional folks that the second to the last page says that we're serving are people who we can actually serve more than the 200 that are leaving by death or by whatever reason because one of them may be at Beatrice, which is the most expensive care for one person. And when they leave, we can provide two community-based cares. Is that what you're saying or serve two clients? [LR283]

JOHN WYVILL: That's a possibility. So hypothetically, let's say there's a client out there that is getting $100,000 in services. Then we'll go through the waiting list of the person that is requesting services based on a thing, they may only need $25,000. So you take that one, someone else may need $35,000, you take that one, there may be one that takes a significant increase, just depending on what they're requesting. So it's, Senator, somewhat of a inexact science. [LR283]

SENATOR LATHROP: If we look at this, and still on the second to last page and using 2007, the actual number of people that we're taking off this list of 1,559 is 86 in the last year. Is that right? Those priority ones came off the waiting list. [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: So is that a fair average for what kind of a dent we're making in the waiting list that now sits at 1,559? Is it about 85 to 100 a year? [LR283]

JOHN WYVILL: I think for the 2008 numbers which will come out after the end of this fiscal year, you can see the trend. I can't accurately predict, but I can use this as the trending data I can give you that. Hopefully that answered your... [LR283]

SENATOR LATHROP: Well, I'm looking at the trend just on this graph, and it looks like 86 last year, 105 the year before, 89 the year before, 82, 70, 79. It doesn't look like it's trending anywhere. It just looks like it's staying with more or less between 85 and, say, 70 and 100. [LR283]

JOHN WYVILL: Um-hum. That's correct. [LR283]

SENATOR LATHROP: Yesterday we had somebody testify about the established goal for reducing the waiting list to zero. And I think since the consent decree, that's been moved and we seem to say, well, we're not going to make the goal, so we're going to move it three years. And the next benchmark is in 2010. And it... [LR283]

JOHN WYVILL: Set out in legislation. [LR283]

SENATOR LATHROP: Yeah. Our goal legislatively is to have that down to zero by

2010, not going to happen unless we do something significantly different. Would you agree with that? [LR283]

JOHN WYVILL: That's correct, Senator. [LR283]

SENATOR LATHROP: If I can, you have two more columns here. One is state wards, and the other column is in yellow and it says "others." Who are those people? [LR283]

JOHN WYVILL: Okay. Don? [LR283]

DON SEVERANCE: Those people... [LR283]

SENATOR LATHROP: The record should reflect that we now have Mr. Severance answering that question. [LR283]

JOHN WYVILL: Okay. Sorry. [LR283]

SENATOR LATHROP: I want to make sure that the record reflects what's going on. Go ahead. [LR283]

DON SEVERANCE: Okay. Actually, that's from tracking the funding for...there was $5 million that the Legislature appropriated in 2001-2002 to serve people off the waiting list. That hadn't been tracked real well. And then we got to where we tracked it. And so that's what we're using to be able to take additional people off. [LR283]

SENATOR LATHROP: But when we have this purple column. [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: It says "state wards" under the legend, and last year it was 17 people. Were they on the waiting list or are they coming from some place else? [LR283]

DON SEVERANCE: No. They had requests on the waiting list, yes. [LR283]

SENATOR LATHROP: Why do we have a separate column for them? [LR283]

DON SEVERANCE: Because generally they're funded through child welfare, and so it's passed through DD services. [LR283]

SENATOR LATHROP: Okay. So they have a separate column because of the funding. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: But you think they were part of what used to be a waiting list larger than 1,559. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: And in the last column it says "117," and the legend says "other." Who are those folks? Are they just people that needed a little something and... [LR283]

DON SEVERANCE: Those are ones that we took off with that tobacco money. So they would have been the people that were waiting the longest who we'd offered services because we had extra money left over from that $5 million so we could take people off. We get $5 million every year from the Legislature for that. And so if we don't use it all, then we take additional people off. [LR283]

SENATOR LATHROP: Okay. Then going back to this chart to make sure I understand it, we had a list of 1,700-and-some people, is that right, all past date of need? [LR283]

DON SEVERANCE: Yes, currently. [LR283]

SENATOR LATHROP: And so the number of people that we served off of the waiting list, which is people who are past their date of need, would it be the sum of these three columns--the tan which is priority one, the purple which is state ward, and the yellow which is other? [LR283]

DON SEVERANCE: And also the green, the graduates. They were all had requests, and so they all came off the waiting list. [LR283]

SENATOR LATHROP: But the...okay. The answer's, yes, and now I want to go back, if I understand it. I want to talk about the people in green. We bring them on. They're not actually past their date of need until they graduate, right? So we put about 200 people on that list and take 200 off of it every year. [LR283]

DON SEVERANCE: Yeah, yeah. And people...I don't want to get confusion between the attrition numbers and these numbers. Some of these people are already in services. They're requesting additional service. So they may have come off the waiting list, but they may have been receiving one service and got another service off the waiting list. So you can't necessarily say that these offset the attrition numbers. [LR283]

SENATOR LATHROP: Okay. [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: Mr. Severance, what I'd like to understand before we let you go this morning is if we have a goal to eliminate the waiting list and we now have 1,772 people who are past their date of service, how much over the past 5 years, how much do we reduce that list or increase that waiting list each year? Is it getting smaller by 25 or is growing by 50 each year? [LR283]

DON SEVERANCE: It's growing. [LR283]

SENATOR LATHROP: And tell me by what number is it growing each year? [LR283]

DON SEVERANCE: Since we were able to use the tobacco money, in the last three years it grew slower. Now, it's probably growing somewhere between 200 and 300. [LR283]

SENATOR LATHROP: So the 1,700 is going to be 1,900 next year unless we do something different. [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: That's all the questions I had. I think that clarified if for me. Anyone else while we have them here? Senator Adams. [LR283]

SENATOR ADAMS: Well...go ahead and let the other senators. I want to think through a couple of things a little bit more first. [LR283]

SENATOR LATHROP: Okay. Senator Cornett. [LR283]

SENATOR CORNETT: There was something that Senator Lathrop brought up that brought a little confusion to what Ms. Kavanaugh testified to yesterday. When we were asking about people on the waiting list that needed to be approved for funding, and when they were approved, that was separate funding from the people that we're currently at BSDC, that those were two separate funding streams. [LR283]

DON SEVERANCE: That's correct. [LR283]

SENATOR CORNETT: Senator Lathrop just asked, well, if someone goes out of BSDC and they were using $100,000 worth of services that that money might be split up between someone that needed $25,000 and another person that needed $30,000. There was a disconnect there. [LR283]

JOHN WYVILL: I was taking Senator Lathrop's question as a hypothetical if someone was getting $100,000 from community services and they (inaudible) off, the funding for

BSDC is in a separate pot. [LR283]

SENATOR CORNETT: That's what I thought. That's why you... [LR283]

JOHN WYVILL: And what happens when the clients transition to BSDC from BSDC to community, we had legislation last session that the money followed them. [LR283]

SENATOR CORNETT: The person, yes. [LR283]

JOHN WYVILL: So that pot of money, and then you're talking about the reference that Senator Lathrop was using, what if we have globally a client of that. In addition, to follow up I think on another question that you had in terms, there are certain appeal processes. So if someone is on a waiting list and feels that they have priority one, they can go through the administrative appeals process. [LR283]

SENATOR CORNETT: Appeals process. [LR283]

JOHN WYVILL: They can also go through the administrative appeals process if they dispute the level of services that's being proposed. So it is not...there are processes in place to ensure the due process rights for the clients if they're on the waiting list and they feel that it's not appropriate. [LR283]

SENATOR CORNETT: Let me ask one more question dealing back with what we were discussing yesterday. Again, with what Ms. Kavanaugh testified to, the goal that you have set out for BSDC is reduce the population to--what was it?--250. [LR283]

JOHN WYVILL: Yeah, 250...I mean, 200 by the end of the year. [LR283]

SENATOR CORNETT: Two hundred by the end of the year. What is the major obstacle? Is it placement or finding people to be place from BSDC currently? [LR283]

JOHN WYVILL: There's a couple of challenges. The first and foremost challenge is the guardians and the guardians and family members because they feel that they're getting good services, the level one is being treated well, and that they don't want to leave what they know to a community-based provider. So the biggest challenge for us is educating them about that. The other challenge is there are clients at BSDC which we feel can be better served in the community, but for guardian opposition. And that comes a very challenging, as all of you know that have elderly parents or children is how is it going to be received when we look then in the eye and tell them that we know better than you what's in the best interest for your loved one. So that's part of the discussion they had yesterday is where do you draw that line in terms of that they start acting contrary to the best interests. That's the number one obstacle. The second challenge is making sure that we have an appropriate safe placement, and that takes time. But we have to either

work with...yeah. [LR283]

SENATOR CORNETT: Oh, no, go ahead. [LR283]

JOHN WYVILL: ...either work if the guardian had requested a nursing facility or a nursing level of care, we will work with them, they get a pass all, they get eligible for that. Sometimes they are, sometimes they they're not, and then if they're not, that's the only one that the guardian would consider. We are also working with a couple of providers to enhance capacity, that what we do is we're working with one provider that will take a higher level of risk. In a pilot project, a higher level risk behavioral client out, and they will go from BSDC into the new group home that's created. And then a level of funding will gradually go down to the community-based funding level that they would have been doing with other than community-based. And there's two or three, the one provider that we're working with informally that is contemplating adding additional group homes. So that is the biggest challenge. The second is insuring them that if they have, some of the clients have behavioral flare up, that there are some support networks that they can come back to BSDC and IPS to make sure that they can manage that behavior. [LR283]

SENATOR CORNETT: So just so I'm clear on this, the guardians, which I understand, have opposition to the people, their are family members being moved. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR CORNETT: But secondly, you do not currently have places for them to go that have...you're working on finding facilities for people, am I correct? [LR283]

JOHN WYVILL: We're finding facilities. For example, we will have a person that has been approved to go or a guardian has signed off to go to a certain DD provider and they may be waiting for a bed to clear up because someone is getting ready. [LR283]

SENATOR CORNETT: That brings me back to what Ms. Kavanaugh said yesterday. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR CORNETT: She said that as long as there was funding, there was beds available. Are there beds available or do we have to wait until you find a provider that is willing to expand their services to take people based on the fact that they have funding? [LR283]

JOHN WYVILL: Yeah. We have...I'm trying to wrestle with how to answer your question because it's on a couple of different levels. When I talked to the providers, there

was...the providers are telling me, and I think with several in the audience here too, but the providers that I've talked to have talked my staff is and their discussions have been more on can you sweeten the pot for more funding or more money so we can serve these clients because of maybe the behavioral issues or we want a little bit more money to help these clients. Then there comes the other question of those that have the gifting resources that's just a question of where they're going. Right now we are not running into a organized or a group of every door is closed. There may be situations where two or three individuals may want to go to one provider or that one provider is at full capacity or waiting for somebody. There is like, for example, I think Encore or something to...you know, that certain providers that if you don't take that opportunity, it may not be offered any time soon because of the unique medical services, the services that are being provided. From my thing that from what I understand is that nobody at BSDC that's wanting to get out that we can't find a place for right. Now, that could happen in the future that we may have a situation down the road where we can't find any beds in Nebraska. That has not happened yet. [LR283]

SENATOR CORNETT: Okay, because you were here when Ms. Kavanaugh testified that she didn't feel that there was a shortage of beds or there would be if funding was available, that the providers would make room for people or expand their services. If the Legislature waived their magic wand and gave you the money to eliminate the list, would we even have the community-based services in place to provide care for the people that we're talking about? [LR283]

JOHN WYVILL: I think there would be a combination of having to build capacity and going in right now. [LR283]

SENATOR CORNETT: And the reason I ask that is, and I'm sure other people on the committee have heard this, is the trend is to move to community-based services, but we keep hearing that we don't have enough community-based services to provide help for all of the people that are on the list and BSDC in the state and that moving to community-based is going to be a difficult challenge because of that. [LR283]

JOHN WYVILL: Yeah. Yeah, some of the challenges, Senator, and that's a very good question, some of the challenge is it depends on what kinds of clients you're talking about because you will hear later on during the hearing of those about dual diagnosis. [LR283]

SENATOR CORNETT: Correct. [LR283]

JOHN WYVILL: The dual diagnosis, very challenging for the provider. The providers that I have talked to, it creates a challenge because you may have six or seven employees that are working in a group home for a provider. They may have to assign, because of the behavioral challenges, one or two individuals, their best employees to

work on that client. That can be very demanding and trying, and that prevents those two from training the ones that come in. So we have that issue in the community. We also have the issue of in terms of capacity building, dual diagnosis. That's why for our longtime goal at BSDC, we want to expand the ICS program from 8 beds to 16 beds. I think the providers and I and our department may disagree on a lot of things. But one thing we can agree on, if you're asking the provider if they expand that capacity, they would welcome that because that provides an additional resource there. So I don't want to mislead you or any members of the committee. It just depends on which capacity because the people that we feel that would most benefit for community-based services are the ones that have the adamant guardian opposition, and they could be gone just like this. We could have maybe 25 to 50 out right away because they would be able to walk in or go into a facility but for the guardian opposition. And it's a very, as you heard from testimony before, very emotionally charged issue that has to be handled very diplomatically. Yes, we do have the authority to discharge someone. But I have not chosen to exercise that option because of the various things because we want to work with the one voluntarily. Now, are we going to do that in the future? I can't tell you. [LR283]

SENATOR CORNETT: Thank you very much. [LR283]

SENATOR LATHROP: Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. John, on the waiting list and the graduates, when you talk about the graduates, are these individuals going to be receiving services after they graduate or are a portion of them getting services while they are in school? [LR283]

JOHN WYVILL: Graduating. [LR283]

SENATOR STUTHMAN: They're not ones that have been receiving any services? [LR283]

DON SEVERANCE: There might be a few that are receiving residential services. They'd received day services once they graduate. [LR283]

JOHN WYVILL: And Senator, that would goes back to a question that I think Senator Adams brought up yesterday when they were asking I think Bruce Mason about the public school system. Some of the challenge that we have, yes, the school system has much more resources than we do, but some of the challenges that we have is that occasionally there are differences of opinion from the department--and we're in agreement with Nebraska Advocacy Services on some of these cases--is that some of the public schools may only not provide all the schooling or services that we think is appropriate for them. So they may make a decision not to provide certain things that we

think that they might. So in the absence of the school, we sometimes have to step in and that comes into a disagreement about the Special Education Act and things like that. So that's gets a very complicated thing because some of the DD clients may pose a difficult challenge for in a school setting and, you know, the schools may think, well, study hall may be appropriate one hour a day, and we're like, well, if the community includes and we think you need to do more. In the absence of then doing that, we can't push that issue. The parents have been in absence of that. The have to step in sometimes and provide services and service coordination. [LR283]

SENATOR STUTHMAN: So of these graduates while they're in the school, the way I understand it, the school is providing some of the services and you might be providing some of the services, and then after they graduate from the school, then those are the ones that you are responsible for the service. [LR283]

JOHN WYVILL: Correct. [LR283]

SENATOR STUTHMAN: Okay. Thank you. [LR283]

SENATOR LATHROP: Senator Adams [LR283]

SENATOR ADAMS: If you guys will be patient with me, you've probably already answered my questions, but I've got to get it clear in my mind and they're going to come from three different directions. All right? My first question: Yesterday, I heard that because of Supreme Court opinions that the word is "entitlement." But what I heard you say earlier because of legislative action it's not "entitlement," it's "eligibility." Is that correct? Am I hearing that right? [LR283]

JOHN WYVILL: That's correct. If you look at the statutory requirements, it's an eligibility program, it's not an entitlement program. And that is our position. I believe, you guys may want to have legal counsel look at that too. But... [LR283]

SENATOR ADAMS: All right. So one of the things we're going to have to wrestle with here is that language. [LR283]

JOHN WYVILL: I mean, that's why we gave the presentation about the statutory law and the framework which we operate on. There are some out there that feel that this is an entitlement program. We wanted you to be aware of this because it's commonly known among legal circles is that lawyers, myself included, love to quote Robert's Rules of Order, yet maybe in a room of five lawyers, only one lawyer may have read Robert's Rules of Order. So what we wanted you to be aware of is that statutory framework so you can make a decision yourself. But we feel it's not an entitlement and it's very clearly stated out in our statutory authority. [LR283]

SENATOR ADAMS: Okay, and that eligibility, the priority--I'm looking at the front page of this--you have defined here for us what first priority constitutes, what that means. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR ADAMS: Okay. [LR283]

JOHN WYVILL: That's the statutory definition there. [LR283]

SENATOR ADAMS: All right. Now let's shift gears. I'm going over here to guardian opposition to someone leaving Beatrice. It could be for a variety of reasons. If a...let me get right to it, is the private provider paid at the same rate as what Beatrice would be? [LR283]

JOHN WYVILL: No. [LR283]

SENATOR ADAMS: So is it possible then that the guardian is saying I don't want them to leave because if they go from Beatrice to private provider A, A isn't going to provide the same services and one of the reasons they aren't is because they're not getting paid at the same level that Beatrice would be. [LR283]

JOHN WYVILL: That's correct. One of the issues is that at BSDC when you have the budget presentation later on is everything is provided on campus. [LR283]

SENATOR ADAMS: Um-hum. [LR283]

JOHN WYVILL: In the community, they have to go to the grocery store, they have to go to the dentist, they have to go there. We have our own dentists and we have our nurses and we have active treatment on campus. So that is the contrast though when you see the numbers, you will see the difference in the cost per client cost up there. That is why you will see folks like Mosaic want to have the same pay as we have with the ICF/MR, and that's why you see the provider come back and say, we want to get paid like your staff and we want to have those things. So that's part of the challenge. The guardian opposition is, from my perspective, a mixed blessing. The mixed blessing is they are actively adamant that the--by and large to everyone I've talked to--is that the client that they...they're being well cared for while taking care of why should I leave, why should I leave for the fear of the unknown. And the fear of the unknown also is a complex issue because it's a very delicate issue because you have guardians that are in their sixties or their seventies, starting now to think about making the will to providing in the future. They know what they are getting at BSDC and are comfortable with that. They're kind of...despite what we tell them, so we have to work with...we have been working with ARC of Nebraska and others as DOJ has suggested--Department of Justice

suggested--to do a better job of educating them about the successes and the positives of the community-based services. Now, there's some clients at BSDC that we think we can be better serve them at BSDC than in the community. So that's the mixed bag that we're under. [LR283]

SENATOR ADAMS: Okay. Thank you. One more question regarding the high school graduates. I'm going to digress for a moment. And we had some legislation this year that I felt was unfortunately necessary. Having to do with allow people with disabilities to walk across the stage and get something resembling a diploma, even though they're going to stick around until age 21. If a high school decides to graduate a person with developmental disabilities, they've decided to graduate them as part of their IEP plan and they're going to graduate them at age 18 or 19, when they graduate, do they then lose their funding and pick it back up at 21? [LR283]

DON SEVERANCE: Yes. Yeah, we don't serve them until they reach their twenty-first birthday. [LR283]

SENATOR ADAMS: So there is this gap then where they're unserved. [LR283]

DON SEVERANCE: Yes. [LR283]

JOHN WYVILL: Unless they're a priority one. [LR283]

SENATOR ADAMS: Unless they're a priority one. So from the school's standpoint, they have met their educational plan, hence they could graduate. But we're not going to because if we do, we're going to lose funding? [LR283]

JOHN WYVILL: There's a difference of opinion sometimes between the Department of Education and our department in terms of whether or not..well, for the school district, rather than wether or not they really graduated because our perspective is, as anyone else is, is that the more early intervention that you do, especially with DD or anything with disabilities early on is very similar as, you know, from economic development. High school diploma and college diploma, different earning capacity. So what you invest from K-12 is critical in the advancement of a person with a disability because that gives them the opportunity whether they succeed or fail. That gives them that opportunity in which they can realize the fullest potential that's been afforded this on the Nebraska flag, which is equal before the law. And that's where it needs to be done. And that's the biggest challenge. And then instead of speaking globally, there's a check on a table for the lunch and then every just working around about who's going to be picking up the tab. You know, though it sometimes becomes a question of that. We could call...we have I think about ten clients that are currently getting high school at BSDC, and then they're the...you know, there's a question does the school district object to having to pay for that, even though they're not longer in the residence. So that's a very difficult issue.

Stepping apart from the financial issue, it's about the opportunity for that particular client whether they succeed or fail may hinge largely on their high school education to give them that opportunity. [LR283]

SENATOR ADAMS: Yeah. Okay. Thank you. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: Thanks. John, I've got some questions to clarify the waiting list, some of the things you had mentioned. And of the 1,559 people, you said it's $83 million in federal and state funds if we were to totally wipe out the list today. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR GAY: Okay. Then I think you said you don't know exactly what benefits some of these people are receiving on the waiting list. [LR283]

JOHN WYVILL: When we're talking about what might have been an impression conveyed by the various people that testified before hear that DD services are the only services that they may be getting. When they're on the waiting list, then they create...we don't want to mislead you, but we want to make sure you understand it. If they're on the waiting list, there's a very real possibility that other services they're getting either from the state or the federal government, whether it be SSI or other government programs and wanted to give you an accurate picture depends on case by case. And that's what we wanted to give you a snapshot, compare it to the average Nebraskan household income, the average number of services that we get for our clients, and then those other services that they might be getting. [LR283]

SENATOR GAY: Okay. So if I had a spreadsheet showing 1,500 people on that list, I could say they're getting SSI, they're getting these benefits. You can tell us that if we really wanted to get into this list. [LR283]

JOHN WYVILL: We can go and individually check, if you like. [LR283]

SENATOR GAY: So we are tracking all these things. [LR283]

JOHN WYVILL: We'd have to go and check, but we... [LR283]

SENATOR GAY: And you think we're tracking them though. Do you...I mean, the reason I say that, if I had a list of 1,559 people and I wanted to start clearing it up, I may look at the ones, the low hanging fruit maybe and say, well, they just need a simple service that we have. Why wouldn't I take...you know, I understand a priority, but maybe some of these people just need one or two things that wouldn't be all that costly, but we start

whittling away at the list. But we couldn't do that unless we know exactly what they're getting, and then the request. So on that list, you also have what their requests are, right? [LR283]

JOHN WYVILL: Yeah. We have...they may come in and ask for A, B, C, they say we want A, B, C, we want three things. And then once they look at it and they say, no, just based on what you're looking at, based on what we're going to be talking about later with the objective assessment process and the formula and how we distribute the money, they may not be getting all that they're requesting. So it just depends in terms of the DD services, in addition to whatever else they get, in addition to the financial assessment. [LR283]

SENATOR GAY: But they may be getting a portion of...if I'm requesting for a...let's say you got five services, I've requested for all five, I'm receiving two. I'm still on the list because I'm still waiting for three others that I may or may not get. [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR GAY: Okay. So if I'm waiting for a vocational thing where it takes me out during the day and I'm working on a job, but I come back home at night, those things are to me if we had jobs available, we could fill those. Maybe there's 150 people on that list. So are we actively, when you're looking at the list and it's actively moving, it probably never is going to go away because you're people keep requesting more services. It's never really going to get down to zero is what I'm saying because you're going to keep requesting more services. We can do a better job probably on that list. But I guess I'm just wondering, to make sure we know that I need these three services and I'm getting benefits on these five services, that there's some coordination out there. Do we have a computer program that tells us that or some system we bought? Is it just manually done or how do you do these things? [LR283]

DON SEVERANCE: Yeah, I'm not that familiar with...I know it's tracked as far as Medicaid will track all the expenditures. So it is possible to crosslink databases and figure out how much benefits people receiving from SSI or other things, so it is possible. [LR283]

SENATOR GAY: Well, that's just something that kind of concerned me yesterday when I heard about this list and we weren't sure and, you know, that throws up a lot of questions. But I think in today's day and age with data that we can process that we should be able to at least cross reference who's getting what at this point. And that we should probably work on that in the future to say, well, I'm getting three services and I know exactly what they're getting. Otherwise, fiscally it's like it's hard to throw money into something when I'm not so confidant it's going to be utilized fully. But I think that's something that we need to work on as a department in general. Thank you. [LR283]

SENATOR LATHROP: I do have a couple of follow-up questions. And actually maybe to start, I'll clarify because Senator Gay was using the 1,559. The waiting list is actually 1,772; 1,559 represent the number of people on the waiting list looking for residential services. Am I right? [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: And yesterday we had a conversation, I was trying to get an idea of how many of those people were looking for a place to live versus looking for services where they come into the home and make sure that they get their hygiene things met and fed and on the bus to go to a job. Did you... [LR283]

DON SEVERANCE: So there's about 52 percent of them were looking for assisted services where you'd have continuous staff. [LR283]

SENATOR LATHROP: Okay. So just so that we're clear, assisted services is the essentially a place to live where you live in a group home or you're in Beatrice. [LR283]

DON SEVERANCE: Yeah, or extended family home, yeah. [LR283]

SENATOR LATHROP: Okay. So of the 1,559 that are on the residential waiting list, 52 percent of them are actually looking for a place to live. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: And that would be the most...will talk about the finance piece of it. But if we look at blocks of care that we provide to these folks, that's the most expensive block of care. Am I right? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: I mean, we can give bus services to somebody or dental services, those are relatively small units of care, but this is the expensive, so they're more likely to sit on the list longer because of the money. [LR283]

DON SEVERANCE: In the past, like with the tobacco funds that the Legislature said that we would serve those who had been waiting the longest, so it has been based on how much it is for the service. It's really been based on how long they've been waiting for the services. [LR283]

SENATOR LATHROP: Again though, do the...if we have 1,550-some people and 52 percent of them, so what are we at? About 800 people that are waiting for that. [LR283]

DON SEVERANCE: Right. [LR283]

SENATOR LATHROP: What's the average they've been waiting for that kind of a service? Is it still three years like everybody else on the list? [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: And are there some people that have been waiting as long as five and a half years or more? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: The goal is to get the--and now maybe I'll direct this to John--the goal is to get the population at Beatrice down to 200. That's the stated goal in order to have the staff and the number of residents in the right proportion. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR LATHROP: That's the reason and that's the goal, is that true? [LR283]

JOHN WYVILL: That's what we're trying to head to. Yes, sir, Senator. [LR283]

SENATOR LATHROP: Okay. As you reduce the number of people that we have at Beatrice, are we letting anyone in or have we closed the gate at Beatrice to the people with the high needs that we've heard described by Dr. Buehler yesterday? [LR283]

JOHN WYVILL: There has been over the last couple years, there's been insinuating circumstances when someone has been admitted to BSDC. Most recently we had one this year, two that I'm aware of this year... [LR283]

SENATOR LATHROP: How about this one if you can answer this for me, John. As we ended the session, we had a population of 308. [LR283]

JOHN WYVILL: Yeah. [LR283]

SENATOR LATHROP: And we saw the Governor's plan was to reduce the 308 down to 200. [LR283]

JOHN WYVILL: Yeah, my plan. [LR283]

SENATOR LATHROP: Your plan. Okay. Presented to me by the Governor. Your plan was to get us down to 200. Have we taken in a person to Beatrice since we were at 308

and on our way to 200? [LR283]

JOHN WYVILL: There have...not knowing the sequence of time, there's two that I'm aware of this year in which we admitted someone into ITS program in which we couldn't have two clients in the same living unit for health and safety reasons, so we had to move one out. And then second was there was one, there was another one--without going into client confidentiality--another one that we had to admit because the guardian was adamant for admission. [LR283]

SENATOR LATHROP: But the ITS, just by definition, the ITS is a short-term stay at Beatrice. [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: So we're not...if there is someone on that list who is a safety risk, does that make them a priority one? Can you be a safety risk without being a priority one? That's more housing and basic needs, am I right? Priority one. [LR283]

JOHN WYVILL: Well, in the particular context that I was talking about, Senator, we have an eight-bed facility, and one that was requiring an individual requiring services. Because of the circumstance, it could not be in the same living unit as another, which necessitated the need of transferring one or admitting one into the main ICF/MR for... [LR283]

SENATOR LATHROP: Okay. Okay. But it came into the ITS program. [LR283]

JOHN WYVILL: Yeah. [LR283]

SENATOR LATHROP: I think that's all I had. Senator Harms. [LR283]

SENATOR HARMS: Thank you. John, could you provide us an organizational chart of Beatrice? [LR283]

JOHN WYVILL: Sure. [LR283]

SENATOR HARMS: That would help me probably have a little bit better understanding of how this organization works and who reports to who would be very helpful as we go ahead and begin to look at this entire issue. John, I guess the...we're spending time here, and rightfully so, discussing those folks who, people who are on the waiting list, and I'd like to see that resolved in some form or manner. But you know what really where my main concern is, even if we were able to resolve this--okay--when I look at the U.S. Department of Justice report, and I keep coming back to this because this is the heart of the this issue, and I don't want to lose sight of this because I have great

doubts of whether we can manage this. Okay? And when you look at what's there and what the findings were, my concern is do you have a plan put together to correct this? Secondly, are we going to be on target to be able to deal with this issue, you know, appropriately in the future? If you shift to moving as many people that you want to move from Beatrice to a community-based program, I fear that we don't have the things set up right or that it's going to be dealt with appropriately because everything else that's in this report leaves me to the conclusion--and it might be wrong, I don't know--that we are not going to be able to manage this. You're going to place people into that services for those services in a community-based program that we may not have adequate support for. And so that's the issue that I have and that's the thing that I will keep coming back to is the management of this program and the management of Beatrice because that's the heart of the issue here. And when you read it, and I've read this thing three or four times, it's very difficult for me to even go through it. How do we cover the rifts of that issue because that's going to be the heart of this and that's where we're going to have to really get down and deal with the issues. What is your plan to address these issues? How does it all fit together in regards to straightening that portion of that because you come from a premiere program to one that is not there that said. And so that's kind of where I'm coming from and I would really like to hear what your view are about what I've posed to you. [LR283]

JOHN WYVILL: Well, first of all, Senator, I want to thank you for the opportunity to be able to answer that question. We have outlined, our plan is basically very straight forward. What we have done, first of all, is that we have brought on temporary...first of all, we want to be reducing the census down to make sure that we have the staffing in a ratio that we're comfortable with. Even though that we meet the minimum federal staffing ratios, we feel that if we reduce the ratio, and we're starting to see dividends of that, when we first started right sizing the population of BSDC it was 326; as of last Friday it was 272. We have closed three living units. We're anticipating closing another one this month, and another in fairly short order. That consolidation and merging of living units has also allowed the staff to be reallocated, in addition with the temporary agency staff working. We have seen mandatory overtime go from our numbers from 650 hours down to 93. In the last report appears that I have seen, we have seen an increase in the number of employee complaints for voluntary overtime being threatened now because we're doing a better job in terms of managing the direct care staff. We are also and have done some reorganization within BSDC in which we're adding enhancement to management that can talk about not only the staffing issue that we need to enhance in terms of direct care staff, we also have professional staff that we're enhancing. We're going to be bringing on a residential manager is going to be national recruited. We're going to be bringing on an added investigator. We're going to be bringing on a quality management, someone to challenge it, not of BSDC's fault and the staff fault. There are some good and dedicated people that work there, but there may be a collective missing pieces to the puzzle in terms of national accepted practices. One of the things that we have done so well, we brought on Liberty that helped identify, Liberty Health Care, the

head nationally recognized best practices, has recognized some of those issues. So the pieces of the puzzle are coming together in terms of we're dealing with directing the direct care staff, we're addressing the professional expertise. Department of Justice in our informal conversation with them alluded to in their letter have indicated that they like the direction. I can't speak for CMS, but in terms of nationally across the country, the reducing of people living in ICF/MRs is as stated, federal public policy in various different components. It may not be stated by a CMS, but they do that by the regulatory and based on informal components. So the plan, as you will learn through the process in the next two months of testimony, is that some of the problems were two decades in the making, some were shorter. And we're taking aggressive steps that we're starting to pay off in terms of enhancing our management, enhancing our professional staff, enhancing our direct care staff, reducing the census. And the bottom line in the role of an ICF/MR if from what it's supposed to be doing and the proper purpose of it, it is a temporary place. It is simply unacceptable that someone in ICF/MR has lived there for over 32 years. You know, that is not the role of an ICF/MR. And there was a day, there was a time in which, you know, we still have parents come forward and say, what's this active treatment stuff? They say, we just want our kid to get three square meals a day and sit in front of the TV. And that, you know, nothing bad happens to them. That's all they want. You know, we're working very aggressively. Obviously, in a 24/7 facility, you always have to continue to improve or always working and doing enhancement to enhance the safely of our clients and enhancing active treatment. So when you hear the testimony that you will hear in July and August, you will see a very clear chart course, and just a question of executing and having that time. And whether or not that Department of Justice and CMS finds that acceptable. [LR283]

SENATOR HARMS: Two more questions, John. What plans do you have in regard to when you make all these plans you move in the direction, you also--and I mentioned this yesterday just briefly to your CEO--how are you going to change the culture of the organization? And what kind of effort are you going to make in getting people to understand the level that you want and the quality that you expect? Sometimes just bringing new people in doesn't always cut it. The people have to change and be willing to change and to provide the right services. So what are we looking at in regard to the cultural change? What kind of staff do we (inaudible) ? [LR283]

JOHN WYVILL: I think we've adopted a zero tolerance policy, treating people with dignity and respect, actions speak louder than words. I think in terms of the culture that they allude to is that, as Senator Lathrop and others have read on the floor of the Senate (sic), there are individuals unfortunately that have used to work in our facility that have treated our clients less than human beings and that's not acceptable. You have to have consistent application of those policies to ensure that that happens and that kind of action, a lot of them would, those bad apples, unfortunately, will reflect poorly on the others. And the question is weighed by example, make sure they're dealt with and get rid of those. It's very simple. That's the culture and that has to be

addressed. [LR283]

SENATOR HARMS: So are you going to make any effort...what I'm really driving at is what effort are you going to put in in regard to staff development because just changing and talking about change just sometimes doesn't go very well? So what are you going to do to help people understand how to do the very things you've said? Some people just don't know how to do it and... [LR283]

JOHN WYVILL: Well, we've had some informal dialogue with Nebraska Advocacy Services. We've had information dialogue with other organizations about how to enhance training. One of the things that we are looking at is how we can always improve our training in terms of the culture, in terms of our orientation process because if it is done correctly, those individuals should have those values that we endure in the orientation process. And with the help of the Legislature and the Governor, we are in the process of advertising I think four individuals that will be mentored, their sole job in experience with director care staff would be mentoring with the director care staff. In addition to one that is an orientation of facilitators to deal with the recruitment and retention to make sure that the employees are valued and stay to reduce the attrition rate. One thing that we're exploring statewide in Nebraska that we might use is take advantage of our technology to see if we can get nationally recognized experts in for training available either by teleconference. That's one of the things that came up yesterday. We were talking about west of Grand Island was a challenge. One of the things that we'll be looking at is how do we get the professional experts there beamed in to address those issues? So that's part of our ongoing progress and we certainly would welcome, as you hear the testimony for expertise of other individuals, other organizations, we have talked to some other organizations informally and said, nope, we're not going to touch that. Some very interested, just depends on the thing. But the biggest issue in terms of the training is the attitude of the individuals that you hire. And you know, as they say with Southwest Airlines and everything else is, you know, "attitude is everything. Just hire for attitude, train for skill, " and that's what we're doing. [LR283]

SENATOR HARMS: Well, I commend you for at least taking the steps because I think it's probably a move in the right direction. I think it's going to be a long trip. [LR283]

JOHN WYVILL: It's not going to be easy. [LR283]

SENATOR HARMS: No, and we're going to have to work to get there. Let's shift now, if I may... [LR283]

SENATOR LATHROP: Certainly. [LR283]

SENATOR HARMS: ...just for a few more minutes, please. Let's shift now to the

community-based program. Okay? Where we're actually moving people from Beatrice to the community-based program. Do you really feel comfortable that we have right now today the right program established that we can provide the right services and support service for those clients to go there? And financially are we prepared to address that issue? [LR283]

JOHN WYVILL: I'd feel comfortable in terms of the placement because, in my conversations with the providers and others, it is also a courtship because not only do the guardians have a say in the placement, the provider has a choice as to whether or not. And the providers that I've talked to have said, if we're having conversations and you don't think that it's a match, then we don't want you to be putting a round peg into a square peg. And that's very critical because it's very critical you have the placement because if it doesn't work out, it's not fair to the provider, it's not fair to the client, and then we could have them right back where we are at BSDC and start all over again. You know, whether it would be perfect or not, it's trial and error, but the front end, I'm confident that we're doing everything that we can. Can we do better? Certainly. [LR283]

SENATOR HARMS: One of the things that the judgment brought out pretty clearly that we really lacked a lot of follow-up and communication in the length of communication and the length of coming back, and that's what bothers me a little bit. Hopefully you'll...I'm sure that you'll address this issue. But just by placing folks into a different environment, moving them from Beatrice, are we going to have the right follow? Are we going to have the right communication? Will the technology be able to handle this so you can communicate back and forth so that you truly are in control and you have visible what's happening to that client that you've just released? [LR283]

JOHN WYVILL: We have service coordinators that are in our DD system that work very closely in this transition process. Are there going to be glitches? There are going to be glitches. But just for a lot of our staff in terms of placing folks from BSDC is somewhat uncharted waters, and this is a learning experience for us and we have to make sure that we move carefully and cautiously to make that. You know, there's some people that think we're moving through fast; there's some, if you talk to the advocates, who think we're moving too slow. So... [LR283]

SENATOR HARMS: Well, I thank you very much for your comments. I think that the heart of this whole thing will lie, as I said yesterday, is that through the management of the Beatrice center because that's what this is all about. Regardless of what say or what we do, it all boils down to having the right people with the right education, like background, like training, that can manage this because we've placed our loved ones into that center expecting them to have the right care and be treated appropriately. And I think that's at least my goal and I'm sure this committee's goal to get us there. So (inaudible)... [LR283]

JOHN WYVILL: That's what wakes me up at 3:00 in the morning is that responsibility. [LR283]

SENATOR HARMS: I can understand that. Thank you. [LR283]

SENATOR LATHROP: Senator Wallman. [LR283]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yes, John. I heard you say you were closing two, you know, living units and they're going to be empty buildings. [LR283]

JOHN WYVILL: Yes. [LR283]

SENATOR WALLMAN: What will the state...are they willing to least that to private care providers or... [LR283]

JOHN WYVILL: We've had some informal conversations with some providers and provider networks and others to see if they're interested for using that. And it just in terms of long range plans, but one of the areas that we're going to be closing is the administrative building because they have some structural issues. So we'll be moving the folks in the administrative building, you know, that's not the same as the direct care staff. But they will be moving into the hospital wing sometime in the foreseeable future, and then we look at, we collapse and consolidate how to use that. So it is, you know, that's definitely things that we're talking about. [LR283]

SENATOR WALLMAN: And going a little further on, that Senator Harms's deal about education, you know, we heard yesterday, we're short of psychologist, psychiatrists. Now, do private care providers, are they short of those same individuals? [LR283]

JOHN WYVILL: I think they have different access to how they use them. So I don't know. I'm not familiar. I have not heard any shortages from them. But they have different arrangements. But I don't want to misspeak or mislead you. I just know about the shortage of our professional staff. They do it a little bit differently and they usually contract and stuff like that. [LR283]

SENATOR WALLMAN: Thank you, John. [LR283]

SENATOR LATHROP: Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. John, the longer I listen, the more confused I'm getting, (laughter) and... [LR283]

JOHN WYVILL: That's not what I want to hear, Senator. [LR283]

SENATOR STUTHMAN: No, the issue that I have is, you know, we've got so many waiting for services, 1,500 or so, waiting for services. We've got the home, what we're trying to go from 300 to 200 and putting those people out in the community-based services, which would be taking the spot of 100 of those that are on the waiting list. And then we are closing homes at the Beatrice just because we moved these people out into the community base. And in order to attain the goal of minimum staffing ratio, we have to get the number of people, the patients, down at Beatrice. Okay. Is there any thought that you need more staff there that you could keep those people there or is the main objective to get these people out so the federal government doesn't have to pay as much in community-based services as they are in the institution? [LR283]

JOHN WYVILL: Okay. The twofold benefit, the number one is the right sizing is to address the staffing ratio. We may, from talking to my folks, we meet the minimum staffing ratio. To consolidate and close and reduce the number of patients there enhances that, and enhances and raises the bar. So instead of being in 26 living units, we are, I think, now in 23. If we collapse two more, that gives more coverage in terms of direct care staff, which translates to better enhanced care for our clients that choose to live at BSDC. So from that, we're talking about the whole ball of wax is that if we reduce the living units and reduce the census, we have better staffing patterns, we have more a better ratio, we have better active treatment, we have better...I think, that enhances the level of services for the families. They think we're doing good now. If we even have a smaller number, it's even better. The second issue to benefit is there are those individuals that can be better served in the community in terms of what community providers option. The sole purpose of an ICF/MR is temporary in nature in that their goal is to integrate into the community. It goes back to the question about the confusion about we're coming from two ways. We have...and Sandy is going to come up afterwards to say we have this pot of money right here that's for community-based services. That money is working for the waiting list. So money that is coming from BSDC is an oversimplification the money should follow the individual. So we have those individuals there coming into that. Will that have an impact on the waiting list? There's a possibility only because our number one priority in terms of the placement for our DD services coordination and make sure we find places for the BSDC residents. So there's multi-different levels for why we're doing what we're doing at BSDC that has an impact on everything. The uncertainty about, for example, Autism Center, about their contract, that has an impact on providers because you have 67 clients there. So it's all interconnected. [LR283]

SENATOR STUTHMAN: The funding source, John, for community-based services is a separate funding source. [LR283]

JOHN WYVILL: That's correct. And Sandy is going to come up hopefully remove that confusion for you. [LR283]

SENATOR STUTHMAN: Okay. Thank you. [LR283]

JOHN WYVILL: Okay. Yes, Senator. [LR283]

SENATOR CORNETT: Yesterday when we were talking about staff retention and when we've been at the peak and the model that the other people looked at that we were doing things in regards to offering employees opportunities for further education, set so they could enhance their education and continue working at BSDC. And I asked the director--I can't think of his name right now--what are you doing? I know you're advertising for people all of the time and I know we're doing hiring bonuses now. What are we doing in regards for retention and education of staff that we currently have? Is the tuition reimbursement plan being utilized by staff? And are you working on promoting that? [LR283]

JOHN WYVILL: Senator, we are getting that information on the tuition reimbursements. I have not have that for you yet. But for the other questions for you is we're in the process of hiring four individuals that will be mentors with the money that has been provided by the Legislature. So they would work very closely with , not only the new staff...well, I stand corrected. I got the tuition...and I'll give that to you. [LR283]

SENATOR CORNETT: Okay. Great. Thank you very much. [LR283]

JOHN WYVILL: We're working with that in terms of working with mentoring with the direct care staff. We have a new orientation facilitator. We are working on several different things in terms of management by walking around. One of the frustrations that you will hear down the road in August I think when you talk about the employees is the frustration from some of the staff, as well as the leadership. And our CEO is making a point of visiting. We're doing a lot of the little things to make sure that the employee is being valued and treated as an equal. We've been having town hall meetings to make sure that they're being addressed. We most recently had one in May in conjunction with what the union's do it. We're working better culturally with them to make sure that we're addressing any employee concerns, whether it be a simple transfer issue or anything else that if it's an important enough for a union to do it or brought to the CEO or to myself, we make sure we address that and we try to address those issue. So we have several pieces of the puzzle that are working together, and I think I will like to think that with the union do it that we have a very positive relationship with them and an open dialogue with them. We may not agree with everything that they say and vice versa, but we both have the same thing at heart is that is what can we do to better enhance that because ultimately is that what Southwest Airlines has said: You take care of your employees and they'll take care of your customers. And our customers are our BSDC. So that's what we're doing in terms...that's just the numerous ones that we'll be addressing. [LR283]

SENATOR CORNETT: Thank you very much. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR LATHROP: John, I do have some questions precipitated by a lot of the discussion we've had this morning. And I want to clarify some things if I can. First, you have moved 26 people out--I'm trying to do the math--is that about right? You're from 308 down to 272 since the legislative session. [LR283]

JOHN WYVILL: We have two that have passed away. [LR283]

SENATOR LATHROP: Okay. So of the 26 that have brought you down to...am I doing the math right? [LR283]

JOHN WYVILL: Well, this is not the exact...this is not a good forum for me doing the math because of my stress level. So... [LR283]

SENATOR LATHROP: It's 36 it looks like. So you've had two folks pass away that would have brought you down to... [LR283]

JOHN WYVILL: In this year, So we went from 326 to 272, and we're projected to be at 267, I think, by the end of next week. [LR283]

SENATOR LATHROP: Okay. Let's take those numbers. I know that when we were bringing this up and when we talked about it in the Legislature we were in session and that was probably April, March, somewhere in that time frame and you were at 200 when you rolled out the plan to go from 308 down to 200 roughly. And you're now at 272. How many of those people have gone to a community-based program? And how many of them have actually gone to a nursing home? [LR283]

JOHN WYVILL: Okay. I can get that number for you because we track that and have that out... [LR283]

SENATOR LATHROP: I would imagine you can have an idea what it is. Can you share that with me this morning? [LR283]

JOHN WYVILL: I would say early on the majority of them have gone to nursing facilities and then more recently we're now getting them into community DD providers. And that is more the nature of the beast in terms of it takes about a month, month and a half working with a community provider, a nursing facility could be... [LR283]

SENATOR LATHROP: Okay. So of the 34 since we've gone from 308 down to 272, two

people passed away, how many of the remaining 34 roughly went to nursing homes? [LR283]

JOHN WYVILL: Senator, I would feel much more comfortable just to give you a list that you can have the actual list in front of you. But... [LR283]

SENATOR LATHROP: Is it more than half? [LR283]

JOHN WYVILL: No. I don't think so. [LR283]

SENATOR LATHROP: Okay. [LR283]

JOHN WYVILL: But I don't want to mislead you. [LR283]

SENATOR LATHROP: But when we talk about moving people from Beatrice to community-based care, in reality a number of these people simply went to nursing homes. [LR283]

JOHN WYVILL: The guardians had requested nursing facilities, yes. [LR283]

SENATOR LATHROP: Yesterday, the last slide that you put in your presentation showed that we have ICF/MRs, we actually have the Beatrice State Development Center is and ICF/MR. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR LATHROP: But we also have Mosaic providing or serving in the capacity of an ICF/MR in Axtell, Beatrice, and Tri-City. Is that true? [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: And you have today two or three times said the purpose of an ICF/MR is a temporary stay. [LR283]

JOHN WYVILL: Um-hum. [LR283]

SENATOR LATHROP: And I want to make sure that before we accept that as the landscape, as you this, the Mosaic in Axtell, which is an ICF/MR has 108; in Beatrice there's 127; and in the Tri-City region there's 9. Are you doing anything to move those people out of Mosaic or are you satisfied with their placement? [LR283]

JOHN WYVILL: We're not doing anything with the private or on ICF/MR. [LR283]

SENATOR LATHROP: So the purpose of the ICF/MR isn't necessarily a temporary stay because you're satisfied with the placement at the Mosaic, but you've described Beatrice and said it's an ICF/MR and the purpose is a temporary stay. And you're introducing, I think, into our conversation an assumption that Beatrice has not place except for a temporary stop in the developmental disability care. And I don't want to argue about whether that's true or not true, except to point out that in Mosaic, who's providing ICF/MR services, we're okay with them staying there. And what you're trying to do is reduce the census or the population of Beatrice, which happens to be an ICF/MR. Do you see the point I'm making? [LR283]

JOHN WYVILL: I know the point you're making. I would just say that we can certainly share with you the regulations really pertaining to ICF/MRs and let you draw your own conclusions about...it's more of a transitional nature. It's not a final resting. [LR283]

SENATOR LATHROP: Ultimately, don't you agree that as we search for a solution, we're going to have to define what the purpose and what the services are that Beatrice should provide? [LR283]

JOHN WYVILL: Correct. [LR283]

SENATOR LATHROP: And whether that turns into temporary only, like the ITS program, or something broader than that we'll have to up. [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: And Ron Stegemann, who was here yesterday, suggested that there are some people who will not, because of their risk to themselves or the community, wouldn't be a good placement in a community setting. [LR283]

JOHN WYVILL: Right now, that's absolutely correct, Senator. [LR283]

SENATOR LATHROP: All right. And so it may be that Beatrice turns out to be the right place and the right facility for us to provide placement of individuals who cannot safely be placed into a community setting... [LR283]

JOHN WYVILL: That's absolutely correct. [LR283]

SENATOR LATHROP: Okay. Did I hear you say in answer to Senator Wallman question that you are exploring the possibility of having a private contractor come in and take over one of the cottages at Beatrice and provide community-based care from that facility? [LR283]

JOHN WYVILL: An empty, empty building. That might be a possibility. [LR283]

SENATOR LATHROP: What is it that a...there's something about that that troubles me. If we're going to take a cottage, empty it out in the plan that you've outlined for Senator Harms, if we reduce the population and now have four empty buildings at Beatrice, are we not just privatizing Beatrice? If we turn those cottages over to a contract provider, have we done anything more than simply...I mean, it's the same campus, it's the same facility, they're going to go to lunch at the same place and get their care from the same place. Aren't we just moving towards...is that just sort of a left-handed way of privatizing Beatrice? [LR283]

JOHN WYVILL: No, not necessarily, Senator. I think we are certainly open to any users of the facility if they have...as we have our buildings become vacant. One option is the possibility of a community providers interested in running a group home, which is not to be confused with an ICF/MR license. A group home separate from there on the campus, we will certainly be definitely talking to them. So it's not a question of privatizing. It would be a question of we have empty vacant space. Somebody come forward and say, we want to rent your space to do X, Y, and Z, and then we go through the appropriate procurement process and lease it and all that kind of stuff. [LR283]

SENATOR LATHROP: When people go into a private community-based program...not a private, but at community-based program, is the habilitation there that we find at Beatrice? [LR283]

JOHN WYVILL: In terms of the same level? [LR283]

SENATOR LATHROP: Yeah. If someone is at Beatrice...we heard yesterday, they have a constitutional right to habilitation. And the habilitation would be to improve their function, both in terms of activity, of daily living, being able to groom themselves, the basic needs to improve those and their skills. But it's also vocational and those sorts of things. Once we move them from that environment to a community-based program, do they get the same level of habilitation? [LR283]

JOHN WYVILL: I'm not sure how to answer that question, Senator. I think that--and I'm not trying to dodge it--it think when you have a state run facility and when you have a responsibility and an mandate about the U.S. Constitution, federal laws and all that, our rights, duties, and responsibilities to those individuals flow through there, which is a constitutionally protected right. And we are responsible for those individuals. That impose a certain requirements us. That is a separate duty then in the community because our relationship to them is governed by contrast. And then any other issues without getting into a lengthy legal discussion. It might be an apples and oranges comparison, but they're getting similar services. [LR283]

SENATOR LATHROP: So the constitutional duty that Mr. Mason talked about and Ms.

Fenner talked about, that arises from the fact that their liberties are restricted with a placement at Beatrice, and you don't believe a similar level of constitutional concern is present with a community-based placement. [LR283]

JOHN WYVILL: I don't think so. I'd have to defer to the legal counsel because... [LR283]

SENATOR LATHROP: And as a consequence, the duty to habilitate is not there necessarily as it would be with a placement at Beatrice. [LR283]

JOHN WYVILL: I believe so. [LR283]

SENATOR LATHROP: All right. Those are the questions I had. Anyone else? Senator Cornett. [LR283]

SENATOR CORNETT: That brings what, the questions that Senator Lathrop is asking, brings back a term that was brought up yesterday, "minimally acceptable" for care or rehabilitation. When Mr. Mason was discussing the level of care that was the minimum required, would the private providers have to meet that standard? [LR283]

JOHN WYVILL: The providers have to meet the standards set forth in their contract, and I think... [LR283]

SENATOR CORNETT: And that would be set forth in the contract. [LR283]

JOHN WYVILL: In the contract and also they...I think I will start in the discussions in July when you hear testimony from the various regulatory oversight, and we have contract oversight. In that contract oversight, we ask the providers to assume certain duties and set the federal regulations required. [LR283]

SENATOR CORNETT: My point is I believe that it was testified to yesterday that we are currently at minimally accepted practices. I mean, what is the very...we just meet that. If these private providers are to provide the most services that we currently are offering in regards to habilitation, are we going to meet that, will they be able to meet that standard? [LR283]

JOHN WYVILL: My hesitation in answering your question is the ICF/MR that are governed by different regulations than the providers, and I think what would be beneficial for the committee would be the different roles and responsibilities that come forward. There are certain things that providers are required to do that are very similar, but there might be different congressional or different authority. [LR283]

SENATOR CORNETT: So if they are in a state facility, the requirements are different than if we place them in community-based service. The standard of... [LR283]

JOHN WYVILL: They're similar but different. Similar, similar responsibilities, but I think different...I'm not answering your question well. I'm trying to wrestle with it. [LR283]

SENATOR CORNETT: My question is are they...when you said that they may not receive the same level of habilitation if we outsource to community-based programs, is there a different standard of habilitation in community-based than there is for a state facility, and will they still be receiving the minimum care needed? And is minimum even the standard that we should be looking at? [LR283]

JOHN WYVILL: Okay. I think there's two issues. If you talk to the parents and families of BSDC, they will tell you that the community providers do not have the same regulatory oversight and purview at BSDC; that we have CMS, DOJ, Nebraska Advocacy Services. Nebraska Advocacy Services does it on campus by federal law and access agreement. CMS is there because we accept federal money and they come in through the ICF/MR department. Then we have Department of Justice that has a different congressional authority that comes in there. Community-based providers, we have oversight over them for the same protection from harm and other duties. We have, by our contract, ability to enforce the contract. We have regulatory and licensing, and then we have the federal oversight. So it's a little bit different. Same thing to make sure that they provide the services of active treatment and all that kind of stuff, as well as protection from harm, and to ensure that they do things, but it's a little bit different. Hopefully, I'm explaining it. [LR283]

SENATOR CORNETT: This will be...put you in an awkward position. [LR283]

JOHN WYVILL: Yeah. [LR283]

SENATOR CORNETT: Do you feel that they have less oversight than you have at BSDC, the private providers? [LR283]

JOHN WYVILL: Private providers are not much in the press as BSDC, but I think the oversight is similar. [LR283]

SENATOR CORNETT: Are the remedies the same? We are here currently because of the Department of Justice findings that BSDC is out of compliance and... [LR283]

JOHN WYVILL: Uh-huh. [LR283]

SENATOR CORNETT: ...the clients haven't necessarily received the care that they should have received. What are the guarantees that if we put them in community-based service, where is that oversight going to be and who is going to step in if there's a problem? [LR283]

JOHN WYVILL: Okay. I think the oversight is what I said about the contract oversight. If there's a complaint, there's adult protective services that comes in, works closely with regulatory and licensing. You have regulatory and licensing. You also have our certification process which is reviewed. [LR283]

SENATOR CORNETT: Will inspectors going in the private facilities like they do at BSDC? [LR283]

JOHN WYVILL: They don't come out with as much frequency. They either come in either through our certification process or in response to a complaint that we send out, adult protective services. To my knowledge, providers don't have the federal inspectors out there as much as we do, and there's always that potential. [LR283]

SENATOR CORNETT: So the state will basically be acting as the Department of Justice is now in the private providers is going in and inspecting the people that they have contracts with? [LR283]

JOHN WYVILL: We do that now. [LR283]

SENATOR CORNETT: You do that now. [LR283]

JOHN WYVILL: Yeah. And I think these are good questions. I think regulation and licensing with Helen Meeks and others, I think the regulatory scheme for community providers and for the ICF/MRs is a topic that will be up in July that will...a lot of those questions I believe will be answered so you can decide whether or not that's appropriate or we need to make enhanced changes in community-based care. [LR283]

SENATOR CORNETT: I don't want to see us moving people to community-based care and having less oversight when we already have the problems that we have now with the level of oversight we have now. [LR283]

JOHN WYVILL: Uh-huh. Yeah, I think... [LR283]

SENATOR LATHROP: That is a topic that we have on the agenda for July. [LR283]

JOHN WYVILL: Yeah. [LR283]

SENATOR CORNETT: Yes. [LR283]

JOHN WYVILL: Yeah, I think community providers can give you their perspective. The community providers will probably think that we have too much oversight. If you ask the parents and families, it's not enough oversight. And it's just a question of...there was a

law that was introduced in Missouri in which they asked for regulatory oversight. Some providers have said that if we wanted the scrutiny that you guys would, we would be out of business, and in terms of the scrutiny. I'm not making that as a statement. I'm just saying what I've heard. [LR283]

SENATOR CORNETT: Okay. Thank you. [LR283]

SENATOR LATHROP: That's a little disconcerting if they're concerned about not being able to meet the standards that the ICF/MRs are held to, but... [LR283]

JOHN WYVILL: Well, they said that if they had the level of scrutiny that we had. [LR283]

SENATOR LATHROP: Yeah. Okay. I think that...anyone else have any questions? All right. We thought it would be ten minutes, John, and...but I think it's been very, very helpful... [LR283]

JOHN WYVILL: Well, thank you, Senator. [LR283]

SENATOR LATHROP: ...and you answered an awful lot of questions and gave us more information. [LR283]

JOHN WYVILL: Okay. I'll be back. [LR283]

SENATOR LATHROP: Thanks. I think that brings us to Sandy Sostad, who would be anxious to... [LR283]

SANDY SOSTAD: Anxious, yeah. [LR283]

SENATOR LATHROP: ...anxious to speak publicly on the issue of finance. [LR283]

SANDY SOSTAD: Oh yes, I love public speaking. [LR283]

SENATOR LATHROP: Just so that the record reflects what we have going on here, it turned into a panel and that's sometimes difficult to keep a clear record and an accurate record of who is speaking and who is saying what. So what we'll do is...are we going to have you start out, Sandy? Is that the...that's the strategy? [LR283]

SANDY SOSTAD: Yes. [LR283]

SENATOR LATHROP: Why don't we have each of you identify yourselves, and then we'll start out with Sandy. And then if you can just kind of observe this as a matter of keeping a clear record, if we can just have Sandy talk. And then are the rest of you here to answer questions? And then they are shaking their head yes, which is also hard to

get on the record unless I say that. So what we'll do is we'll have you identify yourselves, we'll have Sandy do her presentation, and then we'll go to sort of a question and answer. Okay. [LR283]

SANDY SOSTAD: Okay, for the record, my name is Sandy Sostad, it's S-o-s-t-a-d. I work in the Legislative Fiscal Office. I've probably worked in this area for 25 to 30 years, so I have some experience with it. And the people that are up here with me have, on this side of the table, similar kinds of experience--Vivianne, of course, is new to the system--and I'll let them each introduce themselves now and what they do. [LR283]

SENATOR LATHROP: Okay. [LR283]

VIVIANNE CHAUMONT: Vivianne Chaumont, V-i-v-i-a-n-n-e C-h-a-u-m-o-n-t, I'm director, Division of Medicaid and Long-Term Care. [LR283]

WILLARD BOUWENS: Willard Bouwens, B-o-u-w-e-n-s, and I'm the finance administrator for the Department of Health and Human Services. [LR283]

DON SEVERANCE: And I'm Don Severance, S-e-v-e-r-a-n-c-e, and I work in Division of Developmental Disabilities as a disability services coordinator. [LR283]

SENATOR LATHROP: One thing I'll say is that we had some concern from folks who were in attendance yesterday that they couldn't hear very well, so try to keep the mike in front of you and try to speak up loud enough so that we can all hear you and everybody in back has the benefit of your testimony. [LR283]

SANDY SOSTAD: (Exhibit 2) Okay. I think what we'll do is we'll just reiterate initially what was presented yesterday. We thought it was important to give you a snapshot of how much funding is out there right now for developmental disabilities, and if you go to that handout, I think it was on your desk, there's a small, little, 35-page handout that we're just going to whip right through here, so...(laugh). [LR283]

SENATOR LATHROP: And maybe, so that we...Sandy, if I can interrupt you. [LR283]

SANDY SOSTAD: Uh-huh. [LR283]

SENATOR LATHROP: The handout you're talking about is entitled "Department of Health and Human Services Developmental Disability Funding 2006-2007." [LR283]

SANDY SOSTAD: Yeah. And the first page after the initial page, so it would be the second page, they're numbered down in the corner for your reference, this is what was presented yesterday and the pie charts that followed, just to give you the perspective. We've got $274 million that's going out of the Department of Health and Human

Services in terms of total funding for developmental disabilities. As you can see, General, cash, and federal sources. You see BSDC in the first column there to the left (sic). We've got roughly $50 million; again, 772 clients; 700 FTE are funded there. You get to... [LR283]

SENATOR LATHROP: I'm going to...and maybe, so that we...Sandy, if I can interrupt you. [LR283]

SANDY SOSTAD: Okay. [LR283]

SENATOR LATHROP: I think you're trying to hurry through this and you really don't need to. I'd like you to kind of walk us through this because this seems to be where we summarize all the information. If you can, just tell us what the columns and the rows are so that we can follow. [LR283]

SANDY SOSTAD: Okay, you will see across the top, this is the service, okay: Beatrice, the private ICF/MRs, developmental disability service coordination, developmental disability administration, and then the three columns that follow are the community-based services that we have that I will call aid to developmental disability programs. They are found in Program 424 in the state budget, and then the Medicaid part is in Program 348. So then you'll see the sources of funding--the General, the cash, and the federal; and then the total funding to give you a perspective on that. So we'll talk about Beatrice in the next section. We have a whole section on Beatrice we're going to talk about. The private ICF/MRs, again, that's Mosaic. For the old-timers, that was Bethphage and Martin Luther years ago. They merged; they became Mosaic, so that's what we have. Private ICF/MR: 246 clients is what they testified yesterday. DD service coordination: you can see $10 million, roughly, spent there, we have a breakdown of that later on in the handout, but we've got 222 people that work out in five regions of the state that provide service coordination and they are funded with state funds and federal Medicaid match. The DD administration, that would be 15 people there. That would be John's shop, the people that work in the central office here in HHS that work with developmental disabilities administration. And then the community-based programs, the aid that goes out, and you'll see the total funding there, and we will have a section that will talk about that later on in the presentation. So $274 million total through HHS. Now this does not include, we have community-based providers, we the private ICF/MRs, they have other sources of funds. They have Social Security income from clients. They have client fees. The privates probably have some funds, private funds, that they get, so this is not all encompassing. There are some other resources for other providers that are not shown here. These are just the resources that come through the Department of Health and Human Services. When you look at the total and you compare it to the General Fund budget of the state, this is about $3.67 percent of our General Fund appropriation for 2006-2007, so roughly 4 percent of the General Fund budget is encompassed in what you're going to look at today. The next two handouts were what

John, again, had yesterday and the first one talks a little bit about, well, where are the funds in terms of what services: 52 percent, the majority of the funds in this system, go out, like we said, to the community-based DD services--52 percent are General and federal funds that serve clients; 18 percent of the total funds go to Beatrice; 12 percent of the total funds come through Medicaid--that would be paying for medical services for clients that are out in the community-based programs; Mosaic gets roughly 7 percent of the funds, and another 7 percent of the funds is state only--these are clients that are out in the DD programs but are not Medicaid eligible so they get state funding for them; service coordination, about 4 percent of the total; and DD administration less than 1 percent. And then the final chart that was presented yesterday just shows your total overall funding in this area. Most of it is federal, 55 percent federal, 42 percent General Funds, and 3 percent cash funds. Cash funds, again, can come from tobacco settlement funds, client fees, that kind of thing. Clients pay based upon an ability to pay in these programs. So that's a quick overview of the funding. The next two sections...if you have any questions, we can answer those. The next two sections we'll talk a little bit about Beatrice and then we'll talk about community-based programs in the next section, so... [LR283]

SENATOR LATHROP: All right, let's see if anybody has any questions at this point. Nope, I think we're all following you. Thanks. [LR283]

SANDY SOSTAD: Okay. If you go to the next section, it is entitled "Beatrice State Developmental Center," and then we have a couple charts on DD service coordination and DD administration. The first chart there actually shows some of the census data for Beatrice. This information has been gathered by our office from the agency over a long period of time and we've put it what we call the "Legislator's Guide" and we distribute it to senators. So that is the source of the information. It was provided by the agency. I would say that the one thing that I did change here is when you look at FTEs, the FTEs are always sort of, I think from the perspective of the agency, what's budgeted for. The remaining, let's see, six years or so, beginning in 2000-2001, those represent filled FTEs. The ones above that point in time I would say are probably budgeted FTEs. But for the last six or seven years there we have filled FTEs. What I would say on this, if you look back in history, in 1966 there were probably 2,300 or more clients at Beatrice. When we started doing the consent, the class action suit in 1972, there were 1,347 clients in Beatrice. The beginning of the chart that I show here, in '75-76, when we actually began the plan of implementation to actually move through the consent decree and that, we're down to 990. And originally, I think, in the...when they were looking at that deinstitutionalizing back in the seventies, their goal was to get down to 250 people and they never did. If you look around '85-86, when they stopped the consent decree, it was over after ten years, there were around 450 people at that time. So since that point in time, not a lot of change in terms of the average daily census. What you'll see around, I think it's, '95-96, you'll start to see an increase in admissions, increase in discharges. That's when they put in the outreach treatment service where they come in for a three

months' stay and then they leave service. So that accounts for why you'll see an increase in admissions and discharges there. That's about all I have on that. Okay? When we go to the next chart, BSDC, this is just historical expenditures. Again, we're showing you the source of funding, we're showing you the average daily census, we're showing the ending census, the average cost per client. It's over a 33-year period. Basically, when the Legislature funds Beatrice, the way that we look at it is they submit a budget request and we review the cash that's available for Beatrice and we review the federal funds that are available for Beatrice, federal funds, again, primarily Medicaid. And we'll look at the cash flow and we'll say, we're going to maximize those sources of funds so we say we think they're going to have so much cash, we think they're going to have so much federal, and then we carry over a certain amount each year so that they have a cushion for the next year. So the remainder of their budget then is General Funds and their budget goes up every year based upon state salary increases, the fixed costs of institutions. The Legislature has typically always put in additional funding for food, medical services, utilities. That's a fixed cost for those institutions and we call them unique costs of institutions, and the Legislature has pretty much generally funded those increases year by year, so... [LR283]

SENATOR LATHROP: Senator Cornett. [LR283]

SENATOR CORNETT: The amount in per client cost has risen dramatically,... [LR283]

SANDY SOSTAD: Right. [LR283]

SENATOR CORNETT: ...more so than the reasons you just explained. [LR283]

SANDY SOSTAD: Uh-huh. [LR283]

SENATOR CORNETT: And I'm making an assumption here. I'm assuming as we reduce the census at BSDC that the people that need less services have been moved out to the community and the cost per client has increased because the people that need the most services remain. [LR283]

SANDY SOSTAD: Right. I had a few...there's actually a chart on the next page if you want to look at average cost per client. There are a few things, if you compared '05-06, roughly $123,000 there, average cost per client. With the CPI it would be about $42,000. So why is there a lot of difference? I mean, I had a few thoughts on that. I thought maybe some of it is there's a fixed cost to the institution. We've got a big campus there. We've got a lot of buildings, we've got a lot of fixed costs, so that's one thing. Secondly, there's...if you look at the next chart, 75 percent of the costs of Beatrice are in salaries and benefits, so the state has periodically increased the salaries of all the...and the benefits of the employees down there. That's another reason the cost is increasing as it is. Thirdly, what you talked about a little while ago, there's federal

requirements for certification. You've got to meet the ICF/MR staffing requirements, the medical requirements, and I think that's a big part of it. It's more, in my mind, I'm not a program, it's more of a medical model. You've got a lot of medical staff there and you've got a higher cost and you've got to meet staffing requirements and that kind of thing. [LR283]

SENATOR LATHROP: We also see, if I can, on page 6 that you showed us, the percent of severe and profound clients is... [LR283]

SANDY SOSTAD: Right. [LR283]

SENATOR LATHROP: ...is significant. [LR283]

SANDY SOSTAD: That was my fourth thing, the type of client that we're serving, severe and profound types of clients there. And again, like I said, it's more of a medical model, an ICF/MR model, that they have to comply with those requirements. So that's why I think that the average cost is going up much higher, much...is much higher than what the rate of inflation is. Those are some things that I thought. I don't know if anyone else has anything to add but... [LR283]

SENATOR LATHROP: The panel is shaking their head no. [LR283]

SANDY SOSTAD: They're shaking their head. [LR283]

SENATOR LATHROP: Okay. [LR283]

SANDY SOSTAD: Okay. Thanks, panel. (Laugh) [LR283]

WILLARD BOUWENS: Did a good job. [LR283]

SANDY SOSTAD: The next, the next chart, just to give you a perspective on what we look at when we're budgeting for the institution, you can see the breakout of salaries, and I tried to breakout salaries because you talked a little bit about that. That's sort of an issue. So you can see on the left-hand side, I'm on page 9 now, the total salaries permanent, temporary, overtime, premium pay, shift differential, comp time, and other personal services, and then benefits, and total salaries. The one thing we have to look at, too, when we're looking at salaries is down under operating expenses. Sometimes they stick some contractual salaries down there and you'll see that pop up. In the current year, '07-08, under operating we've got about $144,000 being spent for contractual. That's to get those people into the institution right now to solve some of their problems. So they're contracting for people. I guess the point I wanted to make on this is if you flip to the next page, this is percentage of total. So this is the sheet that I just showed you here. And if you go to the next page, percent of the total, you can see

that if you look under overtime, which is the third line down, back in fiscal year '98 overtime was about 2 percent of the budget. If you look in the current year it's about 7.8 percent of the budget. So you do see that we have some growth in the overtime. [LR283]

SENATOR LATHROP: Can I ask two questions on the overtime? [LR283]

SANDY SOSTAD: Uh-huh. [LR283]

SENATOR LATHROP: On page 9 you have overtime listed. You've not attempted in this chart on page 9 to identify mandatory versus voluntary overtime. [LR283]

SANDY SOSTAD: No. No. [LR283]

SENATOR LATHROP: It's all overtime. [LR283]

SANDY SOSTAD: All overtime. [LR283]

SENATOR LATHROP: And the second question I have is, is the overtime number the time and a half, or is it just the premium for the overtime? [LR283]

SANDY SOSTAD: I don't know. I'll defer to Willard. [LR283]

WILLARD BOUWENS: Yeah, it's time and a half, most generally, it's time and a half, recognizing that we have 24-hour, 7-day operation facilities. Then you have holiday pay. Sometimes that gets higher than that. I'm not an HR expert but I know that it's at least time and a half. [LR283]

SENATOR LATHROP: But the line for overtime, if we paid an employee $10 an hour and that showed up on just salaries, $10 an hour, and then the person worked an hour of overtime, first he gets the $10, then he gets $5 more, does our overtime line have just the premium, or the $5, or does it have the whole $15? [LR283]

WILLARD BOUWENS: It just has the overtime amount, because they're... [LR283]

SENATOR LATHROP: So it's the premium. It's... [LR283]

WILLARD BOUWENS: Correct. [LR283]

SENATOR LATHROP: That's how much we pay over and above what we're paying... [LR283]

WILLARD BOUWENS: Right. [LR283]

SENATOR LATHROP: ...for the base salary. [LR283]

WILLARD BOUWENS: Correct. [LR283]

SENATOR LATHROP: Okay. [LR283]

WILLARD BOUWENS: Their base salary is in the top line and the overtime would be the additional. [LR283]

SENATOR LATHROP: Okay. [LR283]

WILLARD BOUWENS: That's correct. [LR283]

SENATOR LATHROP: Thank you. [LR283]

SANDY SOSTAD: Okay. Again, on page 10, you can see that over time at Beatrice, total personal services, which is sort of in the middle of the page there, in fiscal year '98 it was about 75 percent of the total, and through the current year it's about 75 percent. So salaries and benefits are about the same percentage, but you'll see that benefits have actually gotten to be grown much more than salaries over time and that's just in general for state employees that you would see that kind of trend, I would think, if you'd look at any agency. Let's see, the thing that, you know, is a concern, I suppose, from a fiscal point of view is as we move clients out of Beatrice our revenues are going to go down. We have cash and federal revenues that come based upon the number of clients that we have, so as we start to move those clients out of Beatrice and the money follows the client out into the community, I have somewhat of a worry what the impact is going to be on the General Fund in the next couple years in terms of maintaining what we still have at Beatrice. So that's something that on the Appropriations Committee we're going to have to look at, because we're going to lose a lot of our cash and federal revenue as those clients leave, and some of the General Fund revenue that will go with them, so.... The next chart, page 11, it's just, for me, it was a snapshot view of another way you could look at Beatrice if you have any inclination to do so. We're looking at fiscal year '03 compared with fiscal year '07, actual expenditures. This is the way they budget, by subprogram. So if you have an interest in looking at how are the subprograms laid out, what do we spend for pharmacy, you can look down there and that will give you an idea of what pharmacy is. I thought we might see more changes in the percentage of total. If you go to the far right-hand side, I thought we might see more changes in terms of maybe pharmacy being a bigger component or psychology or some of those kinds of things. But I didn't see much movement in terms of percentage of total over the four-year period. Possibly if we looked at a longer period of time, we would see more change. What you did see at the top is the unit, the ICF/MR units, as percentage of total changed a little bit. What I'm guessing is maybe it was a coding there. Overall,

percentage of total in terms of the care in the units was about 43 percent in the initial year, fiscal year '03, and was about 41 percent in '07. So if you added them all together...so it didn't change overall but possibly within the units they did some changing in the accounting. I don't know if you have any questions there. [LR283]

SENATOR LATHROP: Senator Harms. [LR283]

SENATOR HARMS: Sandy, when we look at the psychology services and pharmacy, when you go back and look at the federal findings, they're definitely short in providing the right kind of services there, as well as even pharmacy. I would anticipate this cost to go up. I think once John...he's able to implement what he's previously testified, I would say this is going to change a lot because they have a shortage there and don't have the right services available at that point. So I'm assuming that's part of the problem here. [LR283]

SANDY SOSTAD: Uh-huh. [LR283]

SENATOR HARMS: Pretty much points it out when you see the percent. It should be much higher in that kind of facility and services. [LR283]

SANDY SOSTAD: Right. [LR283]

SENATOR HARMS: The other thing I wanted to ask you in regard to salaries that we were looking at, with the shortages that we have and probably the issue of hiring the appropriate people with the right kind of educational degrees and to slowly change the culture of that organization, when I had a discussion with you, I think right near the end of the legislative session, I asked you about the funding aspect of this and you felt like we at least had the adequate funding and funding shouldn't be an issue at that point in regard to trying to straighten some of this up. Is that still where you're thinking we are? [LR283]

SANDY SOSTAD: I think...this is my perception. [LR283]

SENATOR HARMS: I'm putting you in an uncomfortable position here, but... [LR283]

SANDY SOSTAD: I think the funding is adequate right now, but how it shakes out in terms of the next biennium I'm not sure, in terms of when we lose revenues, in terms of what staffing they finally end up at and how much that's going to cost in terms of General Fund dollars. I'm not sure I could answer that. Possibly, do you have any perception? [LR283]

WILLARD BOUWENS: Senator, it's just as Sandy said. What we'll do as we're in the process now of preparing our 2009-11 budget request, we're working on that now,

Sandy indicated earlier, our job is to estimate revenue sources that we will get from other payers, such as Medicare, Medicaid, private individuals and so forth, and then whatever is left becomes a General Fund support. I think what is important to remember, all the clients, I think with 99.9 percent determination, are Medicaid eligible that come into Beatrice. So any client or any expense that comes from Beatrice is funded with support from the federal government and today it's at about 60 percent. So any of the clients that come in or any of the expenditures that we have that are appropriate for the care of those clients (inaudible) will receive the federal share of the dollars. But we will be doing those estimates to determine what our revenue sources are and what the request would need to be for the remainder of the funding of that program. [LR283]

SENATOR HARMS: As we...as you prepare your budget for the Appropriations Committee next year, there was a lot of discussion, at least on my part, in regard to the Appropriations Committee about benchmarking and about being able to determine how we compare with other states, other organizations like Beatrice. Are you moving at all in that direction so that when we are able to look at...we're trying to find a way to provide services but, yet, in the most cost-effective manner possible. And had this discussion more than once, both on the floor and both in the Appropriations Committee, in regard to the benchmarking and (inaudible) so that we can have some way to compare what's it's costing us and whether or not we're moving in the right direction and whether we truly are cost-effective based on the FTE production here. [LR283]

WILLARD BOUWENS: Can you speak to the benchmarking? I'm not real familiar with the benchmarking. I do remember that discussion going on. But just briefly what the...the way the department approaches the budget request for Beatrice will be dependent upon that notebook you have in front of you there from DOJ that says what is the appropriate staffing level. So we first determine the appropriate staffing levels, the program does that, and then we fund those and then we fund the fixed costs that go with that. So our goal would be to only request the funds that are necessary to meet all the certification requirements and to maintain the safety and the quality of care for the clients at Beatrice. [LR283]

SENATOR HARMS: What I'm trying to come to grips with, I mean there are other ways you can do that and sometimes looking at that versus efficiency and still providing quality of care is important for us. And I know that there are, at least, national organization you can go to that you can get those benchmarks. And so that's why I'm asking the question, because that question, if I'm on Appropriations Committee next year, which I don't know about, I'm definitely going to go after that issue because I think it's very important for us to have some idea to see where the efficiency is, and that it is available. That's all I'm asking, to see whether or not you're on target (inaudible). [LR283]

WILLARD BOUWENS: And, Senator, Direct Wyvill and them may have already been doing that. I'm just not familiar with that. [LR283]

SENATOR LATHROP: Senator Cornett. [LR283]

SENATOR CORNETT: When we toured Beatrice and we spoke with the director, he said that the Department of Justice said the number of employees we should have working there, and I can't remember that exact number, I'd have to look at my file folder, versus the number of employees we actually currently had working there, are we fully funded; is it budgeted currently in Beatrice to hire everyone that is needed? If we could hire everyone tomorrow, is there money in the budget to fully fund Beatrice at the level? [LR283]

WILLARD BOUWENS: I'm not, Senator, I'm not familiar with what that level is. I haven't...I mean, we're in our second...we're going to just start our second year of our biennium and we have a funding level that was provided to us by the Legislature and it was at a certain level. I think Sandy shared some of those numbers with you. [LR283]

SENATOR CORNETT: Yes, but are...those numbers,... [LR283]

WILLARD BOUWENS: But I don't... [LR283]

SENATOR CORNETT: ...are the full numbers we need to reach... [LR283]

WILLARD BOUWENS: I cannot answer that question. I don't know for sure because I have not seen what the level of staffing that we are required to have, I haven't seen those numbers. [LR283]

SENATOR CORNETT: Because whether...I'm trying to get to the point that was made to me that they didn't...that people did not believe that the budget was fully funded to be able to hire. If we could hire everyone we needed tomorrow to reach those levels, the money was not there to do that. [LR283]

WILLARD BOUWENS: And the way I would answer that for you, in our past the way we funded the facility at Beatrice, because of the turnover rate of...I don't know if it's still 30 percent, it used to be 30 percent of our staff would turn over in a year, while we would set a level of funding for that expectation of turnover because it has historically always stayed the same, so if that 30 percent turnover did stop we would not have enough funding to fund all of those people for 12 months in a year. That would be correct. [LR283]

SENATOR CORNETT: So if we were able to hire everyone that was needed to be hired... [LR283]

WILLARD BOUWENS: And we had no turnover. [LR283]

SENATOR CORNETT: ...and we did not have the turnover, which you're going to have turnover in any job but if you were able to keep those positions full, be at full staffing or close to full staffing, the question is, are we budgeted for that? [LR283]

WILLARD BOUWENS: I would say we would not be at this time. But as we do our '09-11 budget, as they determine the appropriate level of clients at the facility and the staffing needs, that's where we'll be making that adjustment. [LR283]

SENATOR CORNETT: So with all of the advertising for jobs that we have going on, if we were able to fill those positions, where would that money come from? [LR283]

WILLARD BOUWENS: We wouldn't currently have it in our budget. [LR283]

SANDY SOSTAD: The Legislature did authorize (inaudible) was it a million? [LR283]

WILLARD BOUWENS: We have $1.5 million that the Legislature authorized for that retention, recruitment, I think for those...maybe those four positions that John was talking... [LR283]

SENATOR CORNETT: Right, but that's retention and recruitment. [LR283]

WILLARD BOUWENS: ...but that's...that's... [LR283]

SANDY SOSTAD: Yeah. [LR283]

SENATOR CORNETT: That's not actual salaries then. [LR283]

WILLARD BOUWENS: ...down the road. That's correct. [LR283]

SENATOR CORNETT: The next question is, I know that businesswise a certain amount of overtime is beneficial rather than hiring more employees, because you have benefits. At what percentage does the overtime cost more than hiring more employees would? [LR283]

WILLARD BOUWENS: I don't know the answer to that, Senator. [LR283]

SENATOR LATHROP: And just so the record reflects this, and this isn't...you all shook your head no, so we got a negative response from our distinguished panel. [LR283]

WILLARD BOUWENS: If you would like us to get that for you, we can do that. [LR283]

SENATOR CORNETT: I would appreciate that. [LR283]

WILLARD BOUWENS: Okay. [LR283]

SENATOR CORNETT: Because the amount that we're spending on overtime is quite a bit, how many employees could we hire for that amount? [LR283]

SENATOR LATHROP: Senator Wallman. [LR283]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yes, Sandy, on this unit expenses, I noticed that went up considerable. Is that because you remodeled those units or kitchen expenses or would that be was... [LR283]

SANDY SOSTAD: That would be actually what they budgeted for the particular units. So what they budget for all the staff and expenses of a particular unit, that's what that reflects. [LR283]

SENATOR WALLMAN: Oh. Thank you. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: I've got a question on the educational services. Is that for patient educational services? [LR283]

SANDY SOSTAD: I have a question on that one too. I notice that that one actually did go from 6.5 percent of the total to about 12 percent of the total, and I don't know. If the agency can answer that question, I'm not sure on that. [LR283]

SENATOR GAY: Because I was assuming it would be for programming for clients, not... [LR283]

WILLARD BOUWENS: I believe, if I understand where Sandy got this number, it is for the true education costs of those clients that are under the age of 18 that we do get...we fund it from the school districts where they have been, where their legal residency is. It's an expense for us because we do have school teachers on staff and then we get reimbursed from the school district. I believe that's the item that is that cost, the educational services. [LR283]

SANDY SOSTAD: Okay. [LR283]

WILLARD BOUWENS: Because any of our training for our staff go in a different...we don't...I don't think it's classified as educational. [LR283]

SENATOR GAY: Yeah. That would be an employee expense probably, wouldn't it, if you're doing... [LR283]

WILLARD BOUWENS: Correct. That would be just their time and then the cost of doing the training, yes. [LR283]

SENATOR GAY: Okay. And then you had mentioned, you said a 30 percent turnover rate and you said that's been going on for some time. [LR283]

WILLARD BOUWENS: Historically, that's been going on. [LR283]

SENATOR GAY: Like how long has that been? [LR283]

WILLARD BOUWENS: I've been working with this facility or this department for about 20 years and I remember that as being always the number. [LR283]

SENATOR GAY: It's been that high for that long. [LR283]

WILLARD BOUWENS: Yes. [LR283]

SENATOR GAY: That's amazing. [LR283]

WILLARD BOUWENS: And it may have changed now. I haven't looked at it recently, but that's what it used to be. [LR283]

SENATOR GAY: All right. Thank you. [LR283]

SENATOR LATHROP: Senator Cornett. [LR283]

SENATOR CORNETT: You also work with the other 24-hour care facilities. [LR283]

WILLARD BOUWENS: I do. [LR283]

SENATOR CORNETT: What is the turnover rate in the other facilities? [LR283]

WILLARD BOUWENS: I believe it's less than that, but I don't know for sure what it is. It is less than that probably just due to the nature of the service and maybe the nature of the location, I'm not sure, but it is less than that. [LR283]

SENATOR CORNETT: Thank you. [LR283]

SENATOR LATHROP: Okay. [LR283]

SANDY SOSTAD: Okay. Now we're on page 12 and this is one that...pages 12 through about 21, this was just provided as information to you and I'm going to let Willard talk a little bit about it. This is when they have to establish a rate, a per diem rate, to bill someone to come to Beatrice. This is how they actually establish the per diem rates. When they bill Medicaid for a service at Beatrice, this is how they establish the rates. You'll see the Bridges Program in here later on; that's how they establish a per diem rate for the Bridges Program. If they bill an insurance company, this is how they establish the per diem rate. Willard can speak to it in more detail, but this is just another way of portraying what goes on at the institution, I guess, in terms of how they actually bill out their services to other entities. [LR283]

WILLARD BOUWENS: I'll just briefly say and then I'll open up for questions. Once the Legislature establishes our appropriation and the facility determines the census level they're going to serve that year, and you'll see on this first page there that's 340 when we did this at that time, then we determine what it costs for the different services, as Sandy said, so that we can bill the appropriate third-party payers. And third-party payers at Beatrice are Medicaid, private insurance companies, we have some Medicare, and then we have private individuals that pay, with the largest payer, of course, being Medicaid. So if you were to look back through this handout that's stapled together, you will see the different types of services and the rates that we have established on it. This morning you were talking about ICF/MR and then you were talking about ITS, the short-term service. We had a hospital program, we had a hospital unit there for many years and that was closed on May 1, if I remember correctly, so those costs will not show up in next year's budget. We have a...it's called an observation service, if you're paging through this with me. It's just for clients to go and have a doctor view them for whether it be medical needs or psychological needs. We also have a clinic they do that in. The outreach services, I think Senator Lathrop talked about those this morning a little bit. Those are those short-term services where we have...in fact, actually this program I think our staff go out into the field to intervene with very high level interventions that need to take place. An evaluation unit, again, these are all medical or ancillary type services that the clients get. And then the last...next to the last one, the Bridges Program is the one that's located on the Hastings Regional Center campus and that one is run by the administration at Beatrice. So what this allows us to do is to have rates to bill third-party payers and, as all hospitals do, you set a rate at the beginning of the year for your billing structure, and that's what we do with this information. And it gives you a lot of detail about what goes into their, what Sandy was showing earlier, with how much psychology goes into a service, how much nursing goes into a service. The food costs should be the same throughout the organization, except for what Senator Wallman said. We did put some individuals kitchens now rather than a central kitchen, so that could change just a little bit. But these are the costs that go into providing the care at Beatrice. [LR283]

SANDY SOSTAD: Okay. [LR283]

SENATOR LATHROP: Senator Harms. [LR283]

SENATOR HARMS: I'd just like to say when you look at the Program 65, that's the physical plant cost. [LR283]

SENATOR LATHROP: What page are you on, John? [LR283]

SENATOR HARMS: I'm on page 12. Is that where we're at? [LR283]

SENATOR LATHROP: Okay. [LR283]

SENATOR HARMS: Are we on...? [LR283]

SANDY SOSTAD: Uh-huh. [LR283]

SENATOR HARMS: Okay. When I look at that, that seems to me to be fairly high. That's because the facilities are older? And with your plan to maybe consolidate those will bring that down, is that a place where you're able to make up some room in your budget in the future or...? [LR283]

WILLARD BOUWENS: Yeah, Senator, that is high, I think, if you were to compare us to an efficient building and facility. The Department of Administrative Services Building Division runs all the facility maintenance at all of our 24-hour facilities. This is a payment to them. They purchase the utilities for us, the heat. They maintain the grounds. They maintain the actual building structures. So we pay that out to them and then they maintain our structures for us. But all of the buildings, and I don't want to try to tell you what the process is on raising a building or surplusing it or getting of it, but just because we shut the door or turn off the lights... [LR283]

SENATOR HARMS: Oh, I understand. [LR283]

WILLARD BOUWENS: ...there's still some other things that go on with that building, so...but this is that cost for all those things. [LR283]

SENATOR HARMS: I just thought when we took the tour which, you know, it's well kept, I was presently surprised that everything looks really nice and it was clean and...but what stuck in my mind was the number of clients that we have there and the size of the facilities and the plant, it seemed like to me to be completely unbalanced and would be something that I would really encourage you to look at and maybe for us to see how we might be able to consolidate that to cut those costs. I realize that when you can move people out you still have to keep the heat on, that sort of stuff, but that cost will continue

to go up. [LR283]

SANDY SOSTAD: And that's something, like I said earlier, that typically the Legislature has funded that. Whatever DAS says you need to pay, the institutions need to pay for the utilities and for that, the Legislature has funded that and placed it in the institutional budget over as many years as I can remember, so... [LR283]

SENATOR HARMS: I would like to go...and then I'll leave you alone, okay? Program 72 of psychology, with the...I guess with the shortage that we have and at least from what the federal report has shown us, that we're inadequate or not efficiently...have enough people to do that, I would have anticipated that if we were funded appropriately that that should go up much...be much higher in the future because that's expensive. But it is very clear that we don't have the right kind of assistance there to provide that appropriate service. Is that correct? [LR283]

WILLARD BOUWENS: Yeah, I'm not sure about what the appropriate level is, but your observation is correct, Senator. This says that it costs $8.71 a day and so however many psychologists we have over the population that we have at Beatrice is how that's calculated out. [LR283]

SENATOR HARMS: Yeah, I understand. [LR283]

WILLARD BOUWENS: And I would agree with you that I don't... [LR283]

SENATOR HARMS: It says it's really short... [LR283]

WILLARD BOUWENS: It's pretty low. [LR283]

SENATOR HARMS: When you look at the fiscal side, it shows you where our shortfall...where we really are falling short. I know it's a difficult issue to get people to maybe go there, but that, to me, tells a story right there about adequate services, appropriate services and what we're going to have to deal with in the future. Because that's going to have to go up if we're going to meet what John was explaining to us before of his plan to address those issues. That's going to have to go up considerably. And so then, when you look at it overall fiscally, then if what you were saying, you know, Sandy, is...if we try to fund everything, the question will be where will all the dollars come from. Well, when we start looking at the plant and some of these other things, I think in the planning process those are things we're going to have to start to look at to get the right services to the people and make sure that we're on target. I mean this is really very revealing, when you see where your money is being spent, about what the issues are. So thank you. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: I've got a question. When you look at all these programs and there's probably other facilities around the country, how does this compare to a like facility in another state? Have you ever looked at that, to say, boy, we're not as efficient... [LR283]

SANDY SOSTAD: I've never looked at that. [LR283]

SENATOR GAY: ...or superefficient? [LR283]

SANDY SOSTAD: I have never looked at that. [LR283]

SENATOR GAY: We've never looked at that. [LR283]

SANDY SOSTAD: We could look at it, you know, looking at regional centers or, you know, at other ICF/MRs. That's something we could look at for you, yeah. [LR283]

SENATOR GAY: The only reason I say that, you know, we were the gold standard, now we're not. But, you know, maybe it's time to look around and see what other people are doing. [LR283]

SENATOR HARMS: Senator, that's what I was talking about, the benchmarking. I mean, we're going to have to do that so that you as senators, even on the floor, when you want to debate the budget, you got to have some idea how you are with efficiency, and that's what I was referring to. And you're right on target; that's exactly what we're going to have to do. [LR283]

SENATOR LATHROP: Senator Adams. [LR283]

SENATOR ADAMS: How do we line up then in terms of Medicare and Medicaid and private insurance when we submit these base rates? Do we hear back from them that we're out of line or... [LR283]

WILLARD BOUWENS: No, we usually don't, Senator. The private insurance companies will pay, you know, they reimburse you the rate that you bill them normally with...depending on the individual's plan. And just for the record, they don't have...very many of our clients don't have private insurance. Medicare, the federal government sets those fee schedules for us. When we had a hospital, it was a prospective hospital that we updated DRGs on those. Medicaid program in Nebraska for a public-run facility like ours is a cost-based program. So while we bill a rate here of x dollars, at the end of the year, whatever is allowed by the Medicaid program, then the rest of that federal dollars is passed through to Beatrice, so...and then with private pay people, that is the rate and if they have the ability to pay full cost, they have to pay that rate or some portion of it

based on the statutes. [LR283]

SENATOR LATHROP: Okay. I think you can continue. [LR283]

SANDY SOSTAD: Okay. Then we'll go to page 22. This is just a little brief look at the cash funds again, where they come from: clients; insurance; counties; school districts; federal funds--mainly Medicaid, a little bit of Medicare; interest; grants. And then the total funds you can see over time. It varies. Sometimes we have some federal Medicaid settlements which will make the federal funds look funny in a particular year, but you know we've been counting on overall at least, you know, $1 million or $2 million or $3 million a year in terms of an increase in these funding sources to help us fund Beatrice. And we may not be seeing that kind of thing in the future then. As you move, you're going to step down a little bit in terms of your revenues for clients. [LR283]

SENATOR HARMS: Mr. Chair, could I ask a question? [LR283]

SENATOR LATHROP: Certainly. Senator Harms. [LR283]

SENATOR HARMS: I don't mean to be a pain. [LR283]

SENATOR LATHROP: No, no, I think that's a good way to approach it. [LR283]

SENATOR HARMS: Sandy, have we done any projections at all, as we start to look at going to the community-based programs and trying to see what those numbers will be, if we're successful in reaching what we said we would like to get the level down to, have we projected at all in regard to the federal loss? Because I think that's a question we're going to have to look at. This committee should be interested in knowing exactly what those costs will be because of what the recommendations you might end up making might very well be tied to some of this. And in order for us to meet what John's goals are, which I would have to say I'm hopeful we could meet those, do we have any idea? [LR283]

SANDY SOSTAD: We haven't done it. I know the agency will be doing that when they submit their budget request. I'm fairly certain they will have projected what they think is going to happen at a client level of 200 people,... [LR283]

SENATOR HARMS: Okay. [LR283]

SANDY SOSTAD: ...what we're going to lose in revenue, what kind of balances we're going to have and that kind of thing. And then the Legislature will react to that. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: So if we had a...let's say a patient has moved out and on the first page it's $140,000. Where is it? Let me get to a page here. Per patient cost you had average cost per client is $140,000 here. It's making up 12 percent of your budget. If we move...if we get their population down, though, we're also going to pick up...you're saying we're not getting revenue in. Would it be much more cost-effective in another program? Are we not going to pick up any savings? If a client is moved and can be more self-sufficient, which is the idea, what I'm hearing earlier, is that...that's less expensive, isn't it, or is it not? [LR283]

SANDY SOSTAD: The clients will move to probably a community-based program or a nursing home and then the revenue will follow the client there. So you're going to get less, quote, federal revenue at the community-based level than you would get at the institutional level. That's why we have, quote, waivers, because you waive that cost of the...the higher cost at the institution and it goes down to the community-based, the lower cost level, that Medicaid reimburses then, so... [LR283]

SENATOR GAY: Overall, though, I mean you're looking at one at BSDC (inaudible) overall budget. Wouldn't you still get some savings somewhere there? Because the federal government is going to pay less, yeah, we're going to pay less, but it's the best thing in the long run for everybody, federal/state taxpayer, plus qualify of life issues, is what we're trying to get here. So in a way, I know we got to look at the numbers, but when you move people out, do we know that number? Is that number in there of the cost of the... [LR283]

SANDY SOSTAD: We'll get to that later on... [LR283]

SENATOR GAY: Okay. I'll wait. [LR283]

SANDY SOSTAD: ...in terms of when you move from Beatrice, say, $150,000 down to a community-based program. You're going to get a lower, quote, average cost, depending upon what kind of service that they move to. [LR283]

SENATOR GAY: Yeah, that are being provided because it's... [LR283]

SANDY SOSTAD: And we'll talk about that in a little bit, so... [LR283]

SENATOR GAY: Okay. I'll wait. Thanks. [LR283]

SENATOR LATHROP: Senator Harms. [LR283]

SENATOR HARMS: I'm sorry. [LR283]

SENATOR LATHROP: No, don't apologize. [LR283]

SENATOR HARMS: Sandy, it doesn't...when we move clients to a nursing home, doesn't mean that those costs are going to go down. They're transferred, but the costs may very well go up because of the expense there compared to where we are today. Is that correct? [LR283]

SANDY SOSTAD: That's where maybe Vivianne can address that or Willard. [LR283]

VIVIANNE CHAUMONT: I'm Vivianne Chaumont. Probably not. The cost of a nursing home is usually much cheaper than the cost of an ICF/MR. [LR283]

SENATOR HARMS: Really? [LR283]

VIVIANNE CHAUMONT: Yes. [LR283]

SENATOR HARMS: Thank you. [LR283]

SANDY SOSTAD: Okay. And then the last two pages here in just this section would be, again, we talked about John's shop, developmental disability administration. There is the 15 folks that work in that section right now and the funding for that. There is a Medicaid match for that, for the administrative component in the department. And then on page 24 you'll see the budget for the service coordinators that are out in the five areas of the state and there's approximately 222 people that do the service coordination component; again, a Medicaid match for that also. Okay? [LR283]

SENATOR LATHROP: Can I ask a question? And I may be getting ahead of ourselves a little bit, but when we talk about a Medicaid match for that service, is that part of the $28 million that's in jeopardy with our decertification, or is this coming to us without respect to that? [LR283]

SANDY SOSTAD: I don't think that's in jeopardy. [LR283]

WILLARD BOUWENS: This is a different program, Senator. [LR283]

SENATOR LATHROP: Different program? Okay. [LR283]

WILLARD BOUWENS: Yes. [LR283]

SANDY SOSTAD: Okay. Now if we go to the next section, this is what I would call the aid to developmental disability programs. Just to give you a little brief history, back in 1967...well, back...really back in the early fifties, middle fifties, early sixties, that's when community-based programs sort of developed and they were really developed at the local level. The state really didn't get into that until about 1967 when we created a

Division of Mental Retardation. That was in the Department of Health. And then in 1968, we had an Office of Mental Retardation. That was in the Department of Public Institutions. And then in 1973 they actually formally created regions, community-based programs in statutes. For a long, long time there were six regions, six providers and a couple private providers. Now we have, and you'll see that on one of the other pages we have, I think John said somewhere around 30-plus providers, plus we have a lot of people, individuals, that provide respite services. So you have a lot of entities providing developmental disability services in the different areas of the state. What I wanted to talk about here on the first chart, when we first funded, the state went in and began funding developmental disability programs, we put in about $650,000 of General Funds. That was back in fiscal year '71. If you look at the chart on page 26, you can see now, and the chart on page 27, we're roughly at $71 million worth of General Funds for next fiscal year. So the effort has increased. But what has changed is when we initially did it, General Funds were about 60 percent and local funds were about 40 percent. And now, due to the Medicaid waivers that began in about 1987, now we're seeing a reverse, where the federal funding is roughly 60 percent and state funding is roughly 40 percent. So that's what we're beginning to see. I have sort of a busy chart there on page 27. What I wanted to talk about is really focused on the last 15 years in DD services. What you'll see on the chart is probably what I would call the initiatives, in terms of what the Legislature and the Governor have funded, in terms of what we wanted to do in terms of DD services. And down towards the bottom in the left-hand corner you'll see the bills that I think were somewhat important to making these things be accomplished. I know it's little print, but it's what we like to use, and I like to use for my spreadsheet. Probably the first bill that I think was really important--they talked about it yesterday--LB830 in 1991. That bill established the DD Services Act, and in my mind it established two entitlements: first entitlement was service coordination for everyone. Every person that's eligible for DD services gets service coordination. The Legislature established that. Second entitlement was transition. Kids that graduate and are 21 receive transition. Those are the two entitlements. If you go back to the middle of this sheet on the left-hand side--skip the base; that's just stuff that I use--and you go down to the rate equity increase, transition increase, and waiting list, those are the categories that the Legislature has chosen to fund over time, in terms of developmental disability aid. So for instance, in 1995-96 Governor Nelson had a...called a blueprint back then, and he said, we're going to take the federal funds that are coming to the state of Nebraska, and we are going to fund everyone on the waiting list. And we're going to leverage...we're going to get client funds, so clients have to pay for services, also. So that was the initiative in '95-96, and that was when we began...we wanted to serve everyone on the waiting list with the funding that was provided that year. We began the intensive treatment service down at Beatrice, and transition was funded and service coordination. So that's when you began to see LB830 implemented in '95-96, through a Governor's initiative. During the same year the Appropriations Committee and the Legislature said, we have another priority; we want to do rate equity; we want all the providers to be paid, at some point in time, the same rate for the services that they provide. So the Legislature began this

initiative, and if you look under rate equity increases, they put in $5.6 million in '95-96 and we began moving towards using a methodology that would pay everyone the same rate for the service that they provided. And you can see over time the money that was put in for rate equity, and I know you remember the Legislature debated that again in the past year, where we put in another $3 million in the current...in the last legislative session for rate equity, to bring those rates for every provider to the same amount. And also the increase each year is based upon the developmental tech position at Beatrice and how much that position increases each year. That's what drives the rate increase every year. If you'll notice, if you get to the far right column on rate equity, we're only at 95.5 percent for next fiscal year. In other words, we would have needed $3 million to $3.5 million more to be able to "fund" the rate equity mechanism to provide the rates that the methodology says that we should provide. Methodology, again, is not legislative; it is intent language only. It is nothing in statute. So if you flip to the next page, I tried to sort of summarize...yeah. [LR283]

SENATOR LATHROP: Hang on just a second, if you would. Senator Harms has a question. [LR283]

SENATOR HARMS: Rate equity. As you know, that was--bringing this up now--that was a real debate in Appropriations Committee, and our understanding was when we did that, that everybody would have at least, you know, an equal increase, and that did not happen. And there was a lot of hard feelings over that. Can you maybe explain to us, you know, what really does take place, because to be honest with you, it didn't occur. That's the thing we thought was occurring. So maybe other senators would have the same questions. [LR283]

SANDY SOSTAD: I think what...if you'll notice that we got to 100 percent of rate equity in fiscal year '04-05, real close in '06-07, a little bit less in the current year. Once we reached 100 percent of methodology for rate equity, then it became, what happens to that salary at Beatrice? So we have a position down there--it used to be DD Tech I. Now it's DD Tech II, because there aren't any DD Tech Is. So whatever happens to that salary at Beatrice, that's the percentage increase that the Legislature has indicated, if they follow the rate equity methodology, they would put in. So in the last biennium, this most current biennium, when the state bargained for that position down at Beatrice, there was a huge increase, percentagewise, and what happened to that salary. So I think over the biennium, it was roughly a 12.7 percent increase in that salary. So it would have taken a lot of money to get to that 12.7 percent increase and to make the methodology "equal" 100 percent. So the Legislature put $3 million in last year. It probably would have taken about $6.5 million to get to that point in time, to make this be at 100 percent of methodology. So I don't know if that answers your question. [LR283]

SENATOR HARMS: That's fine, that's fine. [LR283]

SANDY SOSTAD: Okay. [LR283]

SENATOR LATHROP: Can I ask a question, just to make sure I understand that. There is some relationship between what we're paying in Beatrice and what we pay the providers in the community for their care. We'll talk about the formula a little later on. But what you're talking about with the rate equity increase is that if we increase salaries at Beatrice for the Tech II by 6 percent, then to follow the rate equity increase we'd have to have a like increase for community-based providers. [LR283]

SANDY SOSTAD: That's the way the methodology is working at the present time. [LR283]

SENATOR LATHROP: And last year we just didn't put enough money in to make up for that. [LR283]

SANDY SOSTAD: Right, right. [LR283]

SENATOR LATHROP: Okay. Then I think I do understand. [LR283]

SANDY SOSTAD: And what that allows is the same rate to be paid to every provider for each type of service that they provide, so. If you go to the next page, page 28, this sort of shows you over time, the last 15 years, where has the Legislature...where has the funding been concentrated. And as you can see, the priority has been rate equity. The Legislature has said, we're going to spend 56 percent of the $126 million, $125 million that we've put in...we spent it on rate equity; 23 percent, because that was an entitlement--that is in state law--went to transition, for those kids coming out of high school. And when we had some money, 24 percent went to address the waiting list. So you had those competing needs in the area of developmental disability funding. Where are you going to put your money? And I think the Legislature has--at least the Appropriations Committee--has looked at, we wanted to keep the provider rates at a certain level. We want to make sure that we have the providers out in the community, so they have emphasized the rate equity, at least from my perspective. That has been where their emphasis has been over the last 15 years, other than the entitlement that we feel like we have to fund, so. Okay, the next chart would show you--this was done, I believe, by Don--but it would show you the change in the transition funding for high school graduates as we began funding it in '95-96. You can see the number of graduates that came in and have been funded by roughly $27 million to $29 million probably now in this current year, in terms of transition funding. Again, that is a statutory requirement, or we look at it like a statutory requirement. It's an entitlement for those kids. We talked a little bit this morning about what I would call the gap in services. I would say the school districts tend to keep the kids in school until they reach 21, so that they don't have that gap in services, because they have to be 21 to access the services in the system. We've had bill in past legislative sessions, not real recent, where we

actually had said, okay, we're going to fund them if they graduate at age 18. But we're talking, then, probably a fiscal impact of somewhere around $7 million, $8 million to fund them if they graduated at 18 and not have that cliff effect, you know. So you will see a lot of these kids stay in school till 21, to retain those services, so. The next page, page 30, this is a snapshot view of the last year that we paid--not the current year, but last year--actual payments that went to the DD providers. That shows you a list of the providers. You'll see that, like Region V, is the initial one, Region VI is the second provider, Region IV is the third provider, and then we get down to Region III--it's right in there--and then you see Regions I and II. So the regions are still the primary recipient, I guess, of funds. And then you have some private providers that also provide a great deal of services. So that shows you how the funds go out in terms of aid, who the providers are. [LR283]

SENATOR HARMS: Mr. Chairman, I... [LR283]

SENATOR LATHROP: Yes, sir. I'm sorry. [LR283]

SENATOR HARMS: Sandy, on these the (inaudible) contracts, what we have here, how do we actually supervise those? And secondly, how do we follow up to determine whether or not the contract requirements are absolutely being met? Because I have some...I just have some concerns about that. And so, how do we do that, and are these being met? And who supervises that and... [LR283]

SANDY SOSTAD: I think that's what Don was getting at this morning, the oversight. The oversight is through the contract mechanism. Maybe Willard or Don can speak more. [LR283]

DON SEVERANCE: Okay. Oversight as far as the billing, or... [LR283]

SENATOR HARMS: I'm just saying that when you have a third-party contract to provide services, you enter to them with a contract? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR HARMS: You know, I'm just saying, how do we know that they meet all of the contract requirements, and who goes out and monitors that, to make sure that the dollars are being spent appropriately in every place? [LR283]

DON SEVERANCE: Okay. Service coordination on an ongoing basis goes out and monitors to make sure...because part of what...the contract says that they'll provide what is in the IPP for the individual. So the service coordinator goes and makes sure that those services are actually delivered. They do formal monitorings and they do informal monitorings, both. We also have a certification process. We go out and certify

the providers, where they go through and look and make sure that everything is done appropriately. For that, it's done at least biannually. [LR283]

SENATOR HARMS: Is there a final report that shows that, in all of Health and Human Services third-party contracts, that shows that...whether they've met the requirements, beyond just this one? [LR283]

DON SEVERANCE: The provider profile that we handed out actually tells you what their accreditation is or whether they got a one- or two-year certification, so. [LR283]

SENATOR HARMS: Well, what I'm saying is, have they met what they said they would do,... [LR283]

DON SEVERANCE: Um-hum. [LR283]

SENATOR HARMS: ...in the contract, all across the board? That's okay. Leave it at that, I'll... [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: Would that be...could the State Auditor, as well, follow up on that, too, because just recently...the State Auditor at any time...or how does that work? Could he come in and say, we're not getting what we're paying for here? And that happens a lot. So is he the final...he could look into this, too, right? [LR283]

DON SEVERANCE: Well, he could, yes, in the case you're talking about... [LR283]

SENATOR GAY: Just not every day, but... [LR283]

DON SEVERANCE: Yeah, we kind of identified some issues and asked for some assistance. [LR283]

SENATOR GAY: So you have that backup. [LR283]

SENATOR LATHROP: Okay. [LR283]

SANDY SOSTAD: Okay. The next couple of pages here I'll probably defer to Vivianne or the other folks. This is just basically some of what you saw yesterday. It lays out the development disability waivers that we have, the number of slots, the slots used, the percentage used, what kinds of services they get. (Cell phone ringing.) Okay. (Laughter) And this is as of May of 2008. (Cell phone ringing.) The only thing I totaled up at the

bottom is the total slots approved and the slots used, and we're using roughly 81 percent of the slots that we have available, and maybe the agency could address, you know, why aren't we using all the slots? Or is this good, is this not good, in terms of, you know, what we have available? [LR283]

SENATOR LATHROP: If I can interject, maybe you could tell us...give me the background on what a waiver is, since I'm not over in Health and Human Services Committee. And just as a matter of background, since we're about to talk about waivers, explain how that works. That's a federal government Medicaid sort of thing; am I right? [LR283]

VIVIANNE CHAUMONT: Yes, it is. [LR283]

SENATOR LATHROP: Maybe you could share that, a little background, please. [LR283]

VIVIANNE CHAUMONT: Okay. Vivianne Chaumont, HCBS, Home and Community-Based Services waivers, are what's known in Medicaid as 1915(c) waivers. And basically, what this waiver does is it allows the state to provide services that the state might not otherwise pay for the rest of Medicaid clients, in order to effectuate cost effectiveness in delivery of services in the community, as opposed to an institution. So in other words, what the standard is, is that you have to look at a cost-effectiveness analysis to say that the person in the community would be less expensive to care for than the person in an institution. And therefore, since there's going to be savings, both to the federal government and to the state government, we're going to go ahead and pay for services which are not necessarily for general Medicaid services because they're not medical in nature. Medicaid pays for services that are medical in nature. So that's what a 1915(b) waiver. Now the state can limit enrollment, and that's what slots are. So you ask the state...you ask CMS in the waiver how many slots you're going to have, how many people you're going to have in the waiver, and you can limit it, which is usually not something that is allowed in the regular Medicaid program. You don't get to say we're only going to serve 300 people in Medicaid. So that's...those are really the two things that you offer services that are not normally covered by Medicaid, and you offer...and you can limit it and there's a cost-effectiveness analysis that's involved. [LR283]

SENATOR LATHROP: Where does the waiver come in? Who is waiving what? [LR283]

VIVIANNE CHAUMONT: What you're doing is you're waiving general Medicaid requirements that say you have to offer "statewideness," you have to offer the same services to everybody across the state. You don't have to offer these services to everybody across the state. You can limit it to a population, specific population, and you can limit the number of people on there. So you're waiving normal Medicaid requirements. [LR283]

SENATOR LATHROP: And what we do with a waiver is we essentially say to Medicaid, this is our idea, but we need to have you waive some of the requirements that Medicaid has with respect to the delivery of services. [LR283]

VIVIANNE CHAUMONT: Exactly. [LR283]

SENATOR LATHROP: When you have a waiver--I've heard the term used...with respect to Medicaid, I've heard the term used in a program that with the waiver you get money. So are there programs that if you do a waiver or you request a waiver, it's approved, then there's money that comes from Medicaid, or am I misunderstanding it? [LR283]

VIVIANNE CHAUMONT: Right. If you get your waiver approved, then you get federal matching funds just like a Medicaid, so that these waiver services, these DD waivers, are matched by the federal government, just like inpatient hospitalization would be. [LR283]

SENATOR LATHROP: So by asking for a waiver, there must be some inducement from the federal government to ask for a waiver; am I right? [LR283]

VIVIANNE CHAUMONT: The inducement is the cost savings. [LR283]

SENATOR LATHROP: Okay. [LR283]

VIVIANNE CHAUMONT: And the fact that now you're offering services in the community which is, you know, now seen as the best way to provide services for people. [LR283]

SENATOR LATHROP: And is that savings...if we ask for a waiver, then we're given permission not to do something, do we save more than the federal government, so therefore we come out ahead? [LR283]

VIVIANNE CHAUMONT: We come out ahead, but we don't save any more than the federal government. If you have somebody in a nursing home that we're paying $5,000 a month for, and then you move them as a result of this waiver into the community and you provide things like chore services, you allow them to have their house...you know, help them have their house cleaned, you get groceries, you help them with the laundry, have somebody come in and do their medication, that kind of thing, those are not medical services. But they're allowing that person to be at home, say, instead of in an institution, so maybe they cost $3,000 at home. So you just saved $2,000 on that client, and then so the federal government saves 60 percent of that $2,000, and the state saves the 40 percent of that $2,000. [LR283]

SENATOR LATHROP: So the advantage to us in a waiver is we're saving part of the overall cost that we share with the federal government. [LR283]

VIVIANNE CHAUMONT: It's the cost effectiveness and the quality of life, both those two things. [LR283]

SENATOR LATHROP: You have...and I'm not looking necessarily at specific lines in here, but you have slots approved, slots used. Do we have to...when we get this waiver, do we have to say, we want to do this is X number of people that are currently receiving Medicaid benefits? [LR283]

VIVIANNE CHAUMONT: For any home and community-based services, you tell them how many slots you want, and then you can't go above those slots without asking for permission to expand. [LR283]

SENATOR LATHROP: Okay. You answered my question, or at least you gave me the background I'm interested in. Senator Stuthman. [LR283]

SENATOR STUTHMAN: Vivianne, does a client request the waiver, or does the federal government grant a waiver? [LR283]

VIVIANNE CHAUMONT: The Medicaid agency usually requests a waiver of the federal government; says, we want to run this program. Will you go ahead and approve it? And it's a lot of paperwork and a lot of approval process, and then the federal government says, okay, this works for us, as well; you can go ahead. And then clients can apply to be in...to receive the services that are in the waiver. [LR283]

SENATOR STUTHMAN: So you as the department would request a waiver from the federal government, because you can see a cost saving and a need in that community and in that service? [LR283]

VIVIANNE CHAUMONT: Correct. [LR283]

SENATOR STUTHMAN: Thank you. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: Vivianne, when you get those waivers, though, how often do they say--or maybe they don't--they say, oh, by the way we're not going to do that anymore? Do you get notices that say, we granted you a waiver four years ago, but we're not doing any more? Are those kind of permanent things, or... [LR283]

VIVIANNE CHAUMONT: We haven't seen that at all in the home and community-based

services. [LR283]

SENATOR GAY: In other...for other things, other waivers, though, that we apply for, do they ever come back and say, oh, by the way, you're not getting the ten of these. [LR283]

VIVIANNE CHAUMONT: The only other waivers that I can think of are...there's family planning waivers and there's managed care waivers, and I've never known the federal government to back off. [LR283]

SENATOR GAY: So they're fairly...they're permanent, fairly permanent. We're saving money, so they'd want to continue? [LR283]

VIVIANNE CHAUMONT: Yes. And actually they recently have made some of these waivers, then they put it in the state plan so you don't have to keep renewing it every, I think it's five years for the waivers, and it's a lot of paperwork and a lot of...so yeah. I think the federal government is very committed to these programs. I've never seen that. [LR283]

SENATOR GAY: Okay. [LR283]

SENATOR LATHROP: Good. Okay. Sorry to interrupt, but I didn't understand the whole waiver business, so. [LR283]

SANDY SOSTAD: Well, and I guess the only question I would have of Vivianne is, you know, in the first waiver here, the home and community-based, the comprehensive waiver, we're using about 90 percent of that waiver. And then in some of the ones...I know the last one, the community supports, that's a relatively new waiver we just got. But the ones in between I was just curious about the utilization. Why wouldn't we be using most of those slots, or... [LR283]

VIVIANNE CHAUMONT: That's not a question for me. The Medicaid division is the single state agency that has to put forth the waiver, but in the state of Nebraska the Division of Developmental Disabilities administers the DD waivers, and so it would be a question (inaudible). [LR283]

DON SEVERANCE: Yeah. So we have asked for slots to be increased. On some of them, like the community supports waiver, that just started, so that number is going to increase and we will be using more of those slots. The children's waiver just got increased; it was at 250, and we were always using all the slots so we wanted them increased so that we'd get more children on the waiver. So that's part of why that's not being used as high. So for the most part, yeah, we try to use all the slots that we can, because we're trying to maximize federal funding. [LR283]

SENATOR LATHROP: Senator Gay. It's getting...long morning. [LR283]

SENATOR GAY: Thanks. If we're going back and forth, then, and DD asks for...we have the waivers set up now. We went to the (inaudible), set up the waiver. We have the list. That's why I'm saying if there were 40 people on a list for one of these...and if one of these waivers would work for them, how do we coordinate between Vivianne's office and your office, that we're filling these slots? Because it seems to me like a lot of work. You know, we have them available, let's go use them. So are we actively pursuing that, where we're going to get these filled up, do you think? [LR283]

DON SEVERANCE: Well, yeah. We're actually pursuing it. We have disability services specialists out in the field, and we're going to review every person to see whether or not they would be eligible for the waivers, for whatever the appropriate waiver is for the service they could receive. And so they'd make the effort to go and get the person signed up for the waiver, yeah. [LR283]

SENATOR GAY: Oh, they do? [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR GAY: And then they tell you, we're making headway on...let's say this home and community-based supports, community supports for adults. So we've got 200 slots approved. We've only used 59, but we're making good progress then. So they're out actively today or any other day trying to find clients to go fill these slots? [LR283]

DON SEVERANCE: Yeah. Actually, on that one, that's a new program and virtually everybody that's in that program is on that waiver. So as we get more people to take the service, then we'll get more people on the waiver at the same time. [LR283]

SENATOR GAY: Yeah. But I guess what I'm looking for is the assurance that we're out actively moving our list and trying to fill these, when we can. I mean, obviously some clients wouldn't qualify for some of these things, but the ones that do, we're...every day, these people are out...employees are out working hard to get them filled, right? [LR283]

DON SEVERANCE: Yeah, yeah, because it goes and stretches our budget. The more federal money we have, the more people we can serve, so. [LR283]

SENATOR GAY: But it's a winner for everybody, though, like we said. [LR283]

DON SEVERANCE: Yes. [LR283]

SANDY SOSTAD: And the next sheet was provided by Medicaid. I don't know if

Vivianne wants to say anything about this, in terms of how Medicaid funds the claims paid in the fiscal year 2007. [LR283]

VIVIANNE CHAUMONT: I'm Vivianne Chaumont. This is just a sheet that tells every Medicaid expenditure that we've had for clients who are developmentally disabled. And the first five columns are the clients by waiver. So what we expend, you start at the top, what the waiver services cost, what the DD services coordination--which are the 225 people, what they cost--and then a subtotal of what the medical services are, because if you're a Medicaid client, you obviously are not just eligible for the waiver services, you're eligible for regular Medicaid services. So you're talking about prescription drugs, nursing facilities, home health--all of the different medical services that Medicaid pays for. And then the very last column is the costs that we have for people who are not...DD clients who are not on a waiver, and so those would be people in ICF/MRs, and then how much money for the medical services we spend. So altogether, Medicaid spends about $250 million a year on DD services, including waiver services, ICF/MR payments, and medical services. [LR283]

SANDY SOSTAD: And that is general and federal funds, the $250 million. [LR283]

VIVIANNE CHAUMONT: Forty percent of that would be state funds, and 60 percent of that would be federal funds. [LR283]

SENATOR LATHROP: Yeah. I think you did say that the federal government...so the total amount is $250 million a year? Where in this do we see the money that was put in jeopardy by our decertification? Is that on that... [LR283]

VIVIANNE CHAUMONT: That would be the Beatrice, payments to Beatrice. So that would be... [LR283]

SENATOR LATHROP: On page 32. Is it found on page 32 in one of those numbers? [LR283]

VIVIANNE CHAUMONT: It would be some of the money that's the very...let's see, the sixth column, the nonwaiver, and that intermediate care facility, second line down, $64 million. That is private ICF/MRs plus Beatrice, so that would be some of that. [LR283]

SENATOR LATHROP: So that's where the $28 million is, or whatever the number is? [LR283]

WILLARD BOUWENS: Yes. [LR283]

SENATOR LATHROP: Thank you. [LR283]

SANDY SOSTAD: Okay. And then the last...just the last two pages are...sort of really quick, but gives you an idea. Page 34, community-based providers, we talked about the rates they're paid. They're paid a different rate based upon the kind of service they provide. These rates are units based on units of service, so they would have to speak a little bit what the units of service are. But if you provide this unit of service, then you're paid this rate. These are the rates that go up by the percentage that the Legislature puts into the rate methodology. If you flip to the last page real quickly, it tells you the average cost by waiver. So if we put a person in a community-based program on the comprehensive adult waiver, which would be very close, as close as you could get to what Beatrice would have without some of the medical components, you're talking around $50,000 in the community versus maybe $150,000 at Beatrice. So there's your comparison there. And depending upon what services, what array of services a client needs, you would have different average costs for that client. But Don worked on these numbers and he could maybe answer some questions, if you have, on that. [LR283]

SENATOR LATHROP: I think this would be a good time to break for lunch. (Laughter) We've kind of gotten in your presentation to the community based and the cost of community-based care, and that's going to segue into the formula. And I think...are you going to talk about that too, Don? I see John raising his hand. The two of you are going to tag team--talk about the formula for determining how much money will follow a patient into the community-based care. So perhaps we can take up the last two pages of this presentation, ask questions, and go into the formula after lunch. All right? So let's return at 1:30 p.m. [LR283]

SENATOR LATHROP: We're right where we left off, except that we lost Vivianne, right? [LR283]

JOHN WYVILL: Yeah, I think we lost Vivianne. [LR283]

SENATOR LATHROP: Okay. I see you brought a flow chart. Maybe we'll get to the flow chart after we cover the last page, and that was something we were hearing from you on. Is that right? [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: Good. Why don't we...go ahead, Don. [LR283]

DON SEVERANCE: Okay. Community providers unit rates are on page 34. Those are basically the rates we pay per hour of service provided to individuals and services. So it would be kind of comparable to the number of staff hours per provider that are provided. The rate also includes additional payment for training, supervision, administrative costs, facility costs, other costs that are...go into it. So there's quite a bit that goes into a unit rate. And that's why they vary somewhat between assisted and supported day versus

assisted/supported residential, because there are just different components that go into them. [LR283]

SENATOR LATHROP: Okay. We're going to ask you to talk into the mike and be a little louder. [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: They're cupping their ear like this in the back row. [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: You're fine. Let me ask you a question then, and not to get too far ahead of ourselves, you're going to talk about a formula for deciding when a particular person with developmental disabilities goes into a community-based program. Does that formula then give us some fraction or multiple for this unit rate? [LR283]

DON SEVERANCE: Yeah. Basically, the way we do it is the formula for the OAP, that we'll be talking about later, will actually kind of give you an overall amount, and then that's divided out by the rate, unit rate amount. So it tells how many units of service a person would receive. [LR283]

SENATOR LATHROP: Okay, okay. So just to give it some context, we'll talk about the formula shortly, but this is the unit rate, or this is the summary of the unit rates for the last several years. [LR283]

DON SEVERANCE: That's correct. Okay. And the back of the sheet just has...we talked about waivers this morning. And also people that are on state aid or just DD aid, state funds. And so this gives kind of the average cost for people on each of the waivers. Children's waiver is just basically a residential waiver, because they're receiving day services through school, service coordination, just service coordination. The DD aid could be any combination of services. The comprehensive adult waiver would be both day and res., which is why it's closer to $50,000. The adult day waiver, again, would just be for day services, and the adult residential waiver would only have residential services. That amount under the total really is kind of inaccurate. I think the average for everybody in services, as far as off these waivers, is around $34,000. [LR283]

SENATOR LATHROP: Okay. Okay. Thank you for that explanation of the last two pages. Let's see if it provoked any questions? Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. When you just stated the average cost per client or whatever, or the one receiving services is $34,000 a year? [LR283]

DON SEVERANCE: Yeah, for people in community-based...yeah, what I'd call hard services. [LR283]

SENATOR STUTHMAN: In community-based setting, services provided cost whoever pays $34,000? [LR283]

DON SEVERANCE: On average, yes. [LR283]

SENATOR STUTHMAN: On average. Okay, thank you. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: When you look at these, though, let's say a comprehensive adult waiver, which is you said residential services, day services, just what it says, comprehensive, where is it that...is there anything that you might have handed out and I just don't have it in front of me that says what each one of these things is and how you qualify to get in there? You know, if I had a person that wanted to get in there, all the different things I have to meet to be able to not only get on the list, but then get through the list and start receiving services. Do we have that somewhere? Did you hand that out to us? [LR283]

DON SEVERANCE: No, we didn't hand that out but could probably come up with something for you. [LR283]

SENATOR GAY: At some point, I think that would be good for everybody. Because, I mean, I know you guys...your staff, you deal with these things all the time. But here we are trying to figure this out. And it would be nice to say exactly what a children's waiver encompasses. So it doesn't have to be today, but that's something that I think would be very helpful as we look through all this data, so we know what we're paying for, you know. [LR283]

SENATOR LATHROP: The criteria. [LR283]

SENATOR GAY: Yeah, the criteria of getting on there, yeah, and what's provided out in the community. Because I know some of the things, you know, I'm no expert at all by any means, but I kind of know some of the things that are happening in the community. But it would be kind of good to have a better summary. You handed out a book of all the services that are being provided by people, what that means though doesn't do me much good, unless I know what these things mean. So... [LR283]

DON SEVERANCE: Okay. We'll get that to you. [LR283]

SENATOR LATHROP: Any other questions? Sandy is still in the crowd, I see, and I wondering if anybody needs to have her come back to answer any questions before we move on to the organizational chart? Doesn't look like it. All right. Thank you very much for your presentation. It was very, very helpful. We have John Wyvill back to talk about the organizational chart and, I guess, to answer questions for us. [LR283]

JOHN WYVILL: (Exhibits 3 and 4) Yeah, the organizational chart and OAP. I'm John Wyvill, director of Developmental Disabilities, for the record. Need...before we touch on the organizational chart, need to give you some hard numbers that we have at the request of Senator Lathrop about people since March, where they're going, placement outside of BSDC. We have 22 that are going into a nursing facility, and we have 13 for DD community providers, and we have two deaths at that time. Also, at one time Senator Gay had requested a tally of how we track where they're going. This is just a simple redacted chart. We will give each one of you members something in the mail in the next couple of days that shows you where the placements are going without the client identifier. And that will be there. And if you want to have any questions about that, that will be helpful for you for the record. [LR283]

SENATOR LATHROP: And if you could provide Beth Otto with a copy of that, so that we can get it into the record, that would be great. [LR283]

JOHN WYVILL: Will do so. Yeah, okay. [LR283]

SENATOR LATHROP: That document that you were just talking about, that explains where each of the 22 people, what nursing homes they went into? [LR283]

JOHN WYVILL: Nursing homes, developmental disability facilities, things like that. And we'll track it all the way back since December. [LR283]

SENATOR LATHROP: Okay. [LR283]

SENATOR GAY: Are you going to send those to the offices, not our home? [LR283]

JOHN WYVILL: Yeah. [LR283]

SENATOR GAY: Yeah. Okay. [LR283]

JOHN WYVILL: Yeah, yeah, won't send them home. [LR283]

SENATOR GAY: Okay. [LR283]

SENATOR LATHROP: Our dining room tables are covered with stuff. [LR283]

JOHN WYVILL: Understand. I'm the same way. [LR283]

SENATOR LATHROP: As long as we're on that subject, and before we go to this, let me ask you about the folks that went into nursing homes. When we take somebody from a Beatrice-style setting, where they're getting habilitation, and go to a nursing home, there is no pretence that there is habilitation going on in the nursing home. Would that be true? [LR283]

JOHN WYVILL: That's correct. There's nursing level of care; however, money follows the person. We will be, if we have not already, follow up to see if any of them will be interested in community placement after the next step. So if not, nursing home, and that's it. It just depends on the individual. But that's the guardian's preference. [LR283]

SENATOR LATHROP: But when we send...when we place somebody in a nursing home do we necessarily have to first conclude that they're not capable of habilitation? [LR283]

JOHN WYVILL: They have PASSAR. They do the PASSAR with... [LR283]

SENATOR LATHROP: I'm sorry, I didn't understand. [LR283]

JOHN WYVILL: PASSAR, P-A-S-S-A-R, which is another assessment to see their abilities. And they have to pass PASSAR to get into a nursing home. [LR283]

SENATOR LATHROP: And does that mean they've developed all the skills that they can, or they've hit some plateau, or does it mean they're not capable of learning any skills? What's passing the PASSAR mean? [LR283]

JOHN WYVILL: That they are eligible for nursing home level of care. [LR283]

SENATOR LATHROP: And what does it tell us about their skills or their ability to learn or their needs? [LR283]

JOHN WYVILL: I believe it...I don't know the exact answer. But I believe it's not able to improve any more. [LR283]

SENATOR LATHROP: Okay. And in each of the 22 placements into a nursing home, a guardian has agreed to that? [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: None of those were involuntary? [LR283]

JOHN WYVILL: Yeah. Yeah, that's correct. Now there's some that wanted nursing home placement and did not pass the PASSAR, so they have to either consider staying at BSDC or looking at community-based (inaudible). So it's a safety net so we're not pushing people into nursing homes. [LR283]

SENATOR LATHROP: Good, good. Thank you. And, I guess, you can explain the organizational charts for us. [LR283]

JOHN WYVILL: Yeah. Senator Harms had requested an organizational chart. An organizational chart, which is a draft, which was 5-28-08. Organizationally we have made some changes. Just so you know, Senator, we consulted with my...I belong to a development disabilities directors organization, and they put me in contact with nationally recognized experts, such as Liberty Healthcare. And after consulting with them and others, we have reconstituted the management team and how we're doing it to be consistent with best practices in ICF/MRs. And this is what we have, is we have the chief executive officer, and then we have a project manager, and then we have several senior managers underneath. The medical director, which is an interim right now, we are going to be, hopefully, making an announcement within the next week or two of an appointment of a new medical director. The quality improvement manager, active treatment administrator, and neighborhood services administrator, we're doing a nationwide search to fill and place those, probably from someone outside the state of Nebraska will be coming in to do those services. And then we have the facility operations, and then you see the breakdown in terms of how the areas are organized. And that's the organizational chart you requested. And just as an added bonus, we just threw in the Division of Developmental Disabilities one to show you the long-term care service coordinators that work throughout the state. [LR283]

SENATOR HARMS: Thank you very much. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR LATHROP: Give them just a second to read it. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR LATHROP: See if that provokes...bring up any questions. Maybe while they're doing it, can you...we haven't talked...we've talked a lot about Beatrice, but not a lot about Bridges. And Bridges is actually part of Beatrice State Development Center, but it's found at the Hastings Regional Center. Am I right? [LR283]

JOHN WYVILL: Um-hum, that's correct, Senator. [LR283]

SENATOR LATHROP: Can you just tell us what's special about the Bridges Program or identify the clients and the reason people go to Bridges? How many beds you have? [LR283]

JOHN WYVILL: The reason that they go to Bridges is they're the most violent offenders that pose a risk to themselves and others and/or sexual predators or perpetrators. And that is the safest place for them and for the community to be at. [LR283]

SENATOR LATHROP: They are folks with developmental disabilities who are...have... [LR283]

JOHN WYVILL: That's correct. [LR283]

SENATOR LATHROP: ...have... [LR283]

JOHN WYVILL: Have...if they were not there, they'd probably be in jail or, unfortunately, even worse circumstances. [LR283]

SENATOR LATHROP: And what are...what's the capacity of the Bridges Program? [LR283]

JOHN WYVILL: I believe it is 12. We have 14 beds, but it's usually operating under 12 or 13 people that are clients. [LR283]

SENATOR LATHROP: So we have more capacity than people? [LR283]

JOHN WYVILL: One more. I think I said that wrong. We have 14 beds; I think we have 12 or 13 clients. [LR283]

SENATOR LATHROP: Okay. And I don't want to open this completely up, this can of worms, but the Hastings Regional Center, what's there besides the Bridges Program? [LR283]

JOHN WYVILL: Senator, I couldn't tell you. I'm just focused on the Bridges unit. I know they have behavioral health there. [LR283]

SENATOR LATHROP: As we begin to have vacant cottages at Beatrice, does it make sense to move the Bridges Program there, or do we have to have fence around these people? Or why is the Bridges in Hastings and not on the campus of Beatrice State Development Center? [LR283]

JOHN WYVILL: I think that was a decision they made prior to me coming here. I think

the unit was created, if memory serves me correctly, in response to a developmental disability client stabbing, a community-based client stabbing, I think, a five-year-old child. And there was a movement out there to identify those risks and put them in a more secure setting so that they wouldn't do it. And I think that predates me for some considerable time. And there really hadn't been much discussion about that. Senator Flood has expressed some interest in moving that facility up to Norfolk, but... [LR283]

SENATOR LATHROP: Right, and that's my concern is that we have the Bridges there. And I don't know if...we hear, from time to time, just talk on the floor, if I can use that, that Hastings doesn't have anything going on but the Bridges Program. We got a whole lot of staff and we have just a few people receiving care. But you're not the guy to answer those questions. [LR283]

JOHN WYVILL: Well, it's...they're high-risk clients. And they... [LR283]

SENATOR LATHROP: And that I can appreciate. But having a whole facility for 12 or 14 people, while we have empty buildings at Beatrice, I was just... [LR283]

JOHN WYVILL: Yeah. I would not be...to be candid, Senator, I would not feel comfortable with them being on BSDC campus right now. [LR283]

SENATOR LATHROP: Okay. Senator Cornett. [LR283]

SENATOR CORNETT: You may not know the answer to this. Bridges is for the developmentally disabled, correct? [LR283]

JOHN WYVILL: The Bridges Program, yes. [LR283]

SENATOR CORNETT: Bridges Program, yes, for the developmentally disabled that are dangerous. [LR283]

JOHN WYVILL: Yeah, dangerous or...yeah. [LR283]

SENATOR CORNETT: Danger to themselves or danger to the community. [LR283]

JOHN WYVILL: Yes. [LR283]

SENATOR CORNETT: Where are people that are mentally ill but not developmentally disabled that are dangerous, whether to themselves or to others, placed? [LR283]

JOHN WYVILL: I would think Lincoln Regional Center or others. [LR283]

SENATOR LATHROP: Regional Center. [LR283]

SENATOR CORNETT: Is it the regional? [LR283]

SENATOR GAY: And Norfolk. [LR283]

SENATOR LATHROP: Norfolk would have this...the sexual... [LR283]

SENATOR CORNETT: Predator. [LR283]

SENATOR LATHROP: ...predator types and Lincoln Regional Center. [LR283]

SENATOR CORNETT: That's it. [LR283]

SENATOR LATHROP: Okay. Any other questions, organizational chart or the Bridges? Okay. Then I think our next assignment is to learn something about this formula. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR LATHROP: I'll encourage you one more time to put the mike closer while you're talking, so the volume is being broadcast in the room. [LR283]

JOHN WYVILL: Okay. Sorry about that, Senator. The next thing that I wish to address is the question about how funds are allocated to persons in community services. In 1991, the Legislature passed into law the Developmental Disabilities Service Act, LB830, which specified that the state develop a policy which ensured the adequate and equitable distribution of financial resources based on a consistent rationale for reimbursement that allows funding to follow service recipients as their service needs change. This is also referenced to in statute as the objective assessment process. Work on this process began in 1996, and formulas for determining the funding for individuals was developed shortly after that time based on information regarding people's utilization of services as predicted by assessment of their ability. The basic idea behind the objective assessment process, or OAP, is that persons with greater abilities will need less support, and vice versa. The guiding principle of the OAP are to provide equitable funding through a revenue-neutral redistribution of available resources that is based on the abilities of the individuals versus the need of the provider. It is designed to allow the person to take the funding from one provider to another should they do so. It is also designed to allow for changes in a person's ability or circumstances, as well as aiding the division in management of its resources. This methodology was modeled off of and developed in consultation with other states who have addressed this issue. Thus, the OAP is comparable to what many other states are doing to ensure an adequate and equitable distribution of resources. I'm not going to go into the detailed explanation of the formula developed as part of the OAP process due to the complexity of the

statistical procedures used in the development. There are separate formulas for day and residential services as the mix of abilities that affects the supports a person needs varies somewhat between the two services. What a person needs for support in gaining meaningful employment is somewhat different from support the person needs to live with increasing independence. [LR283]

SENATOR LATHROP: John, can I interrupt you just for a second? Are you working off a handout? I see everybody up here looking around through their stuff. Just so that we can follow along. [LR283]

JOHN WYVILL: You should have in your booklet my testimony. I'm sorry. [LR283]

SENATOR LATHROP: That's all right. That's in this book? [LR283]

JOHN WYVILL: Yes. [LR283]

SENATOR LATHROP: And what's it under or what's the tab? [LR283]

SENATOR ADAMS: It's under that first tab. [LR283]

JOHN WYVILL: I'm sorry about that, Senator. [LR283]

SENATOR LATHROP: No, that's all right, that's all right. I just saw everybody up here digging through their papers. [LR283]

BETH OTTO: It's not the very first page. You go down a few pages and then it's (inaudible). [LR283]

SENATOR LATHROP: Okay. What's on the front? [LR283]

SENATOR GAY: Objective Assessment Process. [LR283]

SENATOR LATHROP: You can continue. I'm sorry to interrupt you, John. [LR283]

JOHN WYVILL: Oh, that's okay, that's okay. [LR283]

SENATOR CORNETT: We were just trying to keep up with you. [LR283]

BETH OTTO: Do you have extra copies? [LR283]

JOHN WYVILL: I just have one more paragraph, so if that helps. [LR283]

SENATOR LATHROP: Oh (laugh), all right, go ahead. [LR283]

JOHN WYVILL: There are...and I think, with all seriousness, I think the meat and potatoes of this is more the questions and answers process, which is why I have Don Severance here to help assist with that. The OAP was implemented in 1999 for service...for persons new to services, as well as those who request increased support within their current services. This is not to say that everyone is happy with the process. As the redistribution of available resources means some people will have to give up some of their support in order for others to have increase to ensure equity, there are those who have been resistive to fully implementing the process. We have made efforts to work with all interested parties to improve the process, and will continue to make efforts to improve the process while retaining the guiding principles and goals specified in statute. And as a handout that you have is the objective assessment process that has the description of the development of the formula used in determining the level of support. And I open it up for any questions or comments or further information that will be helpful to you in understanding the OAP process. Yes, Senator. [LR283]

SENATOR LATHROP: Oh, I'm sorry. Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. I went over this the other evening when I received this stuff. And in order to, you know, get the day services level of support in dollars, the pluses and the minuses and the factors and everything like that, does it come down to what one person thinks of the individual as how they assess the individual as far as how many support dollars? I mean, the independence index, motor skills index squared, general maladaptive index, and unusual or repetitive habits severity, how do you come up with this stuff? (Laughter) [LR283]

DON SEVERANCE: I think a lot of people have asked that question over the years. The primary instrument we use to assess people's ability is called the Inventory for Client and Agency Planning, or the ICAP. And so all these different things that you're going off of are different scales, scores, and things like that off the instrument. How we do the assessment is service coordination does the assessment. They have to interview at least two people, you know, and at times they interview three or four different people independently, so that they get independent ideas of what the person is like, plus reviewing all the records that we have on the person, so they can verify the information. So we're trying not to have it just be based on kind of a whim, you know. And I understand your question. [LR283]

SENATOR STUTHMAN: But it's one or two individuals assessing someone else and making a determination and trying to weight in all of these factors, right? [LR283]

DON SEVERANCE: Yeah, based on all the information they can gather about the person. Yes. [LR283]

SENATOR STUTHMAN: I think after you get all this plus and minuses together, you'd be ready for the mental institution. (Laughter) [LR283]

DON SEVERANCE: Computers help a lot. You know, realistically...I mean, this goes in, you know, the scores go into a program for the ICAP. And then those we use along with another computer program to go ahead and compute all that. So it does happen that way. You know, realistically we've made efforts over the years to try and improve this as far as the quality of the assessment. A lot of assessments that are done by psychologists and other people are just done with a single interview with somebody, and they decide that they have a disability or that they meet, you know, eligibility or something like that. Our effort was to try to make sure that we had enough information that the person could verify it, you know, enough to be able to basically withstand scrutiny if somebody questioned what the assessment came out to be. [LR283]

SENATOR STUTHMAN: The thing that also concerned me is the dollar amount of support service could weigh heavily upon the individual taking the assessment as how he weighted all of these factors, right? [LR283]

DON SEVERANCE: It should be based on what the person's abilities are, regardless of what kind of services they're receiving right now. Should be based on what they have the ability to do or not do would be how the instrument would be scored. [LR283]

SENATOR STUTHMAN: Okay, thank you. [LR283]

SENATOR LATHROP: I'd like to ask some questions, and maybe it will help clarify what I understand or what I think the process is like. [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: And maybe we can do that by talking about a hypothetical person wanting a particular service and let's say that, you know, I have a son or a daughter who's now 30. She's lived with me at home, and I think it's time for her to have a different situation. And so I come to the department and ask for services. And let's say that we're looking for a residential placement and community-based care is what's going to happen. You will then take my request and some service, assuming there's availability and we're not caught up in that. You will have two people assess this person to determine what their strengths and their disabilities are because the more profound their disability the more reimbursement the community-based provider deserves. That's essentially the premise, am I right? [LR283]

DON SEVERANCE: That's correct. [LR283]

SENATOR LATHROP: And the more abilities that they have the less compensation they

should receive for the services provided to that particular patient or individual. [LR283]

DON SEVERANCE: That's correct. [LR283]

SENATOR LATHROP: You do the assessment and you look for the level of disability at various functions so that you can add the sum of the needs, and that will give the community-based provider some idea of how much care they're going to have to provide to that person? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: And the amount of care, or the amount of compensation for the care provided is going to correspond to the amount of care required? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: The more high needs that person is, the more compensation they'll get for having them under their care. [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR LATHROP: The assessment is to identify the needs and the strengths so that you can figure out what's fair compensation for the person that's going to take that individual in and provide care? [LR283]

DON SEVERANCE: That's correct. [LR283]

SENATOR LATHROP: The assessments are done not just in conversation, but on objective criteria? [LR283]

DON SEVERANCE: Yes, I'm... [LR283]

SENATOR LATHROP: There's something subjective about it... [LR283]

DON SEVERANCE: Sure. [LR283]

SENATOR LATHROP: ...because one person may or may not agree that a person has a particular need or a deficit. But generally, there will be a checklist that your assessors go through to determine their level of disability in a number of different areas. [LR283]

DON SEVERANCE: That's correct. [LR283]

SENATOR LATHROP: That goes into the formula and the formula then decides how

many units of compensation will follow that patient into a community program. [LR283]

DON SEVERANCE: That's good, yes. [LR283]

SENATOR LATHROP: That about it? [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: Okay. [LR283]

JOHN WYVILL: And, Senator, we just handed out a flow chart that will just help crystallize the process using a hypothetical client. There's a couple of things that I would want to work out or point out to you. When you determine eligibility, when you determine eligibility for services, then they do an ICAP, it's completed by service coordination. Then it is scored. Then the funding units are determined. When you hear testimony later on from the providers, that determines the number of units, and that's where the providers are saying that the rate methodology, which is separate and apart from the OAP process, they need either more funds or we need to address the rate methodology. So the two issues, when you're dealing with the OAP process, that the OAP process is for units of service for the client, and then the weight methodology that is built in. Because once we determine how many units they get, automatically that determines the weight, and that creates...that creates a situation. So when you have a situation in which a client is currently with available resources, if we talk about a client feels or a parent feels that there are too little resources allocated to them, then they go through the appeals process. In effect what they're saying is, number one, we are not correct; number two, basically, you need to take services away from somebody else to provide services for me. So it's a continuum in terms of we have a finite set of money out there in how we distribute it back and forth. And that's just a little background for you. [LR283]

SENATOR LATHROP: Okay. Senator Wallman. [LR283]

SENATOR WALLMAN: Go ahead and have Senator Gay first. [LR283]

SENATOR LATHROP: All right, Senator Gay. [LR283]

SENATOR GAY: Thank you. I guess on this assessment method, I was just kind of glancing through here, and 17 states use this method? Is that what it says on this little sheet? [LR283]

DON SEVERANCE: Yeah. Yes. [LR283]

SENATOR GAY: And then this was started in '99, 2002, so it's relatively new, isn't it?

[LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR GAY: What are the other states using then? I mean, this does look fairly...well, it looks complex to us because we don't deal in this every day. But just looking at all these weights, what do other states do? I mean, is there another method out there? Are there three methods? [LR283]

DON SEVERANCE: Yeah. There's quite a few states are using kind of a comparable method to what we did. You know, I mean, it's tailored to each state because realistically, in order to develop those formulas, I had to look at current utilization of services. And what you're trying to do is predict, based on all of these factors, you know, so that you can come up with a formula that will give you what people are actually using, so that you can go forward with it. So each state varies somewhat in their mix, their kind of services and things like that. So they don't end up with exactly the same formula. [LR283]

JOHN WYVILL: And, Senator Gay, if I might follow up, and, Don, correct me if I'm wrong, is that the OAP process that we use has be set forth to us by legislation. And this OAP process, obviously, is a sore spot among some advocates and some family members. And we have met periodically with providers and also with individuals. And then we have...I always ask the rhetorical question, is there a better process out there to see? And we have not been pointed to another state. We have gotten some allusion to maybe looking at Minnesota. But that's the extent of it. So it's a question of trying to get fairness and equity. And, you know, we are certainly obviously open to better ways to do it and improve on it. [LR283]

SENATOR GAY: So to follow up, I understand that you need something that's going to give you an accurate, fair measuring process. I understand that. But when you say this was legislation made you use this formula? The Legislature passed legislation or... [LR283]

DON SEVERANCE: No, it just...legislation said we had to have an objective assessment process. [LR283]

SENATOR GAY: Oh. But then somebody in the...ultimately chose this... [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR GAY: ...and said this is the latest and greatest probably at that point. [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR GAY: But you constantly review these things and you look back. But so right now are you actively looking at another method that's a little...that maybe other people can agree on, or are you just kind of...Minnesota? [LR283]

JOHN WYVILL: We are...we have just recently settled the Bill M. lawsuit. And the Bill M. lawsuit was dealing with a variety of things that dealt with weight methodology, notification of clients for the appeal process, and the objective assessment process. Basically, the settlement was that when we go through the objective assessment process to go forward with a new one is that we would include more people at the table, so to speak. And that's the process that there's been some criticism in the past that not everyone...everyone did not feel included in the process. So there seemed to be a sense that did connect out there that there was not appropriate (inaudible). There's always...you're not going to make everyone happy, but then there were some people fundamentally saying we were not even at the table. [LR283]

SENATOR GAY: So are you saying in the future you're going to go look around for a different method and include more people in the decision-making process, more stakeholders, let's say, or whatever? [LR283]

JOHN WYVILL: Yes. Yeah, we're definitely looking at it and seeing what...if there's a better way to do it, we're certainly going to be doing that. [LR283]

SENATOR GAY: Okay, thank you. [LR283]

SENATOR LATHROP: Senator Wallman. [LR283]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yes, John, in regard to assessments, I've sat through assessments in a different state for a person. And you sit down like with a psychologist, medical doctor, various...an educator, about four or five people. Do we have that same scenario here? [LR283]

DON SEVERANCE: Now, generally, because a lot of people in community services don't have those individuals that know them that well all the time, they're generally actually interviewing the direct care staff that work with the person, both on the day shift and in the evenings, you know, parents, if they're still involved, you know, and anybody else that would have a significant role in the person's life. Those are the people that we're interviewing most of the time, basically, because they're the people that know the person's skills the best, are the ones that are around them most of the time. [LR283]

SENATOR WALLMAN: So very seldom a psychiatrist or psychologist, huh? [LR283]

DON SEVERANCE: Very seldom. [LR283]

SENATOR WALLMAN: Okay. Thank you. [LR283]

DON SEVERANCE: Yeah. [LR283]

JOHN WYVILL: And, Senator, I want to follow up with Senator Gay. This is just an example, I don't want to bury you with a handout. But this is an example of a spectrum of services that various clients have had. Any time that you tinker with the OAP process, that is going to create a very anxious family and friends because you're talking about individuals that if they get reassessed could move down and then people move up when you're talking about certain resources. So when we do that, that will be very controversial or very upsetting to the families because that will be used for services. And then there could be a possibility of them getting readjusted, and obviously that's not going to sit well if we go that route. [LR283]

SENATOR GAY: Yeah that makes sense. Just to follow up then. Earlier this morning when I asked you about this list, this waiting list that's out there, and I didn't...the answer you gave as best you could at that point, but...so all these things factor into that. You got to run them through this assessment really... [LR283]

DON SEVERANCE: Um-hum. Yes. [LR283]

SENATOR GAY: ...before you can say, you're going to be eligible for these programs. So you can't just change this thing overnight. So what you're saying then is you go through all these, they get an index number, and that creates the eligibility requirements for the programs, or no? [LR283]

DON SEVERANCE: No. No, the eligibility for the program is totally different. [LR283]

SENATOR GAY: Okay. [LR283]

DON SEVERANCE: These are the formulas that say how much service you would get within like a day program, or how much service you would get within a residential program. [LR283]

SENATOR GAY: Okay. But in a way, though, if you're saying, here's what you're going to get, kind of qualifies you, well, this program doesn't serve that type of person. So in a way they kind of work together, don't they? [LR283]

DON SEVERANCE: It could limit your options within those, yes. [LR283]

SENATOR GAY: So I guess the reason I was kind of saying you couldn't quite directly

answer that question, now I can see why, because there's a lot of factors involved in that. It's not a simple, well, you go here, you go here. You got to look at all these things. So this is a fairly complex way to gauge that. But, I guess, if that's the fairest thing you've found so far, that's what we're going to use for a while, huh? [LR283]

DON SEVERANCE: That's where we're at. [LR283]

SENATOR GAY: Yeah. [LR283]

JOHN WYVILL: However, in your questioning, Senator, you did raise a very good point about the waiting list, about from a wish list, to paring that down. And we've already had conversations in our office about how to address that. So appreciate your point. [LR283]

SENATOR GAY: So you are working on that. That's good. [LR283]

JOHN WYVILL: We're going to start working on it. [LR283]

SENATOR GAY: Thanks. [LR283]

SENATOR LATHROP: If I may, this assessment process is important to two people. One is it's important to the provider that's going to take this person in. Am I right? [LR283]

JOHN WYVILL: Correct. [LR283]

SENATOR LATHROP: And they're going to look at it and say, you've just assessed this person and understated their needs. And so I'm going to be doing a lot more with this particular person that's going to come into my care than what I'm going to be compensated for. So that would be the first rub with the formula. [LR283]

JOHN WYVILL: Senator, you're dead on, on that one. And usually what happens is the provider may come back and say, I can't serve you with those units; I would suggest you either find another provider, or you need to appeal this so we can get you more money. And usually the provider is very helpful with the client because they care about the clients too and want to serve them. But it...ultimately they got to be paid for the services. [LR283]

SENATOR LATHROP: Okay. And then the other person, potentially, who has a concern about the outcome of this assessment is going to the individual who's going to receive the services. Because after the assessment is over, do we make a list of things this person is eligible for? You say, you can go and get community-based care, but you can get A, B, C, and D. And it looks from our assessment that you can do D, E, and F on your own, so you're not going to get those from us. [LR283]

DON SEVERANCE: We don't prescribe services. This...it gives you a number of units, so you'll have a number of units of residential services. And the person, you know, with their team goes and decides what services they want with that. [LR283]

SENATOR LATHROP: Well, let me ask this question to better understand it then. Let's say that a person has trouble with spasticity, and one of the things they need is to have physical therapy come in and do range of motion with them, or somebody do range of motion with them. That might be a consideration, I didn't look at all of these, but that might a consideration in the assessment, wouldn't it? [LR283]

DON SEVERANCE: It might be a consideration, but actual physical therapy would be paid off of medical stuff. What our services... [LR283]

SENATOR LATHROP: Maybe it's a poor example then, or I chose a poor subject matter for the example. Are all of these things going to be just general needs that go along with the person, and once they land at the doorstep of the community-based provider they're expected to do everything that person needs that they can't get in a contract setting? [LR283]

DON SEVERANCE: Yeah, the team would sit there and decide what kind of services the person needs and who's going to provide those services, yeah, given the amount of resources they have available to them. [LR283]

SENATOR LATHROP: And if I'm the community-based provider, the rub would be I might be at ENCOR, for example, and say, this guy needs this, but your assessment really hasn't identified that as a need. [LR283]

DON SEVERANCE: I don't think...the assessment, the way it is, just gives you an amount of resources to utilize however you want to. So it really doesn't say what you can have and can't have, I guess, except in the sense that you have like a budget, an individual budget... [LR283]

SENATOR LATHROP: Okay. [LR283]

DON SEVERANCE: ...to spend. [LR283]

SENATOR LATHROP: Okay. I think I understand it. [LR283]

DON SEVERANCE: Okay. [LR283]

SENATOR LATHROP: And I appreciate your answers. Senator Gay. [LR283]

SENATOR GAY: So what Senator Lathrop is talking about, the assessment and you going through there, it still has...the provider has to say we want the patient. I mean, don't they? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR GAY: This has to be a win-win situation in all cases,... [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR GAY: ...which is lots of times hard to achieve. [LR283]

JOHN WYVILL: And there are numerous circumstances, which I'm sure the providers will tell you,... [LR283]

SENATOR GAY: Right. [LR283]

JOHN WYVILL: ...where they fire their clients... [LR283]

SENATOR GAY: Right, because they are saying... [LR283]

JOHN WYVILL: ...for a variety of different reasons. [LR283]

SENATOR GAY: ...your indexing was wrong; we're providing way more than we bargained for in this case; we can't continue to do that. Which is business practices, you just can't. I understand that. But basically it's always last call is up to the provider to say, all right, we'll take the patient. But then they can send them back if it's not working out? [LR283]

JOHN WYVILL: Well, what they have is a...they have a 60-day notice provision in the contract, which they notify you of the intent to discharge them within 60 days. And that means service coordination has to work and try and find, and that's usually a warning signal that there's some other issue, like behavioral health or some other issues that come up. And then maybe it wasn't a good match or there's other issues and then you have to... [LR283]

SENATOR GAY: And that client is back on the waiting list again. [LR283]

JOHN WYVILL: No, we'd be finding another provider. [LR283]

SENATOR GAY: Oh, okay, so you're really off the list and... [LR283]

JOHN WYVILL: Now what could... [LR283]

SENATOR GAY: ...caught in flux. [LR283]

JOHN WYVILL: ...a typical scenario, not an unusual scenario, could be that a client is with a provider, and then may have a behavioral health episode that gets them into a Crisis Center. And then the Crisis Center is ready for discharge, and then the provider may say, no, I don't think so, or...and then it becomes a...the clock is ticking as to where they need to go. And they come back home, and the mother says or the family member says, I can't handle this client with the behavioral issues. And then they become...service coordination has to figure out, sometimes fairly quickly, where they need to be placed. That's just a hypothetical that happens unfortunately more often than you think. [LR283]

SENATOR GAY: Yeah, it could happen. There's probably a lot of those. [LR283]

SENATOR LATHROP: Senator Adams. [LR283]

SENATOR ADAMS: So clear up for me, and I think I've got it now. I heard it said, when we took our trip to Beatrice, by one of the group leaders and I heard it said yesterday that one of the advantages that private providers have is they get to cherry-pick. Well, to me, using that language kind of takes on a negative connotation. But it would seem to me that this assessment process is what you'd want to look at to determine whether you can provide the proper services for that person or we can't. Am I thinking correctly? [LR283]

DON SEVERANCE: Yes. [LR283]

SENATOR ADAMS: Rather than cherry-picking... [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR ADAMS: ...and they get the good guys and we don't. [LR283]

JOHN WYVILL: Yeah, it's kind of like a marriage. It's a relationship between or a contract with a relationship between two parties to help out the one individual. And there has to be a good match. And during portions of it there could be change of circumstances or events that necessitate the divorce, a separation, a trial period, or whatever. At the risk of oversimplifying it, though, it's a very fluid and constant thing, and also can be quite stressful for family members and service coordination staff that work with this. [LR283]

SENATOR ADAMS: I see that. So there is something more complicated than the state aid to schools formula. (Laughter) [LR283]

SENATOR LATHROP: I think that it's analogous. [LR283]

SENATOR GAY: I don't know. [LR283]

SENATOR ADAMS: So I don't want to hear any more about that state aid formula. All right. [LR283]

SENATOR LATHROP: Are there any other questions about the formula; financing, anything on that order? Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. Do two individuals ever come up with different figures at the end of the...when you do the formula? Or do they...pretty well your assessment and the factors that are all used, the plus and the minuses and everything like that, do you generally come up with the same answer as far as what type of...or how much funding they get? [LR283]

DON SEVERANCE: No, you get quite a variety of levels of funding, again, based on what a person's abilities are. So...and even a person, over time, changes sometimes. So, you know, with a reassessment, when anybody is new to services, we reassess them after six months even, just because we know the person better after six months, and we get a more accurate measure. And so it can... [LR283]

SENATOR STUTHMAN: So you spend a day on going over the reassessment again in six months. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR STUTHMAN: And then that could vary amount for the dollars of support for this individual? [LR283]

DON SEVERANCE: Yes, yes. [LR283]

SENATOR STUTHMAN: It could go up or down then. [LR283]

DON SEVERANCE: Yeah, depends on how... [LR283]

SENATOR STUTHMAN: Does that happen very often? [LR283]

DON SEVERANCE: It happens often enough, and especially it seems like with children it's more likely to happen, to tell you the truth. You know, sometimes it's because they're moving from a less stable environment to where they actually ended up with quite a bit of money as far as support. And once they're in services for six months, then the

stability of the services, a lot of their behaviors improve and their abilities go up, and it will drop the amount they get. And sometimes it's the opposite way around. And part of the reason with children, I think, is because there isn't as many people that know them all the time. So sometimes you have a harder time doing a good assessment at the beginning. So... [LR283]

SENATOR STUTHMAN: So the private or the community-based setting, the one that's providing this service, he has no guarantee that he's going to get the same amount of dollars for this individual in six months as he did two months ago, or five months ago, or when you reevaluate them? [LR283]

DON SEVERANCE: For people new in services that's true, you know. After that six-month period at this point we don't do the reassessment unless they are a priority, you know, and then we would do the reassessment because it would come up that they've got increased needs. And then they're going to get increased funding with a reassessment, most likely. [LR283]

SENATOR STUTHMAN: But there is a chance that they may develop the expertise or the intelligence, with the therapy, that they could receive less funding, too, right? [LR283]

DON SEVERANCE: Yes, that's correct, yeah. [LR283]

SENATOR STUTHMAN: Okay. Thank you. [LR283]

DON SEVERANCE: Yeah. [LR283]

SENATOR LATHROP: Any other questions? Okay. Thank you. I'm going to, if the commission doesn't mind, I'd like to call one more person up to testify, and that's Mr. Brinker, who's with ENCOR, in Omaha. And the purpose of that would be just to have him give us kind of a view of or an example of a community-based provider. I happen to have toured ENCOR last summer, and it might be useful in terms of our background. Is that all right? [LR283]

SENATOR ADAMS: Sure. [LR283]

SENATOR LATHROP: Everybody okay with that? So he didn't know that he was going to testify until about 30 seconds ago, so... [LR283]

SENATOR GAY: Is he going to talk about residential housing and work programs as well? [LR283]

SENATOR LATHROP: Right, right. [LR283]

BOB BRINKER: Good afternoon, senators. My name is Bob Brinker. I'm the director of ENCOR. ENCOR serves approximately 800 people in eastern Nebraska, counties of Dodge, Washington, Cass, Sarpy, and Douglas. A little bit about my background: I've been with the agency since 1974, and have been director of the agency since 2004. It's my understanding my charge or the interest is to talk about community-based services that ENCOR provides. And what we provide is similar to what's provided by other providers across the state. We're probably more similar than dissimilar. We each have different takes and different ideas, but in the end we're providing community-based services for persons with disabilities. I think it's important to note that the state of Nebraska was a leader in the development of community-based services for those with disabilities back in the late sixties and into the seventies. People would come across the country to look at services in the state of Nebraska. ENCOR personally has hosted tours from New Zealand, Great Britain, Japan, most recently Russia. We had two very interesting tours from Russia. One was a group of doctors, and the other was a woman's leadership caucus. And the reason I bring that up is just to let you know that the services for community-based, the impetus, the history, the heritage of community-based services was born right here in Nebraska. I think that's something we shall be proud of, and that the Legislature has helped to promote and maintain, through funding and different initiatives over the years. As far as the services that we provide, there's a variety of those services. A lot of talk has been made about group homes. I operate approximately 55 group homes in the greater Omaha area, 40 of those are owned by the agency or rented, 15 the people actually in services sign the lease on those properties. In the group homes I would have anywhere from three to six people, with all ranges of disabilities. People with severe, profound disabilities, the types of activities would be most centered around self-help, self-care type activities, habilitative-type activities. And most importantly, regardless of the disability, to provide for opportunities for integration with the communities, and specifically with their families. One of the things with community-based services, it's services in the community rather than an institution, such as Beatrice, being closer to home, their parents, their family, there's more opportunity for interaction and experiences in the community to do the things that you or I would do as members of communities and things we do with our families, whether it be celebrating birthdays, in the case of Omaha--going to the College World Series. We have a bunch of people that have got tickets, they've gone to the series and they enjoy it. And there's a lot of opportunity for community interaction in fulfilling their wishes and desires as people. And so in the group homes we also have people that are more mildly handicapped. In those situations we might look at more self-development activities in terms of balancing a checkbook, teaching them cooking skills, being independent. And then along those lines we have support residential services. And these are people who are in their own home or apartment by themselves with maybe two or three other people; may have a job, most likely do, could be a shelter workshop, which I'll talk about in a second, could be in a job in their own, excuse me, a job in the community where they're being paid. In those kinds of activities, we send staff

in on an intermittent basis. Kinds of things we'd be making sure that their checkbook is balanced, they're getting out to do the things that they need to do--going to doctors' appointments, being sure they get into work, and providing the supports that they need, that they say they need and would like and do the things with them that they like to have done. And that's providing support, so we're not providing services by deficit, we're providing supports to people. And that's a very important part of our program. One quick aside I'd like to mention, too, in the early eighties the Legislature approved, it was known at the time as LB033-035 funds. And those funds were specifically for the deinstitutionalization, approved by the Legislature. The consent decree, as Mr. Mason testified to yesterday, was in play at the time. And at that time we as providers were able to go down to Beatrice, screen some people, and prepare a plan of services where we'd identify staffing, startup costs, training needs for the staff. And then we'd bring people into the community. And we did that with several people. One of the stories I like to tell, we had a gentleman that came to us from Beatrice in a total care situation. He moved into one of our group homes, worked in a shelter workshop. And then over time we recognized his skills and abilities. He had those skills and abilities all along. And then he went into his own apartment, which he is today. He shares an apartment with two other guys, split rent and utilities, and doing the things which he likes to do in the community, which is Nebraska football and professional wrestling. And he also works in the community. He does not shelter workshop anymore. He has a job. And I think it's important to note in this case the gentlemen was using a lot of tax dollars in the services provided both at Beatrice and initially at our agency, and is now a taxpayer. I think it's important to note that, too. So that's part of the support of residential services. I know I took a long way to get to that point, but I think it's a good example to show the capabilities and the possibilities for people with disabilities when given that opportunity. In our vocational program we have the workshop settings. I have five principal ones, excuse me, five principal ones in the five county areas that we serve. We do job placements for people. People who are on the job, we support them based on what their needs are. Then I also have a very unique program which we call Workstation Industries, where it's kind of a step between a job placement situation and a shelter workshop situation. We're at Lozier's on two of the plant locations, Valmont, to name a few, where we actually have persons with disabilities on the job site, doing the production for the business with an ENCOR staff present. We have a contractual relationship. And those situations have turned out to be quite well and have been quite beneficial for all involved there--the business, the agency, most importantly the persons with disabilities. They earn some pretty good paychecks in those situations too. So anyway, that's a brief overview. We also do some in-home services to persons...to families with persons with disabilities. We provide respite services, intermittent care, could be a weekend when they needed a break, could be a week when the person...the primary caregiver has medical issues. For whatever reason, if they need respite I have a group home that's dedicated to that purpose. And I have a number of providers in the community that we provide services through where they take somebody into their own private home. And we tend to save the group home for persons with more behavioral

needs, or severe disabilities too. Nonetheless, we provide that service. I also have a very specialized program, it's called the Medical Support Unit, which is unique, where I have nurses at a group home and those nurses handle sophisticated medical needs, among which is like trachea care. I do have other people that are placed in the group homes where I don't have the nurses, that do have G tubes and other medical conditions that can be served quite successfully in the community. I do serve in the group homes a number of people with behavioral difficulties. Many years ago an example of this when the funding was a whole lot different, the situation was back then we'd get a chunk of money and we'd do with it as we see fit. Up until '92, the agency was a caretaker of the waiting list, and then in '92 the state took over the caretaker waiting list. In that situation we had a parent in Cass County who had a son with severe disabilities and severe behavior problems. At that time the agency took the initiative to develop a set of services designed specifically for him. And what that meant at that time was we started a group home just for that person. There was talk, discussion, I think, Senator Cornett, you talk about staffing with two, three people, one person. Well, this person fit that category. And we served that person for an extended period of time in that house by himself. He had severe behavior problems, was endangering other people, potential, so we had to be careful; we couldn't put vulnerable people in there. And worked through a lot of problems with that person. And I'm pleased to report after several years that that person is still in a group home with three or four other roommates, still has some behaviors, they still cycle through, we still have to work through those behaviors. But he's with other people in an environment which is more easily, excuse me, in which we can much easily deal with the behaviors. He attends a day program as well, so he's not in an isolated situation. But it just shows an example of how somebody with severe behavioral issues can be served in the community when given the opportunity and the ability to do so within the community. So that's an overview of the services as I understand what the interest of the committee is. [LR283]

SENATOR LATHROP: That was, and I appreciate...that was very helpful to me at least. Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Lathrop. Bob, you stated you're in five counties? [LR283]

BOB BRINKER: Yes, sir. [LR283]

SENATOR STUTHMAN: Are those in the eastern part of the state, the more populated counties? [LR283]

BOB BRINKER: Dodge, Washington, Cass, Sarpy, and Douglas. [LR283]

SENATOR STUTHMAN: And in Douglas. Have you ever had any interest in going out into the rural areas further? [LR283]

BOB BRINKER: We do serve...outside those five counties we have not. The way we're set up, we're a public provider. The five counties that we operate, each of the counties has a commissioner or supervisor that serves on our governing board. So our charge responsibility is to those five counties. Now I do have services in Plattsmouth, Papillion, Blair, and Fremont, still in eastern Nebraska, but we do provide services in those cities, both residential as well as vocational. [LR283]

SENATOR STUTHMAN: This is the reason that I asked that question, because you know going to a community-based service and in the more heavily populated areas, you know, there is service provided closer to the people. You know, we have the problem out in the rural areas, where I'm from, you know, where there's a community service provider might still be 150 miles away. And it's really not bringing the person back to the community; it brings them just to another part of the state. [LR283]

BOB BRINKER: Yeah, I understand the challenge. I have the benefit of the population, and also frankly the resources, too. There a lot in Omaha that we're able to use people in terms of therapy services--speech, occupational, physical therapy and the like. There's a lot of availability of those services and I'm fortunate in that regard. The challenge, as I understand it, I worry about transportation costs, trying to get to and from...I can only imagine when the distances aren't tens of miles but hundreds of miles, you know, excessive. [LR283]

SENATOR STUTHMAN: Yes, and that is a problem that we face out in the rural areas, you know, getting providers and then having enough clients, and then having people to come in and work with them, like psychiatrists or anybody like that, you know. So it's two different situations because of our state. We got the population in one area, and we need services out there in the rural area also. I mean we need to provide that, too, but it's a real...it's another issue. And I don't know how we can overcome that. Thank you for your comments. [LR283]

BOB BRINKER: Yes, sir. [LR283]

SENATOR LATHROP: Senator Gay. [LR283]

SENATOR GAY: Bob, when you decide who's going into a group home or you're going to put a group home together, how do you base your three or four--obviously guys with guys and girls with girls--but how do you prioritize that, who's going into a home together? [LR283]

BOB BRINKER: There's a lot that goes into that. Admittedly, in the early days, if you start working a group home and the agencies, the agency I should say, we'd have space and we'd bring somebody in. And that's the way it was. We'd have a six-bed

group home, typically, two persons to a bedroom. As time has gone on, as service philosophy has matured, we look at things a lot differently these days. We look at private bedrooms versus two people, as you and I would want our own bedroom, unless we're married obviously. But if you're an unmarried adult, you're probably looking for your own room, so that's the more preferred, humane, proper way to provide services to a person with...so that's part of the consideration. So we have to find housing that would allow for that. Admittedly, I still have houses that have...we take the largest bedroom, the master, and have two people in it. But wherever possible, we sure like to have single beds, one person to a bedroom. Also, a thing that we look at now that we didn't look at years ago is what does a person with a disability have to say; what does their family have to say; who do they want to live with; where do they want to live and that kind thing. So we take that into account as well. Then for my side of the table, a big component of that is looking at compatibility as it relates to, frankly, behavioral issues. In other words, I have to be careful that I don't have somebody with significant behavior problems that manifests in some aggressive behavior in a house with somebody that's vulnerable, like in a wheelchair. So you have to be cognizant of that fact in terms of not only abilities but, more importantly, who wants what and behaviors too. We do, for the most part, separate the sexes, but I must admit I do have a couple houses that are coed, which aren't a problem. Boys and girls don't get together; sex isn't an issue. That's just the way it is. But for the most part, we do have male, we do have female houses, but we do have a couple coed ones too. [LR283]

SENATOR GAY: So in a...let's say Senator Stuthman was talking about a rural setting, but we do have population centers. Are these...are there homes out in Grand Island and Scottsbluff? I mean, isn't there other regions doing the same thing you're doing in different areas? [LR283]

BOB BRINKER: Right. It's my understanding, and I've toured some other providers in other locations. I admit I haven't been out to western Nebraska to tour their services, but this community-based movement, that what's going on Omaha, Nebraska, is going on in other communities across the state; whether it's Omaha, Scottsbluff, parts in between, that that same type of services we provide, may be a little bit different, every body has their own twist, but in the end we're essentially the same. We're regulated and funded the same way and we all have similar interests, and that's providing community-based services to persons with disability in the community. [LR283]

SENATOR GAY: Thanks. [LR283]

SENATOR LATHROP: Senator Adams. [LR283]

SENATOR ADAMS: A second ago you said you're regulated the same way. Can you tell me about, from a private provider standpoint, what your...what the oversight is on the services that you provide? [LR283]

BOB BRINKER: Sure. As far as the oversight goes, there's an internal mechanism. We have our own quality assurance plan. There's things that we do and activities. There's things that we expect our supervisors to do, and there's things we expect their supervisors to do in terms of monitoring that quality, and we have those expectations. We have outside points of monitoring from parents. It's not necessarily that they're supervisor of the house, but if there's something wrong in there because they're in the community, in all probability, with their son or daughter, they're right there and they can know and be in a lot better position to say what's going right, what's going wrong. And so my supervisors, myself, if there's a problem we can get a call and say this isn't working out or this needs to be done. So there's that component. I do have an advisory committee that provides me feedback to issues affecting the agency. I have a Human League of Rights Committee that also can provide similar feedback to us. And then as far as the outside monitoring regulation goes, as previously testified, we have certification reviews. Certification is granted from a one- to a two-year basis and then at the end of the certification period the state comes back out, checks our services, checks our records. They talk to the people in the services on a sample basis, they talk to their parents, and then at the end of the day they decide whether or not to certify us and, if so, for a one- to two-year period. In the case of ENCOR, they've taken me, and I'm broken into six areas, such a big agency it's kind of like in sixths. It's not exactly that way, but that's what it is, and that goes on. Then additionally, as was previously testified, there's a group of state staff called service coordinators and they come out, look at the residences, look at the day programs and they evaluate us against a set of criteria. They got a form. And then if there's some problems or issues with the form...or, excuse me, problems which are identified as immediate/critical, they'll call. We'll get the form back and we'll be able to respond to it and provide a plan of correction, if you will, and say how we're going to do it. Occasionally, we'll disagree, but essentially we agree with most things that are said and work to correct the problems that may be identified, and that's service coordination, monitoring, review. [LR283]

SENATOR ADAMS: Thank you. [LR283]

SENATOR LATHROP: Senator Wallman. [LR283]

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, thank you for being here, Bob. [LR283]

BOB BRINKER: Yes, sir. [LR283]

SENATOR WALLMAN: Just a couple questions. Do you use the state's assessments and, you know, as far as accepting a person in a group home? [LR283]

BOB BRINKER: No. [LR283]

SENATOR WALLMAN: Or do you use your own assessments? [LR283]

BOB BRINKER: We don't. Internally, we have our own assessment tool. State assessment is what gets the money. You know, at the end of the day, that's...we'll give you this amount of money. And then it's the agency's own process, we'll do an assessment of that person's need. Now we have an in-house tool that we've used, as well as we've moved over time to more progressive measures of seeing what people need too. In addition to taking a look at what they don't have, in current contemporary service, I...let's take a look at what the person needs and what they want, and what their parents say they want, too, and taking a look at that. But after everything is said and done, when you have a service decision, it's amount of monies on the table, if you will. That's what it comes down to. And I got to take it...we got to look at it and say, okay, can we serve this person within the parameters of what we have available at the time and the day that that question is asked. With these different facilities that I operate, I may have an opening at a location one day and someplace else the next, and so the day I get the referral, if you will, and the day we...in subsequently, do our assessment, we make a decision on whether or not to serve the person based on those issues as well as where that, physically, where that opening is at that time and who else is in that environment as well. So we make our own decisions based on our own rationales. [LR283]

SENATOR WALLMAN: Question number two: As far as sheltered workshops, what percentage of your clients work in a sheltered workshop? Do you have trouble getting jobs or...? [LR283]

BOB BRINKER: We have, of the total people we serve in our day services, I probably have, rounding, just off the top of my head, I probably have two-thirds, 70 percent, and I'm just doing it off the top of my head. I know, I can give you some numbers. We work with 60 people, approximately, on the job site and those Workstation programs, with Lozier, Valmont. We send people in the actual business with ENCOR, I have 40 people, like, in that program. Then I also have a unique program we run as a recycling program which we recycle paper. I have 40 people placed in that. And then beyond that we have people in the day programs. One thing I should point out, too, in our day programs and our work shelter workshops, I do have some very specialized programs within those workshops. I have a couple that serve persons with severe/profound orthopedic disabilities. And then of those two programs I have one that not only have that but have particular medical needs where I have a nurse present at all times. Several of those people have "trachs," which you need to have a nurse there too. So I have a spectrum, if you will, of different types of services in the shelter workshop. My point is that we've significantly...people with significant impairments at those locations and, unfortunately, the reality of the situation is any time in the near future the people are going to need very specific qualified care, and, in several cases we need nurses there because of the

"trach," so... [LR283]

SENATOR WALLMAN: I appreciate that workshop thing because that mental health has a lot of do with work to a lot of adults. So thank you. [LR283]

BOB BRINKER: Yes, sir. [LR283]

SENATOR LATHROP: Senator Cornett. [LR283]

SENATOR CORNETT: I, sir, I believe I met you about four years ago,... [LR283]

BOB BRINKER: Correct. [LR283]

SENATOR CORNETT: ...right after I was elected. I came down and toured one of your facilities,... [LR283]

BOB BRINKER: Yes. [LR283]

SENATOR CORNETT: ...and your group homes. At that time, we had a discussion that you needed more...that you did not have enough beds available for all the people that were requesting your services. Is that still true? [LR283]

BOB BRINKER: It comes back... [LR283]

SENATOR CORNETT: Well, not beds, but home,... [LR283]

BOB BRINKER: Right. [LR283]

SENATOR CORNETT: ...residential living. [LR283]

BOB BRINKER: It comes back to the issue of the waiting list. It was previously testified that the needs are many and the resources are few, if you will. And so in terms of services, at this point in time it's continuation of services and that if the needs are going to be met to those persons on the waiting lists that we would need to increase capacity, which would include residential situations such as group homes. [LR283]

SENATOR CORNETT: What would that lag time be? I mean if we were able to fund the list, how long would it take you to get your services up to the number of people that we funded? [LR283]

BOB BRINKER: If everybody on the waiting list was...? [LR283]

SENATOR CORNETT: No, not...just... [LR283]

BOB BRINKER: Okay. [LR283]

SENATOR CORNETT: How long would it take you to expand your services? Because you would have to buy homes, retrofit them. [LR283]

BOB BRINKER: Right. It could take...a simple example, say if money became available to serve three people off the waiting list who needed a group home, simple example, from the point of notification it would take us anywhere from three, maybe six months. And there's a lot of variables that go into that time frame, but just to give a ball park based on my best professional estimate, I'd give that time frame. [LR283]

SENATOR CORNETT: I remember you and I had the discussion, and this was years ago, but on the length of time it takes to find a proper location, the neighborhood notification... [LR283]

BOB BRINKER: Right. [LR283]

SENATOR CORNETT: ...and then finding a home that can be converted economically to be handicapped accessible. [LR283]

BOB BRINKER: That's an important point. As one of the things we've gone organizationally as we've aged, as the agency, so have the people we serve or potentially serving, too, frankly, and that I'm more cognizant now than I was 20 years and need to have houses that are wheelchair accessible and need to be made accessible either on an immediate basis right now or some point in the future, too, so I'm looking for ranch-style housing as well. It's become more and more an issue. I'd say out of the last four homes we've located, three out of the four are wheelchair accessible, so that's a big issue and will continue to be at the forefront of our future service development. [LR283]

SENATOR CORNETT: Thank you. [LR283]

BOB BRINKER: Yes, ma'am. [LR283]

SENATOR LATHROP: I do have a few questions, if I can. I do appreciate you willing to step up and share your experience as a community-based provider on very, very short notice. We have talked about Beatrice, that's been the scope of much of what we've talked about, and the placement of people from Beatrice into the community-based setting, and one of the things that we go back to is the safety risk of that placement. You make this judgment all the time about which people to take into your program. I suppose the first question is, is your program a typical program. The way you approach a referral, do you think it's typical of the way other community-based providers approach a

referral? [LR283]

BOB BRINKER: In my opinion, I would...in my opinion, Senator, we're probably more similar than dissimilar in the end, yes, sir. [LR283]

SENATOR LATHROP: Okay. So I want to ask you some questions. I just want to make sure that there's some universal application to your answers. To what extent...are there some patients or some residents whom you cannot accept into a community-based program for safety reasons? [LR283]

BOB BRINKER: Yeah. [LR283]

SENATOR LATHROP: Can you give us a sense of the people that... [LR283]

BOB BRINKER: Sure. [LR283]

SENATOR LATHROP: ...you'd say we can serve the DD community, but there's some people this isn't suitable for. [LR283]

BOB BRINKER: Right. I have a strong basis, excuse me, bias for community-based services in my heart. I'd like to say we could serve anybody any time, but, to be honest with you, there are certain situations that I would probably stay away from. Earlier there was testimony about the Bridges Program and some people being served there. I'd be very concerned about that, reason for that being that we serve...we have houses in the communities. Their sexual predatory behavior, that's difficult. That's a safety issue and I would think twice about serving that person. Now equally, over a period of time through habilitation and other efforts, hopefully people do better and we could take a look at somebody at a later date if they improve. But if there's a current issue or problem, we would take a look at that very seriously and probably deny placement in certain cases. And that's a small faction, I might add. [LR283]

SENATOR LATHROP: Yeah, and you've given us an example or you've made your point with an example of the...of perhaps the most obvious one and that's the people in the Bridges Program who we can't even keep at Beatrice safely, apparently. But are there people whose behaviors are so aggressive that they might not end up in Bridges but whose behaviors and whose aggressive tendencies are such that you just can't take them? [LR283]

BOB BRINKER: It's possible. I know it's a bad answer and I'd like to expand on that. There are people, as we get through the assessment process ourselves--and there's the ICAP and there's an amount of funding that's available through that ICAP with severe, so I'd have to take a look at what that ICAP has to say--there may be those people that are so aggressive that, regardless of what the ICAP say, that I would give second

thoughts to. I did mention earlier in my testimony an example of the young man from Cass County that did have aggressive behavior problems and the funding was such and the organization was...structure of the state was different at the time that we did set up a house specifically for them and made progress. But there would be some individuals--highly aggressive behaviors, use of weapons and that kind of thing--that I would give great consideration not to serve because of that. And I, frankly, have to look at it at a case-by-case basis. [LR283]

SENATOR LATHROP: When we toured Beatrice, there was a young man who was working on something and I don't know what his limitations were, but he communicated well. And he told me, I have an interview, which I assume meant that he had an interview with a community-based provider to see if he was a suitable fit. And as we left, somebody that was sponsoring the tour said he's got some aggressive tendencies, we're having a hard time making a fit. That seems to be kind of where the line is when it comes to Beatrice versus the community. [LR283]

BOB BRINKER: That's a significant issue in placement, as we look at...and then as the function of what the funding is too. [LR283]

SENATOR LATHROP: All right. Thanks. Senator Cornett. [LR283]

SENATOR CORNETT: If you have someone, like yesterday we had a doctor testify that they have a young individual that pretty much requires two- or three-on-one care because he has self-destructive behaviors. Are community-based programs ever funded for that level of care where it would take three staff members or two staff members watching that person 24 hours a day, working with behavior modification? [LR283]

BOB BRINKER: I don't know the answer to that question. The referrals that we have, I've not seen anybody with that high level of funding approved, number of hours I'd have to defer to the state on. It's an interesting question, is it, what's under the ICAP, what's the highest amount of hours possible and is that two- or three-to-one, as you...I don't know the answer to that question. [LR283]

SENATOR CORNETT: Because they have people at Beatrice currently that are two, I believe, on one person pretty much 24 hours a day and that I don't know if that would transition to community-based. [LR283]

BOB BRINKER: Yeah, and I don't have an answer to that question. [LR283]

SENATOR LATHROP: Senator Adams. [LR283]

SENATOR ADAMS: Yesterday we heard about the need for occupational therapists,

speech therapists, psychologists at Beatrice. So how is your community-based program staffed in those skilled professional areas? [LR283]

BOB BRINKER: We have the, as you were talking about earlier, the difference between urban and rural, in eastern Nebraska we have a number of therapy providers--physical, occupation and speech. Those services are paid by Medicaid. The agency doesn't pay or contract that directly. So when we get our amount of service from the ICAP, there's not a factor in for that. That comes from Medicaid directly. And then there's organizations and resources that are used, a couple main ones in Omaha, but there's a variety of ones we use for those different therapies. But I don't have a physical therapist, I don't have a speech therapist, I don't have an occupational therapist on staff. If I go back to ENCOR's history, 30 years ago I did. There's a variety of reasons for that. As time has gone on, funding has developed, federal money came in and so on and so forth. But as it stands now in today's operating environment, that's paid for by Medicaid and not directly on a contract relationship between the agency and the therapy provider. [LR283]

SENATOR LATHROP: I think that's it. [LR283]

BOB BRINKER: Okay. [LR283]

SENATOR LATHROP: Thank you very much. [LR283]

BOB BRINKER: Thank you, Senators. Appreciate the opportunity. [LR283]

SENATOR LATHROP: Thank you very much for your testimony. I believe that concludes our hearing for today, so thank you all for being here. [LR283]