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Developmental Disabilities Special Investigative Committee  
October 07, 2011

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[LR11]

The Developmental Disabilities Special Investigative Committee met at 1:00 p.m. on Friday, October 7, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR11. Senators present: Steve Lathrop, Chairperson; John Harms; Colby Coash; Norm Wallman; Russ Karpisek; and Bob Krist. Senators absent: Abbie Cornett. Guest senators from the Committee on Health and Human Services: Kathy Campbell; Dave Bloomfield; Gwen Howard; and Tanya Cook.

[LR11]

SENATOR LATHROP: Today we are joined by members of the Health Committee and I'll introduce my colleagues in just a second. Before I do that, I would like to kind of give you my thoughts on how we're going to proceed today if that's okay. You would have seen outside an agenda, and it would be my judgment that we'll proceed in this fashion. We'll hear from Tammy Westfall at Mosaic to give us a update from Mosaic. That will become self-explanatory as she testifies, I believe. Then we'll hear from Jodi Fenner, the director of the Division of Developmental Disabilities. And Jodi is going to address a number of different topics that we've asked her to come prepared to talk about. We are going to have here, for example, talk about the waiting list and then we are going to take...she will take questions from the senators relative to the waiting list or the particular subject matter. We will then, after Jodi addresses the three issues that we have here, hear from the Ombudsman's Office, and then we'll take public comment. We will not...we'll open it up at the end for those of you who wish to be heard. I'll try to get a sense of how many people it is. I don't know if we'll have to use the light system or not. That will be dependent upon how many people want to be heard, and if there's a lot then we're going to have use the light system and limit people to three or five minutes depending on how many folks want to testify. This committee was established four or five years ago by the Legislature to address in the wake of some pretty significant problems that were going on at BSDC. We issued a report probably four years ago, three or four ears ago, and the committee has been reauthorized by the Legislature

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each year to continue its work and provide oversight. We're here today. The committee's function I believe is to work in a cooperative fashion with the director and those people that are providing the services to the developmentally disabled individuals across the state. This isn't...we're here to work cooperatively, let me just say that, and that should be tone today I believe. Before I begin, let me introduce my colleagues, and before I do that let me--just a couple housekeeping things. If you have a cell phone, turn it off or turn it on vibrate so that isn't going off. We are making a record, so if you do testify--do we have sign-up sheets too? [LR11]

KATE WOLFE: They are by each door. [LR11]

SENATOR LATHROP: So there's sign-up sheets by the door. Sign your name on a sheet and give it to our committee clerk Kate who will be in charge of making a good record. You need to sit up here and speak into the mike so that we can hear you. (Cell phone sound) All right, that's the last phone going off...(laughter)...or getting turned off. Let me introduce my colleagues. And as I said, there are members of the BSDC Committee here today and then there are members of the Health Committee. The logic behind that is, is that eventually this really is in the jurisdiction of the Health Committee, and at some point in time the BSDC Committee will no longer be authorized by the Legislature and this will become the responsibility of the Health Committee. And so I've invited them to participate and just as kind of part of the transition and how long the BSDC Committee continues remains to be seen. But I'm joined today by Senator Bloomfield, Senator Krist, Coash, Senator Karpisek is not here right now but will come along, Senator Harms, Campbell, Norm Wallman, Senator Howard, Cook, and Kate, the committee clerk. So with that, we will have Tammy Westfall be our first witness. Thank you. Good afternoon. [LR11]

TAMMY WESTFALL: (Exhibit 1) Thank you, Chairman Lathrop and members of the committee. My name is Tammy Westfall, T-a-m-m-y W-e-s-t-f-a-l-l, and I am the regional vice president for Mosaic. Upon your request today, I will provide you an

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update on the 11 homes that were built to provide expanded community-based services for individuals transitioning from the Beatrice State Developmental Center into the community. Ten of these homes were constructed and one home was a newly purchased home. Six of the homes are licensed as intermediate care facilities; five are licensed as centers for developmentally disabled, and three of them are medical support units of that five that are licensed as centers for developmentally disabled. The homes are located in Grand Island, York, Omaha, Papillion, and Norfolk. Four of the 11 homes are low-income tax housing. Mosaic partnered with Midwest Housing Equity Group, which is a group of investors that funded the construction of these homes. The investors received tax credits for funding this project through the Midwest Housing Group. In order for the investors to receive their tax credits, occupancy requirements on those four homes has to be met. As of today, October 7, 2011, 14 of the 24 beds are occupied. Mosaic has until December 31, 2011, to meet the occupancy requirements. Failure to meet these requirements will result in the investors not receiving their tax credits as well as a monetary penalty to Mosaic. As of today, the monetary penalty to Mosaic is \$38,000, and will continue to increase as beds remain open. Now I have provided a spreadsheet for you that gives you a lot of detail on all the 11 homes, from construction dates, Fire Marshal occupancy dates, licensing, certifications, all that. So what I'm going to do is just highlight a few of the items on your spreadsheet. Thirty of the 66 beds have been filled, and then 36 still remain open. We have received 82 referrals since October 2009, and I want to break those down for you. We have received...we have had 32 admissions, and two of those admissions have passed away, and I can give you more details on that if you would like. Eleven of those admissions are from BSDC, eight of them are from nursing homes, three are from hospitals, seven are from other providers, and one individual came from their home. Now to clarify a little bit on that, the folks that came from the nursing homes and also from some of the other providers, they too were residents at BSDC, okay? Out of those 82 referrals, we had 29 of them were guardian refusals to move their loved ones; two guardians and their doctors--and these were two people who lived in nursing homes--refused to move their loved ones. There are five referrals that we had requested additional risk screenings and follow-up on that we have

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not received any more information on. Six of these referrals went to other providers. One person passed away prior to any transition process whatsoever. And then Mosaic has denied seven of those referrals due to either high-risk behaviors and safety of others with high complex medical needs. Today we have 11 active referrals. We classify an active referral as the name has been given to us and the legal guardian is willing to have their loved one moved to another provider. One of the six ICFs has received recertification. Two of the six ICFs have been denied their initial certification to become a Medicaid provider. And one of the ICFs in Omaha that was denied initial certification has a probation on their license, and what that means is that we cannot admit any further admissions until the probation has been lifted. Now what I'd like to do is take you into a little bit of detail on the two homes that haven't received certification. The denial of the initial certification on the Millard, we'll call it Millard ICF home, in Omaha, was on February 7, 2011. It was the result of three of the eight conditions of participation being out of compliance: governance, active treatment, and dietetic services. We will be asking for a revisit on this home for the initial certification again in November 2011. The denial of the initial certification for the Manchester ICF in Omaha was on May 27, 2011. This was a result of four of the eight conditions of participation being out of compliance: governance; facility staffing, and that geared mostly around training; healthcare services; and active treatment. At the time Mosaic was denied certification, we received a 90-day disciplinary action against the license of the home as a result of the condition of healthcare services being out of compliance. As a result of the disciplinary action on the license, this restricted any further admissions to the home until it is lifted. Public Health returned for a survey visit on August 15, 2011, and they cited healthcare issues related to lack of thorough nursing assessments, tracking, and interventions related to a person's falls. Mosaic submitted their plan of correction on September 26, 2011, and is waiting for Public Health to accept or deny the plan of correction. Upon approval, we will ask for a certification survey. Mosaic has struggled with the ICF certifications in Omaha. Some of the challenges that we have faced there is: it is a new delivery of service for that agency and their employees; the transition process has been difficult at times; lack of medical providers who have the knowledge and willingness to provide quality

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assessments for individuals with high complex medical needs and behavioral needs; at times, lack of adequate health records and history from previous providers. In order to correct our deficiencies at both the Millard and Manchester ICFs in Omaha, we have recruited our long-term leaders within Mosaic who have ICF expertise to assist with certification readiness. Mosaic has also contracted with Dr. Nabih Ramadan, medical director at BSDC, along with two other consultants, to assist in our readiness for certification. Mosaic has also collaborated and is finalizing a contract with the University of Nebraska Medical Center Munroe-Meyer Institute to assist us in developing physical and nutritional support plans for the individuals we are supporting that have high complex medical and physical needs. That will include assessments and training of our employees. This will be a clinical, multidisciplinary teams that will focus on the physical and nutritional supports of each individual. Mosaic does remain committed to our partnership with the Nebraska Department of Health and Human Services Developmental Disability Division and to providing quality services and supports for people with intellectual disabilities. Thank you for your time, and I'll answer any questions that you have. [LR11]

SENATOR LATHROP: Tammy, maybe we can...I think it will be beneficial if we put where Mosaic is...why we're hearing from Mosaic while we're talking about developmental disabilities. Initially, after the BSDC...the focus was on BSDC and the difficulties back in probably 2007 and '08. It was the administration's intent to enter into a contract with Mosaic to build units in the community to provide services to people who have developmental disabilities. Is that right? [LR11]

TAMMY WESTFALL: Uh-huh, and high... [LR11]

SENATOR LATHROP: That's kind of...when you were talking about these beds and the places you're building, that was done at the request or it was part of an overall plan to move some people, some of the medically fragile,... [LR11]

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TAMMY WESTFALL: Um-hum. [LR11]

SENATOR LATHROP: ...some of the folks at BSDC, and get them into community settings. [LR11]

TAMMY WESTFALL: Um-hum. Correct. [LR11]

SENATOR LATHROP: That's right? [LR11]

TAMMY WESTFALL: Um-hum. [LR11]

SENATOR LATHROP: So that the people on the Health Committee that haven't been following this have an appreciation for why we're getting an update from Mosaic, that would be Mosaic's piece in the delivery of services to people. Right? [LR11]

TAMMY WESTFALL: Right. [LR11]

SENATOR LATHROP: And you started out by indicating that it was set up to transition people from BSDC into the community, and that certainly was the primary focus but not the only purpose for Mosaic's homes and the beds you've identified. Would that be true? [LR11]

TAMMY WESTFALL: Well, it was to help them decrease their number of beds at BSDC and then for any of those folks that were currently in the hospitals and/or that had been placing in nursing homes. [LR11]

SENATOR LATHROP: Okay. Today you have described, and I appreciate that you've had some challenges getting your ICF/MRs certified, which you've described, but you've also told us that there are some beds that are empty. [LR11]

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TAMMY WESTFALL: Correct. [LR11]

SENATOR LATHROP: Can you tell us why that is? Well, let me ask this: We're paying...the state of Nebraska is paying for those beds whether someone is in them or not, would that be true? [LR11]

TAMMY WESTFALL: That is correct. [LR11]

SENATOR LATHROP: Okay. And so can you explain to us, as you understand it at least, why if we're paying for beds at Mosaic in the facilities that are certified and they're able to take people, why those beds aren't full? [LR11]

TAMMY WESTFALL: Well, I think, you know, and how I explained the number of referrals that we have received, I think a lot of it is what we're struggling against, and as well as the Nebraska Department of Health and Human Services Developmental Disabilities Division, is that people don't want to move, or even in the nursing homes people do not want to move. And so that's part of...I would say that is one of the biggest barriers that we have faced is that issue right there. [LR11]

SENATOR LATHROP: Would I be...do I understand that there are 30 beds that are available now? Is that the number? [LR11]

TAMMY WESTFALL: Thirty-six. [LR11]

SENATOR LATHROP: Thirty-six? [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: And how long have we had 36 beds available that we've been paying for and that have been not occupied? [LR11]

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TAMMY WESTFALL: Well, we've had our homes...four of the homes had to be open by March 2010. One of those homes had a slight delay on it and did not open up until the very beginning of May. So we've had four homes open since then and some of those still have open beds. [LR11]

SENATOR LATHROP: So we've had some empty beds as long as ten...as long as a year? [LR11]

TAMMY WESTFALL: Yes. Oh, yes. [LR11]

SENATOR LATHROP: How many beds to you think we've had that have been open or we don't have an individual living in the unit for a year? [LR11]

TAMMY WESTFALL: I would probably say at least half...maybe half of them. [LR11]

SENATOR LATHROP: All right. And can you tell us what we spend for the homes? It's a contract the state has with Mosaic, right? [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: What are we spending on the Mosaic beds that are unoccupied? [LR11]

TAMMY WESTFALL: Well, the daily rate is \$454 a day, and then it's tiered depending on how many people are in the home. So in other words, if the home is completely full, then the daily rate is \$454 a day. It increases with the openings of the beds. There's a tiered rate in the contract. [LR11]

SENATOR LATHROP: But it's somewhere around \$450 a day for a bed that's



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unoccupied? [LR11]

TAMMY WESTFALL: Actually it's going to be more than that if it's unoccupied. If there is only one person in the home, then you're talking \$2,721. [LR11]

SENATOR LATHROP: A day. [LR11]

TAMMY WESTFALL: Um-hum. [LR11]

SENATOR LATHROP: So we're paying--is it a flat rate for each home?--and the fewer people that are in it, the larger it is per person per day. [LR11]

TAMMY WESTFALL: Right. [LR11]

SENATOR LATHROP: So the flat rate for a home with how many beds is \$2,721? [LR11]

TAMMY WESTFALL: Six beds. Each home has six beds. Is that what you're asking? [LR11]

SENATOR LATHROP: Yes. Yes. [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: I appreciate that the primary purpose of the agreement between the state of Nebraska and Mosaic was to transition people from BSDC or the former residents of BSDC that were determined to be medically fragile and moved. Have we gotten to a place, Tammy, where we've gotten or had as many people leave BSDC as are going to leave and we need to look to some other place for folks to fill those beds? [LR11]

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TAMMY WESTFALL: We're getting there. Yes. I think, you know, a lot of the...we've...I think there's been an exhaustion on as far as the number of people that are left at BSDC. I think there's still possibilities in the nursing homes, and then, you know, there may be folks just in the community that would like that type of setting or need that type of setting, but we have no idea how many that would be. [LR11]

SENATOR LATHROP: Is there a reason we haven't explored that? In other words, if we have...there's 147 people at BSDC and we have gone through the population to determine if any of them are willing and able to go to Mosaic from the population at BSDC, and we still have over 30 beds open, is there a reason we don't go to the community? Because we're going to take up the waiting list in a little bit and I'm sure some of those people would like or need residential services. Is there a reason we haven't gone to the people on the waiting list to take them off the waiting list and fill these empty beds? [LR11]

TAMMY WESTFALL: All I can tell you is that I know that the division has been working on it. I don't have any idea of the number of folks on the waiting list that would be in any of those areas or that would need that level of care, nursing care. I don't have those numbers. We would have to get that from the department. [LR11]

SENATOR LATHROP: Maybe I need to ask the question differently. Is there a reason you're not going outside of the population at BSDC to find folks to fill those beds? [LR11]

TAMMY WESTFALL: Yes, because of the contract. [LR11]

SENATOR LATHROP: So there's a prohibition against you putting people in those beds other than those folks that come from BSDC? [LR11]

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TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: And we have exhausted or come near exhausting the number of people who are willing to leave BSDC and fill the beds. [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: Yes. Senator Krist. [LR11]

SENATOR KRIST: Were you there (inaudible) part of the contract negotiation process when the state came to you and tried to give an alternative for BSDC? [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR KRIST: Was there a competitive process that went on? Were you chosen, Mosaic was chosen, or...? [LR11]

TAMMY WESTFALL: Yes. And this was prior to the current administrator, but all providers were asked to submit proposals to assist. At that time it was called the downsizing or helping to downsize the number of beds at BSDC. So it was open. There wasn't a formal formal process, but it was open to any provider to submit a proposal to the division. [LR11]

SENATOR KRIST: Do you know if the Department of Administrative Services contracting division was involved with that process? And what I'm getting at is was there an unrealistic number that we have built to that, and restriction of the contract obviously we're wasting taxpayers' dollars with empty beds. So when is it time, as Senator Lathrop has alluded to, to start looking at that contract? You know, obviously I have issues with contracts, everybody knows that. But if we let this contract on a competitive basis, if you fulfilled your contract and now there is a problem with fulfilling the contract

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because of some detail, have you gone back to the department and said, "We're full," or "We're not full," or "You need to take some action here"? [LR11]

TAMMY WESTFALL: Well, the division knows where we're at. We keep in very contact on the number of referrals and the admissions that we have, I mean, because our referrals are coming from them. And yes, we have sat down and talked about admitting people outside of the contract. I mean, there have been discussions on that. [LR11]

SENATOR KRIST: But when you competed for the contract, was there any, in terms of not being certified in some of your facilities, was there any point of qualifying you to go forward with the contract? I mean, it sounds like your problems have been, in the Omaha area, have been lack of qualified people. I'm not going to put words in your mouth, but you've had some issues there. Was there a qualification process at the beginning of the contract that made Mosaic the best qualified in your estimation? [LR11]

TAMMY WESTFALL: Well, I think part of the reason was because we do, we have served...we have ICFs across Nebraska and in other states, Mosaic does. And so I'm sure that was part of the decision. On the division, I can't answer for them. They'll have to answer that, but I'm sure that probably was taken into consideration. [LR11]

SENATOR KRIST: Thank you. [LR11]

SENATOR LATHROP: Can I ask another question? When you were giving us your statement and you said in order for the investors to receive their tax credit, occupancy requirements need to be met; and as of October, today, 24 of the...14 of the 24 beds are occupied and that there's some penalties involved in this and your investors lose their tax credits, does the state of Nebraska share any of the financial consequences of not having these full, or does that fall just on your investors? [LR11]

TAMMY WESTFALL: It falls on the investors and then Mosaic gets penalized also

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financially. [LR11]

SENATOR LATHROP: The people that occupy the beds, it makes no difference for the tax credits whether they come from BSDC or whether they come from the waiting list, for example. Would that be true? [LR11]

TAMMY WESTFALL: As long as they can qualify, the person can qualify to live in low-income housing, which most of our folks do, once they qualify...as long as they qualify, they can live there. [LR11]

SENATOR LATHROP Okay. And I appreciate that you have to have a working relationship with the division and I'm not trying to get you crosswise with them with this question or the next couple of questions, but have you had conversations about, "This is getting to be a problem. We're going to be penalized if we don't have people and we need to fill the beds"? [LR11]

TAMMY WESTFALL: Yes, we've had that discussion. [LR11]

SENATOR LATHROP: Okay. Is there some time line where you will be released from the requirement that you draw from just BSDC and be allowed to fill the beds from some other referral source? [LR11]

TAMMY WESTFALL: Well, I know that as of Friday of next week, because we are bumping up against the December 31 deadline, and I have...we have not had an opportunity to meet with the division yet about this, which we will be, but we will...are going to have to take some type of action in regards to especially the beds that are open for those four homes that were built with low-income tax credits. I mean, we've got to get those filled by December 31. I can tell you that most of the homes, the two medical support units in Omaha that were built with low-income tax credits, there's not going to be a problem filling those. Everybody has worked very hard on that. It's our

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home in Norfolk where we're really struggling with referrals for that area. And so what we will have to do is either close one of our current homes or open it up to the community. But we're running out of time. [LR11]

SENATOR LATHROP: Okay. And under the contract, do you have to have the division's permission to take people other than from BSDC? [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR LATHROP: Are you able to say, "There's 140..."? I understand that the census is 147 at BSDC? [LR11]

TAMMY WESTFALL: One hundred forty-seven, 150. [LR11]

SENATOR LATHROP: Okay. We'll call it 150. That's close enough at least for purposes of the question. [LR11]

TAMMY WESTFALL: (Laugh) [LR11]

SENATOR LATHROP: Do you know how many people are still prospects? I mean, are we down to just a couple people that haven't said no yet? [LR11]

TAMMY WESTFALL: Well, we have 11 referrals right now that we would consider active referrals that, you know, the teams are working on, both folks from BSDC, Mosaic, service coordination. You know, everybody is working on those. And out of those 11, you know, a good share of those folks will be admitted. But they're not necessarily targeted just for the low-income tax credit houses. [LR11]

SENATOR LATHROP: If you admitted all of them, you would still be 20 short though. [LR11]

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TAMMY WESTFALL: Exactly. Yeah. [LR11]

SENATOR LATHROP: Okay. [LR11]

TAMMY WESTFALL: Yeah. [LR11]

SENATOR LATHROP: Thank you. Any other questions? Senator Wallman. [LR11]

SENATOR WALLMAN: Thank you. Thanks for coming, Tammy. You know, active treatment, is that unrealistic from CMS or our Department of Health and Human Services or...you know, you said you had trouble with some of that staff. [LR11]

TAMMY WESTFALL: Well, some of it is, you know...and in the very beginning, when we had opened up the two homes that we are struggling with in Omaha with certification, you know, there's a lot of issues there. It's your...you know, you've got high complex medical needs, you've got...you know, you've got to train your staff well. You have to have good leadership. Just because you have licensed professionals doesn't necessarily mean that they're performing up to their standards or their license. And the difficulty in just getting the assessments completed that are adequate, good, adequate quality assessments from professionals in the community. So it's a combination of things. [LR11]

SENATOR WALLMAN: Thank you. [LR11]

TAMMY WESTFALL: Um-hum. [LR11]

SENATOR LATHROP: Senator Howard. [LR11]

SENATOR HOWARD: Thank you. Hi, Tammy. [LR11]

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TAMMY WESTFALL: Hi. How are you? [LR11]

SENATOR HOWARD: I'm good, thank you. I hope you are too. Just so I can better understand this, Omaha Manchester ICF was under a license probation from June to September of this year. But it's no longer under that? [LR11]

TAMMY WESTFALL: Yes. Manchester is still under probation. [LR11]

SENATOR HOWARD: Oh. [LR11]

TAMMY WESTFALL: They came back out and did a revisit, a resurvey visit, and they initiated an extension on that probation. [LR11]

SENATOR HOWARD: Oh, so where it says here "Placed on license probation from 6/11/11 to 9/11/11"... [LR11]

TAMMY WESTFALL: There are comments down there below the box. That was the initial...should be on the same line, spreadsheet. They've been there... [LR11]

SENATOR HOWARD: Oh, I see what you're talking about. "Survey re-visit the week of 08/15/11, waiting for results..." [LR11]

TAMMY WESTFALL: We've gotten the...(laugh). Keep reading. (Laugh) [LR11]

SENATOR HOWARD: Oh, there's more. (Laugh) It goes on. [LR11]

TAMMY WESTFALL: There's more. Basically, Senator Howard, they have been there twice to do the initial certification, you know. And when they went there the first time, they...not only did we not get our initial certification but they placed a probation on our



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license, for 90 days the first time, and then at that time it restricts your admissions into that home. Then when they came back in August, because there were...if there's any repeat deficiencies at all, then we knew we still would not get our certification. [LR11]

SENATOR HOWARD: So that's when the initial 90 days and then the extension. [LR11]

TAMMY WESTFALL: That's when the...yes. [LR11]

SENATOR HOWARD: Well, here's the question I wanted to ask...thank you for clarifying that. [LR11]

TAMMY WESTFALL: Sure. [LR11]

SENATOR HOWARD: So we pay a set amount every month regardless of the number of the individuals. If there are two, like are listed here, or if there are six. [LR11]

TAMMY WESTFALL: That is correct. [LR11]

SENATOR HOWARD: So we still pay while it's under a denial and there cannot be additional placements. [LR11]

TAMMY WESTFALL: Say that again. I'm sorry. [LR11]

SENATOR HOWARD: If they are under the probation, that restricts you from additional placements. Is that correct? [LR11]

TAMMY WESTFALL: Right. Yes. [LR11]

SENATOR HOWARD: But we still pay the set amount every month? [LR11]

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TAMMY WESTFALL: Yes. [LR11]

SENATOR HOWARD: That seems kind of contradictory. (Laugh) There can't be any additional placements during that period of time and yet we continue to pay, if I'm correct in... [LR11]

TAMMY WESTFALL: That's correct. [LR11]

SENATOR HOWARD Gosh, where's the good sense in that? (Laugh) Thank you. [LR11]

TAMMY WESTFALL You're welcome. [LR11]

SENATOR LATHROP Senator Campbell. [LR11]

SENATOR CAMPBELL Yes. Ms. Westfall, I just want to make sure that I heard you correctly. When you talked about looking at the waiting list, and I understand that the department has the waiting list and we're going to look at that, but I thought you said that you weren't sure that there were people on the waiting list who might qualify to come into... [LR11]

TAMMY WESTFALL: No, I do not know if there's any that...you know, I don't know who is on the waiting list so I have no idea if there are folks on the waiting list who would need the 24-hour nursing care or 8-hour nursing care. [LR11]

SENATOR CAMPBELL: So it's in the nursing care classification. [LR11]

TAMMY WESTFALL: Right. [LR11]

SENATOR CAMPBELL: Okay. Well, we'll ask the department. [LR11]

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TAMMY WESTFALL: Yeah. [LR11]

SENATOR CAMPBELL: Thank you. [LR11]

TAMMY WESTFALL: You're welcome. [LR11]

SENATOR LATHROP: Senator Coash. [LR11]

SENATOR COASH: Thank you. You have...you said you have capacity to serve 66 people, right? [LR11]

TAMMY WESTFALL: Um-hum. [LR11]

SENATOR COASH: But that's actually back down a little bit because you can't take referrals on one of those homes? [LR11]

TAMMY WESTFALL: Right. [LR11]

SENATOR COASH: Right. But if everything was licensed... [LR11]

TAMMY WESTFALL: For referrals. [LR11]

SENATOR COASH: Okay. So maybe it's down to 62. But assuming you had no licensure restrictions, you have a capacity to serve 66 people, right? [LR11]

TAMMY WESTFALL: Right. [LR11]

SENATOR COASH: Are you staffed...I mean, are you staffed up and...I mean, if there were the additional 30 people ready to get services, are you staffed up and ready to go?

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[LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR COASH: So you're paying regardless. I don't...this is pretty amazing. I want to get this straight: You're getting paid by the state of Nebraska regardless of whether or not there's people receiving the services? [LR11]

TAMMY WESTFALL: Yes. [LR11]

SENATOR COASH: So that...is that...that's what the contract...I assume that's... [LR11]

TAMMY WESTFALL: There's a tiered rate on each bed. Yes. [LR11]

SENATOR COASH: So in the contract that you have with the state of Nebraska, it was stated you would get paid...once you had the capacity, you're going to get paid regardless if there's someone receiving the service. Right? []

TAMMY WESTFALL: Right. [LR11]

SENATOR COASH: So you probably aren't...are you really worried about this fine? I mean, you're getting... [LR11]

TAMMY WESTFALL: Well, we still have... [LR11]

SENATOR COASH: And I know you're not...I know you've got some barriers to getting folks in there. [LR11]

TAMMY WESTFALL: Right. Part of the reason for the tiered rate, to begin with, is to get the beds filled. And I don't think it's that anyone doesn't want the beds filled. I don't

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think... [LR11]

SENATOR COASH: I'm sure you would prefer to provide the service. [LR11]

TAMMY WESTFALL: Yes, we would prefer. And I'm sure the division also would prefer to have those beds filled too. (Laugh) [LR11]

SENATOR LATHROP: Senator Krist. [LR11]

SENATOR KRIST: I spent most of the summer dealing with what happens when contracts are not properly administered, so I'm going to use an opportunity to say it again for my chair and for this: If we don't get a handle on putting contracts out there that are, in my estimation, fiscally responsible with taxpayers' money, we'll never be able to service the people who really need the service. I know of a disabilities list that is out there because my daughter is disabled, and there are plenty of people on that list that need places to live. Now I find it appalling that we're paying you for empty beds and I'll leave it at that in terms of personal contact. I know you're trying to do the right thing so don't take that personally. This is at the heart of a lot of our problems within the department. We need to have contracts that are palatable, that pay people to do the right things, and that we are being good stewards with the citizens...with the taxpayers' dollars. [LR11]

SENATOR LATHROP: Senator Howard. [LR11]

SENATOR HOWARD: Thank you, Senator Lathrop. Well, not only are we paying...I'm sorry Tammy, not only are we paying but we're paying for beds that are restricted that we can't put people in that...our hands are tied both ways. We're paying for beds that we can't actually use. I don't understand how that could happen. But again, like Senator Krist, I've been dealing with this very issue regarding contracting and child welfare, and it makes you shake your head. [LR11]

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SENATOR LATHROP: And if I can weigh in, just to give it some historical perspective, the assumption when the contracts were entered in to with Mosaic, is that we would be able to encourage people, entice them out of BSDC, which is a whole other issue, getting people to agree to leave BSDC. The real troubling thing is if we're are the...if we've exhausted that as a referral source, then it's time to give you permission to go to the broader community and find people who need the care that you are being paid to provide but essentially no one is there. [LR11]

TAMMY WESTFALL: Um-hum. [LR11]

SENATOR LATHROP: Okay. I see no other questions, so thank you for coming down. We appreciate your information today and your testimony. We will next hear from Jodi Fenner. Good afternoon, Jodi. [LR11]

JODI FENNER: (Exhibits 3-7) Good morning. Oh, good afternoon. I'm Jodi Fenner, the director of the Division of Developmental Disabilities. My name is spelled J-o-d-i F-e-n-n-e-r. I apologize. I received the agenda recently but before I go through the items in the agenda, knowing that we have some new members on both committees, the division did prepare an update similar to what we did in 2009. It does cover some of the issues that you've requested to be updated on but it also covers many of the other activities from the division as a whole. So if you want to go through any of those today, we're certainly prepared to do that as well. Mosaic isn't on the list but I guess if that's something that you would like me to cover, Senator Lathrop, I would be happy to address those. [LR11]

SENATOR LATHROP: If you would like to...now that we've just heard from Tammy, if you would like to address Mosaic and the things that we've heard, I'll give you that opportunity, because I think people have some genuine concerns. [LR11]

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JODI FENNER: Absolutely. In one of the first committee hearings I attended, we actually provided the committee participants, I believe, with the Mosaic contracts, and we will get those to all of you again today, because the contracts are not restricted. They have a restriction for a time limit. I believe that time limit is 90 days in the CDDs. In an ICF, again we...the point is for us to have a time period with which to do initial referrals. After that time period Mosaic can serve anyone they choose to. [LR11]

SENATOR LATHROP: And you might be using jargon, and so I'm going to ask you... [LR11]

JODI FENNER: Absolutely. [LR11]

SENATOR LATHROP: ...to maybe explain what you've just said... [LR11]

JODI FENNER: I'm sorry. [LR11]

SENATOR LATHROP: ...a little bit so that we understand... [LR11]

JODI FENNER: Certainly. [LR11]

SENATOR LATHROP: ...in relationship you can tell what the concern is of the committee... [LR11]

JODI FENNER: I absolutely can. [LR11]

SENATOR LATHROP: ...after hearing the testimony of Tammy Westfall. [LR11]

JODI FENNER: Absolutely. When the contracts were first put together, they were drafted on the tiered system knowing that, first of all, you can't move six people into a home at one time. That isn't a safe or an appropriate thing to do from the medical or a

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psychological perspective for the people we support. So but also the point is you have to have full staffing for that home whether you have one person in it or whether you have six. So the contracts were drafted in a tiered system, quite frankly, because if you didn't do it that way, it wouldn't be feasible for any private provider to open these homes. So that's where the tiered system comes from. The contracts were also drafted with the assumption that there would be a large number of those individuals that were in the hospitals who would want to move to Mosaic. The reality is Mosaic didn't get completed, the first few homes open in March, and many of the other ones were...there were some significant delays. So by the time Mosaic was ready to accept people, we had already placed most of those individuals from the hospital. That being said, we've had many, many, many, many other referrals. We do still have active referrals pending from Mosaic. We have several significant let's just call them respectful disagreements on their declining to serve certain particular individuals. We also have some issues with referrals not being considered timely, and quite frankly, individuals have moved to other providers or their parents have changed their mind, you know, about placement opportunities. And we had some people die waiting for a referral. And so there are a lot of issues in the referral process. We've met repetitively with Mosaic on a monthly basis at times, on a weekly basis at times, on a daily basis at times. We have been taking referrals from people outside of BSDC for quite some time, and I'm not sure why Ms. Westfall doesn't recall that, because she was at the meeting, I think it was over six months ago, when we started doing that, so. [LR11]

SENATOR LATHROP: Okay. I can appreciate that, Jodi, but if we still have 30 beds that are empty and we're paying for them, can you tell us why we still have 30 beds that are empty and that the state under this contract continues to pay essentially for empty beds at Mosaic under the contracts? [LR11]

JODI FENNER: Well, I think those are some questions that we as a state have to...and those are some legal issues we're going to have to work out with Mosaic. But we are doing referrals--referrals we believe have been improperly declined. We still have



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pending referrals including some individuals from BSDC. We have opened that referral process up to the DD community at large, individuals who are receiving services all over the state who may have a medical need who would be suitable to live in these homes. We've also opened it up to individuals who live in nursing homes who might be more appropriately supported in one of these homes. In fact, some of the current placements are from outside of BSDC. [LR11]

SENATOR LATHROP: Let me ask this question just for my own benefit. Is Mosaic, under this contract, free to go out and find people to fill these beds themselves, or do they have to get referrals through your division? [LR11]

JODI FENNER: They could...at this point in time, they could fill those beds themselves. [LR11]

SENATOR LATHROP: Okay. Have you given them names off the waiting list of prospects that they could talk to, [LR11]

JODI FENNER: We can't...and I think the point, we can't just take people off the waiting list out of order, sir. But we do have lots of people in the community who could benefit from this...who are already in placements across the state who could benefit from a higher level of a care. And so that's the targeted population we've been looking at. When we have people who are coming off the waiting list, then we are--and they have high medical needs--we're also offering Mosaic as an option. We don't have the abilities to just give Mosaic a list of names because that would be a HIPAA issue. We don't really...I mean we respect parents' and individuals' privacy that we have those conversations repeatedly across the state with our service coordinators. [LR11]

SENATOR LATHROP: If they don't have access to the waiting list--and I appreciate your concern for HIPAA--but if they don't have access to the waiting list, then the only other thing they can do is advertise in the newspaper. [LR11]

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JODI FENNER: Well, that's not necessarily true. We have taken and...the division has paid for CDDs that Mosaic has drafted. We've had CDDs copied. We have had...helped them promote open houses. We have sent and we have actually gone out and visited with our service coordinators in the local service areas and talked about Mosaic as an option. So I mean I... [LR11]

SENATOR LATHROP: Maybe I'd put a differently. You and I will both agree that Mosaic was chosen, perhaps through a competitive process, but in part because they have a wonderful reputation for providing care in the community. [LR11]

JODI FENNER: Mosaic was the only provider willing to provide the services. They actually approached the state with a letter stating that they did this all over the country. And indeed, they do have these facilities in other parts of the country. [LR11]

SENATOR LATHROP: And a good reputation. [LR11]

JODI FENNER: And a good reputation. [LR11]

SENATOR LATHROP: Okay. And so it strikes me that if they are being paid \$2,700 for a six-bed unit that's empty, that--and it's state tax dollars--it's the state that should be concerned about them sitting empty. [LR11]

JODI FENNER: We are. We are very concerned. [LR11]

SENATOR LATHROP: Okay. Will we see those beds full by the end of the year? [LR11]

JODI FENNER: That depends upon some community relationships. We have some issues with community relationships and some...I mean, Mosaic as a whole has a good--I will give you that--but we do have...in some of our areas service coordinators

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are telling us there's some hesitancy in referrals. Part of it is because of the quality issues you've heard about today, part of it is because of the experiences that parents have had with Mosaic in the past in their area. We think and we have tried to work through and help collaborate with Mosaic and parents to solve those issues, but at the end of the day, if Mosaic doesn't accept our referrals, then I think our attorneys are going to have to talk. I mean we can't keep having repeated denials. [LR11]

SENATOR LATHROP: Well, that's true except that we don't expect them to take people with behavioral issues who would be a threat to the other residents. [LR11]

JODI FENNER: And I think... [LR11]

SENATOR LATHROP: They have that right even under the contract. [LR11]

JODI FENNER: They have that right but I would expect that right to be exercised judiciously. We have people who Mosaic has refused that other community providers, for far less money and that have far less resources, are supporting quite well in the community at this point in time. [LR11]

SENATOR LATHROP: Okay. It looks like you're going to get some questions before we move to the next... [LR11]

JODI FENNER: I fully expected that. Thank you. [LR11]

SENATOR LATHROP: Okay. Senator Krist. [LR11]

SENATOR KRIST: How was the contract processed? [LR11]

JODI FENNER: I was not the director at that time. I can just tell you from...I was working in the legal division at that time so I have limited contact at that beginning, so it was

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processed as just any other contract. It was reviewed. Contracts for direct services don't go through the Department of Administrative Services, and so... [LR11]

SENATOR KRIST: Yeah. Well, the question is...then that answer part of it. It didn't go through the Department of Administrative Services and the state was put at a point of liability whether or not those beds were filled with, in your estimating, if you're in the legal department, was there a recourse in the contract? I mean, why...I'm very familiar with federal contracts and services contracts. There is a guaranteed G&A and profit margin involved with services contracts. You don't let a contract and "blanketly" just let it go and get charged. You control the cost of the contract with oversight. It seems to me, having been involved with reading this testimony and watching this happen, and now our experience with Health and Human Services, there's an awful lot of contracts out there that are paying people an awful lot of money and there doesn't seem to be either financial or management oversight of those contracts. I would suggest, and this is not a question, it seems to me that somebody in the Department of Administrative Services or somebody in a contracting expertise needs to figure out how to control those costs, because we're spending money for things that we're not getting any product for. Could you agree with that? [LR11]

JODI FENNER: I understand you have recently been working on a wide variety of contracts, and I agree that contract compliance and contract oversight is important. But beyond that, Senator Krist, I really can only speak to my participation in the current contract. [LR11]

SENATOR KRIST: So what we heard... [LR11]

JODI FENNER: So I'm not going to give you a general agreement. [LR11]

SENATOR KRIST: Thanks. So if we go back in time, we've just been told that it's been over a year that we have known that we have 36 beds, or thereabouts, the right

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number...I don't want to quibble over the numbers, but it's been over a year that we know that we have empty beds. What has the division done to speed that process along and fill those beds up? [LR11]

JODI FENNER: It's been over a year since we've had empty beds--not 36, sir. Many of these homes have just recently been completed and only one of these homes, these ICFs, has been certified. And so we also have a concern as a division that we have a duty to protect individuals by not putting them somewhere where their needs can't be met. So to me that's more than dollars, but I respect that your job is to watch the dollars. And so I...again, we have met repeatedly. I think at this point we meet biweekly with the Mosaic leadership, and we continue to send referrals. It's not that referrals aren't there. It's not that people don't want to be in these homes. But we're kind of at the point where we're going to have to have some very serious conversations with Mosaic leadership. [LR11]

SENATOR KRIST: Okay, then one other follow on. As I look at that list, and I'm familiar with the list that you're going to tell us about, it seems to me that probably the division could say these top ten that are on the list, which we have to go to first, are never going to qualify for the kind of care that these homes need. This person who is number 50 on the list indeed would qualify. So by requirement alone, it would seem that you could skip from 1 to 50 and place and try to fill that bed. Is that not...? [LR11]

JODI FENNER: I can say my knowledge of the people on the list, there are only three people who affirmatively requested Mosaic referrals, and so we forwarded those referrals that I believe Mosaic is not capable of supporting... [LR11]

SENATOR KRIST: In the whole list. [LR11]

JODI FENNER: ...or shouldn't be capable of supporting. I believe all of the other people on that list, with proper supports, which they are fully funded to provide--and, quite

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frankly, they're a great company. They're equipped to provide it. I think they have some local management and leadership issues. But I believe that those referrals are legitimate. [LR11]

SENATOR KRIST: Thank you. [LR11]

SENATOR LATHROP: Senator Bloomfield. [LR11]

SENATOR BLOOMFIELD: Thank you. I'm one of the new people on this thing. I keep hearing about this referral list. How many people are on that list? [LR11]

JODI FENNER: On the...well, the referral list... [LR11]

SENATOR BLOOMFIELD: On the waiting list. [LR11]

JODI FENNER: Okay. That's a totally different topic. The waiting list, there are...I don't have that memorized, but there's a section in here and we'll be going through that momentarily. I think there's about 1,700 people on the official waiting list right now. But the waiting list means you're waiting for funding. We have a lot of people who already have funding in the community who have a need for these types of services. [LR11]

SENATOR BLOOMFIELD: Well, how many are on the referral list then? [LR11]

JODI FENNER: The current referral list I believe Tammy said eight. I might have...she said 11; I think I have eight or nine on my list. We have...yeah, so at that point in time that's our current what we call active referrals. [LR11]

SENATOR BLOOMFIELD: Okay. Thank you. [LR11]

SENATOR LATHROP: Senator Cook. [LR11]

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SENATOR COOK: Thank you, Mr. Chair. And thank you, Jodi, for coming to help us get our heads around this. I have a piece of paper here and a pencil, kind of old-fashioned, but I'm coming up with upwards of \$1.3 million that has been paid without utilization of the spaces. So I guess to the degree that we can understand, procedurally, would you try to help me understand how many back-and-forths you would engage with typically, with a Mosaic, before the agency might just say, "Hey, well, let's move down to one of these other 1,700 folks who might be less controversial." How many times...I know you're meeting a couple times a week. How many times back and forth, when (inaudible) talked about rejected referrals, before you might try to get those other folks in there? [LR11]

JODI FENNER: Well, the waiting list and the individuals on that list, that means they're eligible for funding. That doesn't mean that... [LR11]

SENATOR COOK: Okay. [LR11]

JODI FENNER: Okay, so what we have to do is we have to find people who already have...we don't just take people out of order off the waiting list. That isn't how it works. [LR11]

SENATOR COOK: Okay. [LR11]

JODI FENNER: Unless somebody on the waiting list was in a medical crisis or something, and I think we actually have taken one person off the waiting list in a Mosaic, because of what we call priority one status. And I'm kind of going out of order because I know waiting list is something you guys want to talk about here, but. So when we talk about referrals, there's a lot of people who already have funding that are already in DD services. I don't know how you can just jump people out of order off the waiting list without offering it to people who currently need services, but...and again, Mosaic at

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any time, at this point in time, really they can go offer the positions to other...if they have other Mosaic people in services, they can certainly make that happen. I will say that with regard to the ICF services, if they can't get certified, then once they're certified under the ICF, once they get their ICF certification, then all of that funding comes directly through the ICF's payment process and not through community DD services. And so once they get ICF-certified, that tiered system doesn't come into play. ICFs are funded on a cost reimbursement basis in Nebraska, and once they get their certification they'll go over to Medicaid, and Medicaid will take over their funding. There actually is two separate contracts: one for the ICFs and one for the CDDs, so. But if they have referrals that they want to consider, that's absolutely something they're entitled to do. And we will continue to look at all of the 5,000...well, I guess we have 4,800 people in services. And some of the things we did was we printed off a list of individuals in services who were at certain funding levels in the community, and we sent that list to all of our service coordinators, and said, "These are individuals who are at a very high level of funding. Would you look at them and see, individual service coordinators, are they people who have high medical needs, are they people who are near their families or are one of these new homes closer to their home community, and are they people who are succeeding in their placement?" Oftentimes, when you have somebody who has high needs, if they're having challenges in their placement, this would be an opportunity for us to move them to more appropriate placements. Then we also took some time to go visit with our service areas and say, "Are you aware..."--I mean, you know, our service coordinators, they are very ingrained in their communities. "Are you aware of people who, in your local nursing homes, who they're having trouble serving because of their developmental disabilities? And if so, let's visit with them and their families to see if moving to a Mosaic home is appropriate." But I have to be honest, the quality issues are something our service coordinators take very seriously. If you've ever met one of our service coordinators, the people in their caseloads, they treat them like family. I mean when they make referrals, those are issues, so. But we're working through those issues, and I think that Mosaic has made a lot of progress. I think they've got some new leadership, they've got some good ideas. And many of the things they struggle with, I



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can completely sympathize with. I know what it's like to use doctors in the community; they just don't understand our population. So we've been very blessed to have our own providers at BSDC and that's something that they'll... [LR11]

SENATOR LATHROP: And notwithstanding all of those efforts, we still have 30 beds that are empty. [LR11]

JODI FENNER: Absolutely. [LR11]

SENATOR LATHROP: Okay. Senator Howard. [LR11]

SENATOR HOWARD: Thank you, Mr. Chairman. When I left case management in 2004, when I sworn in January 2005, this was the same problem. There was a huge waiting list of people waiting for services, and people were always referred over to get on the waiting list. But if you have a child and your child is going to be, you know, 1,699, what kind of possibility do you have of having that youth or that child placed in facility? And then we hear that there are beds that we're paying for that no one is in. This hasn't changed as far as I can see in the seven years that I've been down here. Does it look to you like there's been any improvement? [LR11]

JODI FENNER: I've only been here since 2009, so I can only...(laugh)... [LR11]

SENATOR HOWARD: Since 2009. [LR11]

JODI FENNER: I can only speak to that. [LR11]

SENATOR HOWARD: For the past two years. Trust me, it was this bad in 2004. [LR11]

JODI FENNER: Yeah. You know, I feel very blessed because the Legislature funded significantly the waiting list, and we've taken almost 1,000 people off of it. And although

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we have 1,700 people on the waiting list, 435 of those people actually were already offered services and declined it. I also think that because of the waiting list being funded, our service coordinators are taking the time and our system is taking the time to really start looking at people on the waiting list so that we can properly identify people who do need prioritization. For the most part, families who have children don't want their children to go into a facility. I mean, that's my son and daughter; I want them to stay with me and I want to protect them in my home. If somebody did rise to the level of needing facility support and ICF support in a community setting, a service coordinator could very well ask them to be prioritized. And I'm almost certain that has happened in one case. I would have to check with Tricia Mason on that. [LR11]

SENATOR LATHROP: Okay. [LR11]

SENATOR HOWARD: Thank you. [LR11]

SENATOR LATHROP: Do you have a question? [LR11]

SENATOR CAMPBELL: My question was answered. Thank you. [LR11]

SENATOR LATHROP: Okay. Just a comment before we leave the subject, I know that the Mosaic homes were not built overnight. We saw the empty beds coming. And whether we...we might be doing this conversation a disservice if we just look at the 1,700 people on the waiting list, because there may be only a handful that need residential services, but there's a lot of people getting community services that would like to put their son or daughter or loved one into one of these homes, and you know who they are. You've got the list. These people are talking to you. And I'll just say this... [LR11]

JODI FENNER: And we're sharing that list with Mosaic. [LR11]

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SENATOR LATHROP: ...we want to get together again and we want you to update us and tell us what are we doing to fill the beds so that the state of Nebraska is not spending \$2,700 a day for empty beds or for empty homes. Okay? [LR11]

JODI FENNER: Absolutely. And again, I don't mean to be completely negative. I want to credit Mosaic for coming into this venture. This was a very big risk for all parties. And this is a new service in Nebraska, a medical risk service. It is a service that will allow people to live in their home communities with proper medical supports instead of going to nursing homes at a very early age. So I understand that in the short term this has been a very frustrating process for both the state and for Mosaic. But I think if you look into the next decade, if we get past these growing pains, which I'm 99...we're going to do this, Senator. But what this means for the future for people with developmental disabilities I think is still pretty immense, and so I do appreciate you being patient with us and allowing us to continue the efforts. [LR11]

SENATOR LATHROP: This is a segue into Jodi Fenner, 2A on our agenda, which is the waiting list, and maybe we've covered a good deal of that. But could you tell us, 1,700 is the waiting list. [LR11]

JODI FENNER: I did. [LR11]

SENATOR LATHROP: We did spend \$15 million. The Legislature appropriated that money. [LR11]

JODI FENNER: Yes, we have spent that. And actually because of some money savings we've had in other areas, I understand that we've spent just a little more that because we had people who have left services since then, and so our job is to spend our budget on people with developmental disabilities, not just the additional money you have. So we're working very hard to manage that budget. I know in years past you have raised concerns about carryover. You know, my goal as director is to serve every person that

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we can. And so we've actually exceed the money that you've allocated is in our working on... [LR11]

SENATOR LATHROP: Did we spend all of the appropriation on the waiting list? [LR11]

JODI FENNER: We have authorizations out that if people use their services within our normal utilizations rate, then that money will be spent. I have to look at total authorizations. Some people don't use them all and so at the end of the year we have to reanalyze and say if they're not... [LR11]

SENATOR LATHROP: But that \$15 million, Jodi, was that in the previous biennium? [LR11]

JODI FENNER: Well, actually it was, but... [LR11]

SENATOR LATHROP: I'm thinking that was three years ago, and we're into a different budget cycle since we appropriated that \$15 million. Do I have that right? [LR11]

JODI FENNER: We are, but it actually...my base is enough to continue. You actually added that to the base is how you did it. So you gave me \$5 million the first year, you added another \$5 million the second year. So now I have \$10 million total on an annual basis to continue those services. You can't just fund them for two years and now fund them for the future,... [LR11]

SENATOR LATHROP: Right. No question about it. [LR11]

JODI FENNER: ...so you actually added them to the base. So yes. [LR11]

SENATOR LATHROP: Okay. And what we saw when we started to work on the waiting list is that when people saw that there was hope, we got more people on the list. [LR11]

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JODI FENNER: We did, and that's a great thing, because not only did we get...and I will point you...part of the...this is covered in the community-based services section. It's called Registry/Waiting List in your notebook if you want to look at that section. There's two things here. We have what we call the registry of unmet needs. We in the department thing it's really important for people to what we call determine early eligibility. At an early age, not 19 and 21, but when you have a youth who is eligible, we want to determine eligibility at an early age, and then we identify when their date of need is going to be, which is at the year...at the conclusion of the school year where they turn 21. So we put them on the registry at what we call their date of need. It doesn't..if they have increased, enhanced needs that qualify them for what we call priority status, then we can prioritize them before their date of need. But generally, people go on the registry in the order that of their date of need. So we actually have a registry that includes more than just the 1,700 people, and that's very important from our perspective because it allows us to do long-range planning. We're not just looking at the next 1,700 people; we're looking at the next, you know, possibly the next decade. But the other thing it does is it connects us to those people so that we can start at an early age educating parents and families on the types of services that we provide. There are still people in the world who think that all we do is provide institutionalization. And so I mean I've actually met with parents who said, oh, I don't want DD services because I don't want my son in an institution. It's like, no, but you want him to grow up; you have all these hopes and dreams and you want him to have a job and a family. Well, we can support people so that they can have successful jobs and have successful lives. But if we don't start changing those expectations at an early age, then that's never going to happen. And so what you did actually got people to start doing that, and that's a really exciting thing. [LR11]

SENATOR LATHROP: Okay. And all that's important if we're going to work at chipping away on the list. So let me ask you this... [LR11]

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JODI FENNER: And I'm assuming that that commitment is still there, so. [LR11]

SENATOR LATHROP: Well, what do you need? [LR11]

JODI FENNER: Well, we actually did... [LR11]

SENATOR LATHROP: What's your recommendation, Jodi, for...we have members of Appropriations on this committee. [LR11]

JODI FENNER: On the second page, we have the total estimated of, first, people on the waiting list for 2013, because that's, you know, when we anticipated the next budget cycle would be. And then, secondly, we gave you the list of everybody on the registry just so you would have that idea. The state funding estimated for the waiting list as of July 1, 2013, is about \$30 million in state funds. [LR11]

SENATOR LATHROP: And my question was what your recommendation is. You've told me what it would cost to get the waiting list down to zero. Do you have a recommendation? [LR11]

JODI FENNER: I think that as a state the Legislature has made a commitment to funding and supporting people on the waiting list. I think that that...if that is the commitment you're serious about, then that's something that you have to consider. I think that's what you're trying... [LR11]

SENATOR LATHROP: So your recommendation is that the Legislature should appropriate \$31 million and exhaust the waiting list. [LR11]

JODI FENNER: I'm not authorized to make appropriation recommendations. That is a decision the Governor makes. I give him the information to make those policy decision. You as a legislative body, my understanding is from the language of the statute, have

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made a commitment to supporting all people on the waiting list. That is a legislative statement that is in statute. My job is to give you the information to make that policy. I will spend every dollar you give me, Senator Lathrop, to support people with disabilities, and I think you know that. [LR11]

SENATOR LATHROP: Okay. [LR11]

JODI FENNER: And I'm trying to make sure you have enough information to make those decisions. [LR11]

SENATOR LATHROP: Okay. Senator Krist. [LR11]

SENATOR KRIST: I have to beat this dead horse, but in order for me to feel comfortable giving you \$31 million, you're going to have to give me better oversight of the financial support that I see right now. I mean, you have...I think Senator Cook came up with a figure, I think it's closer to \$2 million, of wasted taxpayers' dollars implementing a program that was let in contract, and the state has no wiggle room unless we go back legally and take action. So as with all program monies that go into the Department of Health and Human Services, I find a lack of paper trail. I can't tell where some of the money is going to and I don't know where it's coming from. You made a statement earlier that you had some extra money. And if you've got extra money, then I would like to know where it's coming from. Because that's our job to appropriate; it's your job to execute. So it's a comment based upon the financial oversight of the programs. Thirty-one million dollars may be the right amount of money; it may not be the right amount money. But I'd like to see some better financial oversight. [LR11]

JODI FENNER: And I should clarify, we don't have extra money. We had people who passed away or who moved out of state, and so that frees up money. I'm tasked with spending that DD aid budget to support people with developmental disabilities. And so

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when people leave services and we have...and I probably shouldn't have used the word "extra money," but, you know, we get excited when we get to serve people. So I need to step back. We actually...it's not extra money. It's in that DD aid budget that you appropriated. But we do have...we don't serve the same people day after day. We have a changing system. [LR11]

SENATOR KRIST: Thank you for the clarification. [LR11]

JODI FENNER: And I understand your concerns and I respect that, and I can only speak for what's happened since I've been here and, sure, we could go in. I think very clearly Mosaic is in breach of contract. Their facilities aren't certified appropriately. I think there are some issues there. But from my position as the director, I have open spots but I also have 30 people who are being served. And I don't necessarily have anywhere for them to go if we don't work collaboratively with Mosaic to work out the situation. [LR11]

SENATOR KRIST: Okay. I'm glad you brought that up because I have one follow-up comment/question. Don't you think it's important when you issue a services contract to make sure that they're qualified to execute on the contract and that you not pay them for something that we're not getting services for? And to that point, was Mosaic qualified to do that? Was it a competitive bid process? Were the right contract lawyers involved? Because you know what? We just threw money at the issue. And so that's my concern. [LR11]

JODI FENNER: And I respect your concern. I wasn't a decision-maker when the contract was let. I do know Mosaic was the only provider willing to do it, and I know that they're certified to do this I believe in at least three other states, maybe four. So the qualification should have been very clear. They have the national resources to do that. They do it in many other places. They're very well established here in Nebraska. But as far as going into the contracting and that is a decision my predecessor made, so I wish I



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could answer those questions. But I do think it's important, like you said, that we look going forward at those financial issues. Every dollar we waste is a dollar we don't have to support somebody on the waiting list, and that's important. [LR11]

SENATOR LATHROP: We agree with that. Senator Campbell has a question for you. [LR11]

SENATOR CAMPBELL: Ms. Fenner, I started in this area when I was on the county board and we ran a facility for folks in DD. And so it's like the waiting list has always been with us, and it's like, will it always be?--that question. I think there will always be some sense of a waiting list for...I mean if we took all this \$31 million, there's still going to be people coming from the schools, moving in. I mean, we're always going to have people who are waiting. If the \$31 million rounded up, does that also include the 400-and-some people who said, we're not ready for services or we don't want those services? Because some people get on the waiting list in anticipation, do they not,... [LR11]

JODI FENNER: Um-hum. It does. [LR11]

SENATOR CAMPBELL: ...of when they think they're going to need the services. So we really...and sometimes I think the word "waiting list" is somewhat of a misnomer in terms of the fact that we are always phasing in and should be ready to phase people in. Would that be more accurate? [LR11]

JODI FENNER: That is correct. There will be people...say, you gave me the whole \$40 million today and we said we're going to offer services, there will be people who decline services who aren't ready for them. I think what we learned in this last process is Nebraskans, they are frugal. They don't spend money they don't need. They don't take services they don't need. People want to live independently. They want to live in their communities. They want to be integrated and work and do all of these things, and we

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had people who said, quite frankly, we're doing very well with our natural supports.  
[LR11]

SENATOR CAMPBELL: So at this point, really what the Legislature, we need to make sure that your division and we are in consort to be ready as years come, that we are ready to phase people in when they are ready, and not just look just at this year and then the next year. [LR11]

JODI FENNER: Uh-huh. [LR11]

SENATOR CAMPBELL: And I'm assuming that as the committee has looked at this, that's what you're starting to do. You're starting to look down the line so we're prepared.  
[LR11]

JODI FENNER: And not just from an aid section. If you look on the next page, you can't just give me that much money for a waiting list and not give me the administrative and service coordination supports to go with it. It will not work. Our service coordinators absorbed over 800 people into services without any additional staffing other than the five, now you have for the last two years, given us the two five additional staff members. And I understand that my predecessors didn't request that and they were so happy, and I don't know that anybody every thought in the budget cycle, that that money would be appropriated. But I did give you also numbers for what it would take for the additional service coordinators and administrative support, as well, so. [LR11]

SENATOR CAMPBELL: Thank you. [LR11]

JODI FENNER: Because you can't do it all at one time. [LR11]

SENATOR CAMPBELL: Right. [LR11]

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JODI FENNER: Now we as a division have been working very well. There's another section of your book that talks about...it's the DD providers, the specialized providers. We've worked very diligently to recruit new providers, so. But we have options in Nebraska. I mean, we started with 25 providers. We've increased that over 30 percent. We have a total...we increased by ten and then we had two who left. We also have other providers from other states wanting to come here because we also have to look long term, again, at creating different options for people throughout Nebraska. And with options comes capacity, so. [LR11]

SENATOR LATHROP: Senator Wallman has a question. [LR11]

JODI FENNER: Sure. Sorry. [LR11]

SENATOR WALLMAN: Yeah, do these services contracts and stuff? Do you deal also with surrounding states? Or are we just...these are all Nebraska? [LR11]

JODI FENNER: We only serve Nebraska services here in Nebraska. [LR11]

SENATOR LATHROP: Okay. With that we're going to move on to the rate methodology study update. [LR11]

JODI FENNER: Okay. There is a section in your book, it's entitled Rate Methodology. And then I do have a few other handouts today. I apologize. I e-mailed you all the rate methodology draft that we had, and then the afternoon of October 4, we got the final rate methodology study. So in your book we've made a couple of changes and we actually included the final rate methodology study. I don't know if we got that e-mailed out. I know we e-mailed it to the providers, but it's in your book. So I didn't change the time line, though. I'm sorry, I forgot to do that. But the time line is the same one. [LR11]

SENATOR LATHROP: Jodi, I don't want to run out of time today and we have a lot to

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talk about. [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: So I'm going to ask you if you can just tell us where the study is and what changes it proposes to make to the current process. [LR11]

JODI FENNER: Absolutely. What the study... [LR11]

SENATOR LATHROP: So that we can keep this moving. [LR11]

JODI FENNER: Sure. What the study is, it's a rate methodology study. It takes current costs of providing services in Nebraska, and the purpose of a rate methodology is to give you a methodology, basically a formula for how should you calculate services. The formula they gave us is based on current costs, but the thing that we insisted on, and probably the thing that...we had a lot of back and forth with the provider. We wanted to make sure that you had not just a rate but a formula so that you don't have to pay for a new methodology study two years from now or five years from now. You can take the formula and you can change some of the components. When the rate methodology study was done in 1992, the component, the direct support rates, the rates for direct support professionals was set at 90 percent of the BSDC rate. And knowing that, what I did is I developed--and this is what is being passed out--a salary rate comparison to BSDC positions, because I know that's something that is big in the providers' minds. They want you to fund the community the same as BSDC. If you did it the same as 1992, quite frankly, the rate methodology study shows that a standard day in residential habilitation supports are more than the DT-1 entry level staff, not at the 90 percent. But I also gave you comparisons of what our HSTS positions are at BSDC in comparison to the vocational supports in the community and what our management salary entry rates are. So that's really just for your consideration. [LR11]

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SENATOR LATHROP: Does this study include a change in the formula or a proposed change in the formula by which we would reimburse community-based providers? [LR11]

JODI FENNER: It would. The... [LR11]

SENATOR LATHROP: And can you briefly... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: What I don't want to do is have your answers take us into 6 o'clock, okay? [LR11]

JODI FENNER: Sure. I know. [LR11]

SENATOR LATHROP: And I appreciate it. I want to give you the time you need to answer our questions, but we want to make sure we have an opportunity to get through all the material and allow for public input, okay? So I'm going to ask you in what manner would you propose changing the method by which we reimburse community-based providers? [LR11]

JODI FENNER: I am not ready to make a recommendation. We just gave this report to the providers yesterday. I think we have a meeting scheduled in two weeks with the leadership from some of the providers. [LR11]

SENATOR LATHROP: Then let me ask the question differently: What does the report tell providers is under consideration, how are you changing in this report the method by which providers are reimbursed? [LR11]

JODI FENNER: The report actually updates the rates by calculating what the current

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costs of services are. It takes direct support professional services and supervisory services, and that it includes a different overhead rate. It actually is based on the actual cost surveys that were sent to all of the DD providers in Nebraska. And so it's based on what we're spending now as a whole. [LR11]

SENATOR LATHROP: Okay. To what extent did you secure input from community-based providers before this report was completed, or is that the part in the process that we are at right now? [LR11]

JODI FENNER: No, we've met with the community-based providers at every step along the way. Every time we've gotten a document from Navigant, we've e-mailed that out to our community-based provider leadership. [LR11]

SENATOR LATHROP: Who has prepared this document or this report? [LR11]

JODI FENNER: Navigant is the contractor. [LR11]

SENATOR LATHROP: Okay. Senator Coash has questions for you. [LR11]

SENATOR COASH: Thanks, Chairman Lathrop. Just a few questions, and I don't want to hold...I have a lot of questions about this and I don't want to hold this process up, because we have important things to get to. But can you...I think you were starting to talk about this, but what is your next step here? I mean, we paid \$150,000 for these pages. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR COASH: And I would expect that we would want to do something with it, but we don't have to. I mean, it's a study at this point. What is your process here? I mean, you are going...what's your next step here? Are you going to say, "Here, providers, this

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is what we're going to do." Do you have something...what's your next step here? Because I think it's important. I mean, in child welfare we didn't do a good job of listening to providers. [LR11]

JODI FENNER: Colby, you've been in all the meetings we've had, many of the meetings we've had on this. [LR11]

SENATOR COASH: Yeah, I know you've got...I know providers... [LR11]

JODI FENNER: I mean, this has been a very collaborative event, Senator. [LR11]

SENATOR COASH: I know providers have been involved, but at the end of the day, you know, on the other side of the ledger, we didn't pay attention to what child welfare providers were saying and we know where we are. I just want to know what you're...I'm just trying to get a handle on...and I know this is a day-old final study. What's next? [LR11]

JODI FENNER: I think what the intent was for us to sit down with the providers, we as a team, us, the state and the providers, had a lot of concerns about the draft report. The methodology wasn't clear and articulate. Some of the bases for the rates were concerning. For example, they took out some of the higher--I can't remember what they called it--outliers they called them. The problem is some of our outliers are governmental providers and that they pay the best rates, and so it was bringing down the direct staff rates. And well, what is the counties choose not to fund them, so then what do we do? Close all those services? There were a lot of significant issues the provider raised, and we made the Navigant change a lot of that based on the conversations we had with the providers. And so, you're right, we've only had this for a day, and quite frankly, I haven't had a chance to look through that, and so that's the follow-up meeting we're having with the providers. Also going to a more clear staffing level system instead of this whole...the current system we have has a lot of weights and

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means that nobody really seems to understand. We've tried to actually translate the ICAP into straight rates, which is what many other states who have done this process have, because it gives people a clear idea of what their budget will look like. But providers want to know what that means for them. So what we've said for providers is we're going to pull a list from our information systems people, the people that you support, and what are the ICAP scores and what will your budgets look like in the end if we adopt the study as it is. That being said, if we adopt the study as it is, it costs us \$13.2 million. I can't do that. I don't have that kind of money in my budget. So nothing is going to happen overnight. [LR11]

SENATOR COASH: Okay. All I would ask on that is that you keep the committee apprised of those steps so that... [LR11]

JODI FENNER: Sure. [LR11]

SENATOR COASH: I would just as soon hear from you, than the provider community, that you pulled the trigger on these things. [LR11]

JODI FENNER: We're not going to pull the trigger on anything here without partnering with our providers. I mean that's a very significant change to how they do business and how they bill. Even if we all agree to a change and we have the money in our budget to do it, there's some significant changes to our accounting system that we have to make for the billings to occur. [LR11]

SENATOR COASH: Okay. [LR11]

JODI FENNER: And that's why, if you recall, one of the big things we demanded of the provider is you need to tell us how do we update this, because the rates here will be different in a year because of inflation rates. And so we've made them very much clarify the methodology, not just their proposed rates. [LR11]



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SENATOR COASH: Just keep us informed. [LR11]

JODI FENNER: We will. [LR11]

SENATOR COASH: Okay. Our system in Nebraska has always been based on the need of the person and then the money that is allocated based on that need follows that person. So wherever a person goes, so if they change providers they get the same funding, right? [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR COASH: My question is, if this rate methodology was impacted, would people with disabilities see a reduction in their funding because of the way that this rate methodology was set? Was that...? [LR11]

JODI FENNER: The indication is the funding will increase unless we do have some people in the community who their funding was set decades ago and they're maybe funded perhaps above their, what we call their ICAP score or their objective assessment process. And so it's possible that there are a handful of people, and if that's going to happen we would look at them (inaudible). [LR11]

SENATOR COASH: So it is possible that some people might see less money to provide the service that they need than they do now. I mean, I just want to make sure the department is keeping their eye on that because... [LR11]

JODI FENNER: And that's what we need to pull the data from, from the N-FOCUS system. And that's kind of challenging. I mean, it's a decade-plus old system that was written for the Division of Developmental Disabilities. It was written for Children and Family Services. So we work very hard to make that system work for us. So you're point

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is well taken. It is something that we're looking at. [LR11]

SENATOR LATHROP: Jodi, is there a process in place for input from the providers?  
[LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: Short answer. Do you have some public hearing or something  
that's going to take place so that they can participate and give you their... [LR11]

JODI FENNER: We already have a meeting scheduled. Tricia, do you know when  
that...? [LR11]

SENATOR LATHROP: But is it a meeting or an opportunity like we're having today  
where... [LR11]

JODI FENNER: We have a meeting with a smaller group that the provider...the  
providers have what they call provider groups and they have leadership that are kind of  
spearheading the effort. [LR11]

SENATOR LATHROP: Okay. As long as something is in place. I just...one thing I don't  
want to do is run into a situation where the providers are back in front of the committee  
going: we didn't have anything...any input. [LR11]

JODI FENNER: We can't support people with developmental disabilities without  
partnering with our providers. That's just not possible. We don't always agree but we  
have to have the communication and we have to have a process, and that is in place.  
[LR11]

SENATOR LATHROP: I see no other questions on that, so we're going to move into the

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BSDC update. And again we have four subtopics when it comes to BSDC, the first of which is CMS certification,... [LR11]

JODI FENNER: Absolutely. You're... [LR11]

SENATOR LATHROP: ...so can you talk to us about that process and where we are. [LR11]

JODI FENNER: Your notebook has a BSDC tab and behind that, two tabs behind that is the certification schedule and that shows us exactly where we are. Our fourth ICF...we have three that are fully certified we're very excited to say. Our fourth one, Solar Cottages, it's past its 60-day reassurance period, so any day surveyors could show up. We're going to pass that survey with flying colors. That one will be certified. The Kennedy Building, we filed our certification paperwork on September 16, and so again we're just awaiting surveyors to show up and complete that process. The Kennedy Building is going to take a little bit longer. We knew that and that is anticipated in our budget, and it only has...I think it has fewer than ten people in the unit that we're certifying, so. We're still going to be fine in our budget even though that one is going to be out a little ways, but. [LR11]

SENATOR LATHROP: And you have a chart here that shows when... [LR11]

JODI FENNER: I do. [LR11]

SENATOR LATHROP: Essentially, the strategy was to take BSDC, which was formerly operated as one large ICF/MR, and break it into five separate units and have each unit recertified. [LR11]

JODI FENNER: Yes. [LR11]

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SENATOR LATHROP: Do you know if you meet these deadlines or your expectation, how much the state would have paid or how much federal funding we ended up losing over the period of time that we were decertified? [LR11]

JODI FENNER: I did not calculate that. I could have finance calculate that for you. I'm so focused on meeting the certification schedule and this year's budget, sir, I didn't look at the past. [LR11]

SENATOR LATHROP: So you don't any idea, Jodi? [LR11]

JODI FENNER: I don't have that number in front of me. No. [LR11]

SENATOR LATHROP: Okay. Anyone else have any other questions? Senator Coash. [LR11]

SENATOR COASH: I do have a question about the certification. I understand...the process of getting certified on these five, it's not all...I mean, you and Dan do the work. I understand that. And there is built into the process certain waiting periods of, you know, you don't want to just dust things off and have them come in the next day. I mean there's waiting periods built into this process so that surveyors and people who will certify this will see sustained change. And so sometimes you're waiting...you know, you've done what you can do but you have...there's a waiting period, and then after that waiting period--and sometimes it's our own government. I mean, it's state departments who have to come out and do their survey, Public Health, for example. Right? [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR COASH: Okay. My question is...I won't ask about the three that are certified because that's great news. But with the two that we're waiting for, are you getting quick response from those other government agencies to come out and do what they need to

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do? Or are you sitting there going, we're ready to be certified but we haven't got this department to come out, and they could come out but they haven't, and we're waiting and we're waiting, and if we could just get them to come out we could get this certification done? Are you running into that or are things moving along as quickly as they possibly can? [LR11]

JODI FENNER: I can't speak to the scheduling issues. You would have to speak to Dr. Schaefer, because Public Health is our regulator who makes those schedules. When we started this process and when we proposed our budget to be considered for the Governor and the Legislature, we were told by CMS and Public Health to expect our initial survey period to be 45 days and then we would have to go through a recertification period of 60 days...or not recertification but a reassurance period of 60 days. We have to pass two full surveys and there has to be some time in between each of those, again because it's not just coming in and, oh, you look great today. You have to show consistency and ability to maintain. That being said, State Cottages took an extra 60 days. Sheridan Cottages took an extra 45 days. We're currently two weeks past our reassurance period. That being said, I know there are a lot of reasons and a lot of scheduling challenges that Public Health and CMS has had. [LR11]

SENATOR COASH: That's Public Health that you're waiting to come out? [LR11]

JODI FENNER: Well, actually it's a collaboration between federal CMS and Public Health. For each of our surveys, we've had our Public Health survey team and then we've had a contract surveyor from Centers for Medicare and Medicaid. So that is...they both schedule that together. [LR11]

SENATOR COASH: So, for example here, we're two weeks past the date where Public Health could have come out and keep this marching, and that's two weeks where we're not going to be certified. [LR11]

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JODI FENNER: Two weeks we've lost federal money. Yes. [LR11]

SENATOR COASH: Two weeks of lost federal money. And we don't know, in a week it could be three, and we don't...obviously, they're not going to tell you when they come out. That's not the point. [LR11]

JODI FENNER: I'm not privy to that information. Those are surprise visits, sir. [LR11]

SENATOR COASH: Yeah, they're not going to tell you, but my point is we could be getting this done faster. And I think Jodi (inaudible). [LR11]

SENATOR LATHROP: But I think her point is, is that the reassurance period and having a surprise visit and not telling you when they're coming, avoids the executive tour and gives them a more realistic assessment of what's actually happening on the reassessment survey. Would that be true? [LR11]

JODI FENNER: That is the purpose of the reassurance process. Yes. [LR11]

SENATOR LATHROP: So while it may be seen as a delay for us, it's actually part of the process. [LR11]

JODI FENNER: Yeah. I'm not known to be one of those patient people, so every day that we delay on anything, I tend to be a little anxious. But I can assure you that we knew. This is a bureaucratic process and we knew that with the consolidation and the cooperation with federal CMS, that Public Health would have some challenges, and we are going to make our budget this year. [LR11]

SENATOR LATHROP: Very good. [LR11]

SENATOR COASH: I don't want to get too far ahead in the schedule, but I just have one

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more question. I know we're going to talk about the abuse allegations in a moment, but since we're talking about certification right now, I want to know if the investigation with the abuse allegations is in any way going to jeopardize the remaining certification or the ones that are already certified. [LR11]

JODI FENNER: No. [LR11]

SENATOR LATHROP: Compliance with the Department of Justice. [LR11]

JODI FENNER: Well, that's a really exciting one. We just had our visit at BSDC a few months ago from our independent expert team. We should be getting the report from that visit very quickly. The independent expert team, they alternate every quarter between BSDC and the community. And I believe last time I spoke to you I mentioned we were still struggling with some issues with psychology and nursing and some other vocational things. At the end of that last survey, we met with them and they're really excited. I mean, I've never had a federal surveyor hug me. It's exciting. That being said, we still have to sustain all that progress, but they're very positive about everywhere we are at BSDC. You know, the man behind me who has aged about ten years in the last two, I really appreciate everything that they do there. So we're doing great at BSDC. That being said, you move to the community, Nebraska just like any other state, has a lot of challenges, and it isn't so much with the DD services but with access to...I don't want to say competent because it's not that physicians are competent, but we don't have a wide variety of physicians in the community that have experience with people with developmental disabilities. We have parts of the state where access to psychiatry and psychology and different therapeutic services are a challenge, and that's a concern that the Department of Justice still has. We've taken a lot of efforts to provide free education to the community. Some of those efforts are outlined in the medical professional unit here in the notebook. But we actually take a team and we go all across the state and we provide free continuing education for medical providers and therapeutic providers. We're doing a lot of things like that to help improve that. I can't

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open a medical school. I definitely don't have that in my budget. But we can certainly share the expertise that we've gained at BSDC with the community and to improve some of those issues. They had some follow-up issues relating to APS and nursing home regulations. I know they are going to visit with the other directors when they come here again. Access to behavioral health services is a challenge all across the country. So they have some concerns, but in our last meeting with them the concerns are primarily related to the community at large. [LR11]

SENATOR LATHROP: Can I ask a couple of specific questions about the DOJ? [LR11]

JODI FENNER: Absolutely. Yes. [LR11]

SENATOR LATHROP: The process is the DOJ came into BSDC and concluded we were violating people's civil rights. We then had a lawsuit and a consent decree. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: The consent decree was an agreement by the state of Nebraska to conduct its provision of services to the developmentally disabled community in a particular fashion, and it was pretty detailed. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: Was there a period of time by which they expected us to be in compliance or to satisfy that consent decree? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: What was the period of time? [LR11]



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JODI FENNER: For most items, that period I believe was a year, and there were some other different deadlines in there as well. [LR11]

SENATOR LATHROP: How long ago did we enter into that consent decree? [LR11]

JODI FENNER: That was '08, the summer of '08, I believe. [LR11]

SENATOR LATHROP: So three years ago. [LR11]

JODI FENNER: Um-hum. Absolutely. [LR11]

SENATOR LATHROP: And is it a fair conclusion from that, that while they wanted us to get our house in order in a year, it's 2011 and we're still working at it. [LR11]

JODI FENNER: Well, I would say we're still working on improvements. I think whether we've reached substantial compliance, I believe we have. That being said, we have an independent expert team who comes in and makes recommendations. Whether or not we are in substantial compliance, we're still going to take those recommendations, some of the issues with the community stuff, that...yeah. [LR11]

SENATOR LATHROP: But the point is, they expected us to have it done in a year, and they haven't gone away. They're continuing to come back, even now... [LR11]

JODI FENNER: They would stay for four years even if we were in full compliance. [LR11]

SENATOR LATHROP: Okay. Okay, that's what I was looking for. Thank you. [LR11]

JODI FENNER: Yes. [LR11]

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SENATOR LATHROP: Does that prompt any questions from any of the other members? I see none. So with that, we'll go into recent investigation into allegations of abuse at Kennedy. And we'll just let you open on that and... [LR11]

JODI FENNER: Sure. It is disturbing. It's appalling. It's something that has happened. It came to our attention through an APS complaint. Unfortunately, the employee never did report it to BSDC leadership or through management, and she didn't timely report it to APS. And so even though we had somebody who witnessed the abuse, they allowed it to go on for quite some time before they reported it. That is not something that we accept at BSDC. We consider that neglect. We're taking action against the employees. We...again immediately, I shared this information with you all the week that we found out about it. We brought in the State Patrol the next day, and they started an investigation. Our investigator worked alongside the State Patrol. We did actually do an internal report because the county attorney is still considering what he might do from a prosecutorial perspective. His burden and his challenges and the decisions he has to make are much different than mine. And from his perspective he has all of Gage County to deal with, I have my facility, so it's taking him a little longer to make his decisions. We are trying to be very respectful of that. That being said, I have 16 people who are on suspension and I need to make sure that BSDC is adequately staffed, so we had to move forward with our disciplinary actions, so. And the other issue is money. Once you get past the initial six days, I am paying people on suspension, and as a taxpayer and as a human being, I can't stand the thought that I'm paying somebody who has hurt the people I support at BSDC. So for those reasons, we started going forward with our disciplinary actions this week. We will go through those as expeditiously as possible. Even prior to this, though, the week that we learned of this we pulled in our quality improvement team and we had them look at all of the different parts of campus. We wanted them to pull incident...we do standard QI, and that's described in your notebook. But we wanted to get a second comprehensive look, because we wanted to make sure there weren't other things that we were missing. And at that point in time, quite frankly, we at BSDC's leadership, we had turned the matter over to investigators and we had

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very limited knowledge of the actual what was going on. So we wanted to again just do a general oversight. We had them pull what we call incident review team meeting minutes. We had them pull all the quality assurance indicators. We looked at incident reports all over campus. We also went completely independent and started pulling medical records to see did we have medical treatments where we then...then go look backwards: did we not have incident reports for whatever led to that. You know, the team spent weeks looking from all different perspectives just to make sure that we don't have this going on anywhere else, at least that we don't have red flags that we can identify. Finding the activities of people who do things in a way that is hidden is very hard to get out from under, which is why we very much...we count on self-reporting. We count on individuals to report when they see abuse and neglect. That's what we do. And in this case, people sat by and watched it happen, and that's something we're going to have to deal with. And not only do we have to deal with the current situation, but, you know, we have 600 people on campus and they're all really good employees, and they're mad as heck. So dealing with that, you know, they're made that somebody would come in and work with them. Many of them know these staff who participated in these activities, and so we have a lot of emotional issues on campus. That being said, I can say honestly I was in the home where the men were moved to the next day, and as mad as staff were, and we gave them opportunities to kind of take a walk and blow off some steam--there were a lot of tears--but when you go into the home, those staff were very professional and they were dealing with what could have been mass chaos, in a very professional way. Yes, we have challenges because have more people in these homes in State Building than we would normally have. But staff are handling it so well, so I do hope that...I hope they understand how much we appreciate what they're doing. [LR11]

SENATOR LATHROP: Okay. Senator Harms has some questions for you. [LR11]

SENATOR HARMS: Thank you very much, Jodi, for coming and participating today. [LR11]

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JODI FENNER: You're welcome. [LR11]

SENATOR HARMS: What happened at Beatrice with the 11 people is something that I don't think any of us in this room can tolerate. [LR11]

JODI FENNER: Yeah. I agree. [LR11]

SENATOR HARMS: And it's horrible. And as I went through it and read what took place--our staff choked people till they passed out, made filthy comments to them, hit them, beat them--whatever took place is just something we can't tolerate. [LR11]

JODI FENNER: I agree. [LR11]

SENATOR HARMS: And when I first saw this, it brought make memories quickly to me about the past issues that we had. And the first thing that came to my mind is that we haven't accomplished what we really set out to accomplish. You have 11 staff members that participated in this. It was denied again by not coming to the administrative side of the house to have it corrected. It tells me we just haven't gotten to where we want to go. We have in a lot of other categories and I think you have made some really great progress in other areas, but this is something that we just can't continue to go. And I know in the discussions we had in the past, and when we were first addressing this issue when we lost our accreditation and all the other issues that came forward, is that we really felt as a committee that we needed to change the culture of the organization. And when you have 11 people there, I don't think we probably have accomplished that in the manner that we wanted to. So one question and my first question to you, is what have we done at Beatrice to deal with the culture of the organization? How have we opened up communication, which we haven't had before? What type of staff development have you had to start to address these issues, and where has the communication dropped? [LR11]

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JODI FENNER: Sure. If I can share a few things. I want to start with again this isn't a campuswide issue. We knew...we've known for awhile that we've had some leadership issues in this particular home. In fact, we had already suspended the ICF administrator from this home before we knew anything about the discipline--completely separate and apart for simply some performance issues. The...I think that...and I don't know if that's what led to these employees feeling comfortable coming forward. I don't know what changed their mind. But there is a reason that this ICF is last on the list, I'll be very honest with you. So I don't think so. I think if you walk into the ICFs across campus, you're going to see a different...there's just a different environment. I mean Senator Wallman has been there. We've had other visitors come. And it is, we've done a lot to change the communication. We have managers present on every shift. That didn't happen before. We also...we're still continuing to deal with some of the...we think we've done a really good job with our existing certified homes and we are working on the people that remain at Kennedy. But the reality is we also have to look at, going forward, how do we pick really good employees, because if we've gotten to the point where we're happy with the ones we have and we're looking at some ways to ferret out again are there other pockets of issues. [LR11]

SENATOR HARMS: One of the things that we had a conversation about when we had some of our other hearings, historically, that what we were hoping that we could is to take a good look at the people who are in administrative positions and to evaluate them. Because, quite frankly, there are an awful lot of people who cannot fit into this kind of environment that just don't have the background or the heart or the capabilities emotionally to deal with what they're confronted with on a daily basis. Did you do that? Did we go in and evaluate the administrative side of the house, first to start with being able to determine whether we even got the right staffing? [LR11]

JODI FENNER: We've been doing that for quite some time. You'll notice... [LR11]

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SENATOR HARMS: So what process did you use? [LR11]

JODI FENNER: Well, you have to do that on an individual basis. You have to... [LR11]

SENATOR HARMS: I understand that. [LR11]

JODI FENNER: Yeah. [LR11]

SENATOR HARMS: But what process did you use? [LR11]

JODI FENNER: What process did we use? We've used a lot of different educational resources to come in and teach us how, you know, what person-centered practices look like, what we should be looking at from that perspective. We use our internal management team but we also use our external quality assurance team who comes in. We actually what we call home leaders from quality assurance who are assigned to each of the ICFs, and they actually rotate, on occasion, so that they get a fresh check. So we have a lot of oversight outside of the ICF, not just inside the ICF. One of the most recent things we've done is we've actually adopted psychometric testing for new employees. We've only had that in place for about 60 days, because finding an appropriate screening tool for employees, it's a very...it's a different field. It's not like you're taking a job at Target. I've got to tell you, we've been doing that for 60 days, and we've had about a 30 percent fail rate--and two of those people were prior employees. We would never have hired them now. So we're working on it, but... [LR11]

SENATOR HARMS: So now when you go through the hiring process, are you doing...how are making sure that you're getting an employee that can fit into this environment? Because it's a challenging environment. They are going to be confronted with all kinds of hostile kinds of issues, but by people who can't really control themselves. And so you have to have to have a special personality and a special ability to do this. [LR11]

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JODI FENNER: You do. [LR11]

SENATOR HARMS: I couldn't do it. I mean when I took the tour there, I just said to myself, in my heart, I couldn't handle this. So how about...how do you deal with that issue and how can we be assured that we're getting the right kind of people to work there? [LR11]

JODI FENNER: It starts with leadership. It starts with having good managers who oversee the hiring process and who oversee the day-to-day management of the facility. The psychometric testing is just one source that the leaders can use in interviewing new staff. It goes to training. It goes to what kind of training and support do you provide new employees. And you get a six-month probationary period for which you should be evaluating that employee, and if they're not going to make it, you've got to let them go. [LR11]

SENATOR HARMS: One of the conversations I had...in fact, Senator Lathrop asked me to go ahead and do this when we in the previous review, was to look at staff development. So I talked to the folks that take care of the staff development for the state. We had a fairly decent conversation. What have you implemented...have you implemented anything that would address that issue? What have you implemented to start to address that issue to prepare people? [LR11]

JODI FENNER: Sure. [LR11]

SENATOR HARMS: Because when I look at what took place, we have broken down somewhere. [LR11]

JODI FENNER: Absolutely. For a very long time, staff development actually has been outside of our 24-hour facilities. It's actually been managed from the central office.

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That's one of the very first things that I did when I was appointed to this position, is to fight for bringing staff development back to the facility level. It's not that central office isn't competent. They do a very good job at teaching supervisory skills and management skills. But they don't work in a 24-hour facility. If you're going to teach somebody that is going to work at BSDC, you have to have experience with people with developmental disabilities. You can't just have a degree in human resources. And so we partnered with our operations staff and we pulled the staff development functions back into BSDC, for the most part. We do have one staff development person that operates through central office, but that's to teach procedural things--things that are agencywide. But we do almost all of that internally. And the other thing we do is we use our real live nurses and our real live quality assurance teams who actually are in the homes on a daily basis to go out and teach. Again, you can't teach in a classroom setting. It has to be real, it has to be something that you can illustrate and perform, and it has to be from somebody that you think is credible. [LR11]

SENATOR HARMS: Jodi, when you start to hire somebody...I remember when we had the discussions previously, entry salaries kept coming up, that we didn't have the appropriate entry salary to hire the kind of qualified people, degree people, people with experiences that would be more successful in this kind of environment. Is that still an issue for us? [LR11]

JODI FENNER: I think our direct support professionals' salaries are in line. I think if you look at the rate methodology study, they're a little less than what the community pays. Well, that isn't necessarily true, because that's an average. Ours is starting. So maybe that is a little...that's something I think we could look at. We have advocated for evaluation of, like, our HSTS positions and some of our management positions. You know, for some of my middle manager positions, we asked those home manager positions be evaluated. We've got home managers who, especially when you're in recertification or if something happens, they work a lot of hours, so they don't get overtime. And I do think that we have some challenges with our salary levels. [LR11]



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SENATOR HARMS: So let me ask you, Jodi, and then I'll leave you alone then for awhile, okay? [LR11]

JODI FENNER: Sure. [LR11]

SENATOR HARMS: Where did we break down? I mean what did...what happened...when you get right into the heart of this...I mean, (inaudible) everything else out, what's happened here, because we went along so well for awhile and then all of sudden this occurs. And it just brings back nightmares for me to think that, gosh, we're not going back where we were... [LR11]

JODI FENNER: We're not going back where we were. [LR11]

SENATOR HARMS: ...because it was horrible. And this is bad. [LR11]

JODI FENNER: This is bad. [LR11]

SENATOR HARMS: It is bad. So where did we break down? I mean where's the center point of this issue? [LR11]

JODI FENNER: What I can tell you has changed here, you go look back in 2006 and 2007 and the years of abuse and neglect that were occurring at the time in those reports, show me one case that we had a criminal prosecution. Failure to report abuse and neglect is a misdemeanor, and if we don't take that seriously as a community, as a state, as law enforcement, then it's never going to be serious. And I know, I have parents coming to me: oh, give them a second chance. I have a senator sitting in front of me who called me into his office in the spring of 2010, and the Ombudsman, I think Gary Weiss, who is going to be talking, who basically wanted me to give an employee a second chance, several employees who had watched abuse and neglect occur. It was

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on video. I fired the staff who stood by and watched, and I was asked to take them back. And I said no then, and I'm going to tell you no now. Not only am I not going to take them back, but I'm going ask them to be criminally prosecuted. We do not tolerate abuse and neglect at BSDC. I think as... [LR11]

SENATOR HARMS: So what really broke down? [LR11]

JODI FENNER: What really broke down is you have bad people in this world--bad people who other people sat by and watched do bad things. I can't... [LR11]

SENATOR HARMS: How did we employ those people? Were these longtime folks that... [LR11]

JODI FENNER: No. [LR11]

SENATOR HARMS: Are these people we hired new or...? [LR11]

JODI FENNER: No. They were not...well, a couple of them were new. The gal, the individual who ultimately reported it, had been there I think less than three months, so. [LR11]

SENATOR HARMS: Let me ask you this one. One other, okay? [LR11]

JODI FENNER: Sure. [LR11]

SENATOR HARMS: When we had discussion previously and we talked a great deal about the fact we were having difficulty finding qualified people... [LR11]

JODI FENNER: Yes. [LR11]

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SENATOR HARMS: ...to go into Beatrice, I would assume that might...I don't know if that's still the same. But we did have the discussion publicly about creating an apprenticeship program, a tuition remission kind of program, sitting down with the universities and state colleges, for young people who wanted to go into this thing as a profession. And we could build an apprenticeship and an internship program with qualified staff to help them participate in this, to have a better background and understanding about this process. Have we done anything at all with that? [LR11]

JODI FENNER: We actually have done a lot in that regard. We've done quite a bit, actually going out and working, partnering with our different professionals at UNL and UNO related to therapists. You know, we have continued our psychology internship program. From the direct support professional level, though, Dr. Ramadan is spearheading an effort where all of the training or a big part of the training that we've created at BSDC, we do it in a video-based format, and we also have what we call competency-based testing. Basically, you go through a module, you take a test, and then we have some hands-on activities we do. So he's developing that so that we can turn that into something...hopefully, we can partner with our state college system to actually turn that into some type of certification program for individuals who are interested in this field. That's something we very much want to do in the next...hopefully, in the next two years. [LR11]

SENATOR HARMS: One question, and I promise this is the... [LR11]

JODI FENNER: (Laugh) That's okay. [LR11]

SENATOR HARMS: I always have one question, and I'm sorry about that. When we look at this, the issue that we're discussing today, I happen to feel that, just from an outside observation without really...I've read everything that they have given me, and it pretty much made me sick to my stomach. Is this a management issue? [LR11]

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JODI FENNER: It is partially a management issue. Absolutely. One of the biggest challenges we had and still have...and it's easier now because we do have a bench, we do have some really good managers at BSDC. But when we started this process two years ago, I was shocked at...we had managers on campus with very little training. Poor Mr. Howell, I think after his first month here, he wanted to, you know, go for a drink and have a discussion about how do we oversee all these challenges. But we've gotten there, for the most part, but I will tell you it is very hard, because our managerial staff, even at the midlevel and high level area, to take disciplinary action, we have to follow the personnel rules. It goes before the personnel board and you have to take what they call progressive discipline. And it takes forever to separate or invite somebody to leave your organization. I'll be honest, I fired somebody for sleeping on the job--a high level manager--and the personnel board overturned that. So it's not easy to hold managers accountable, but it is something we work very hard at. It's something we'll continue to work very hard at. But yeah, there were managerial issues in this home. [LR11]

SENATOR HARMS: Thank you. Thank you, Ms. Fenner. [LR11]

SENATOR LATHROP: If I can, I do have a few questions. Before I do though, I want to be very clear about one thing, and that is this committee, the BSDC Committee, has generally been supportive of your efforts. I feel like the committee set a course after a lot of thoughtful hearings that you participated in, and that for the most part the recertification of the units is a very positive thing, and a lot of good things are happening. So I don't want this discussion today about what's happening at BSDC to tarnish your efforts and the efforts of the people down at BSDC that work everyday to provide care. And I've always said this, even when things were at their worst: There's a lot of people with a good heart that come out of the Beatrice community that provide care. And they needed some training that they weren't getting, and apparently many of them are getting that or we're working on that. So I told you I would... [LR11]

JODI FENNER: That's okay. [LR11]

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SENATOR LATHROP: ...acknowledge the work that you've done to this point in time. That said, I do have some questions about what took place and probably some comments or some thoughts, because I do, like Senator Harms, when I read the report it just made me sick. And when I read the report, Jodi, it reminded me of the DOJ report, in that...except the DOJ talked about a lot of people that were just left to sit around--neglect. This was abuse, and there was abuse in the DOJ report. And I want to ask you some questions about it so that I understand it and so that we can kind of...we're going to pick at it a little bit today. Not trying to embarrass anybody but so that we provide the oversight that we were put together to do. All right? [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: The report suggests that there were some people who were participants in things like chokeholds and acts of abuse--physical and verbal acts of abuse. There are 11 people involved in this investigation. How many of them, Jodi, were actually involved in abuse as opposed to witnessing it and not talking about it? [LR11]

JODI FENNER: We have...and again, please understand the State Patrol has some stuff pending with the county attorney I haven't seen, so if something comes out of that we will...if other people come out of that, we'll take action. But from the information I've received to date, we have five individuals who are alleged to have actually participated in abuse, physical abuse of some kind. We have I believe five individuals, and one of those is a manager, who are alleged to have observed or it has been reported to them that abuse was occurring and they failed to take the appropriate action. And then we have three managerial staff who we are taking some performance issues with. [LR11]

SENATOR LATHROP: Did you say three? I'm sorry. [LR11]

JODI FENNER: Three. [LR11]

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SENATOR LATHROP: All right. So it's 13 people? [LR11]

JODI FENNER: Yeah. What's the math? Yeah. [LR11]

SENATOR LATHROP: Five, five, and three. [LR11]

JODI FENNER: Okay. [LR11]

SENATOR LATHROP: And those are managers that... [LR11]

JODI FENNER: Four of those are managers and the rest are...and by managers I mean... [LR11]

SENATOR LATHROP: The last three you said were managers. There were five people that were involved in the abuse, five people that watched it and didn't do anything about it, and three people that were managers. Did they manage the abusers? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: And did they have, in your investigation to this point in time, have reason to believe the abuse was going on and didn't do anything about it? [LR11]

JODI FENNER: I don't believe...I don't believe they actually knew but I also don't believe they took the effort to get into the homes and work and know the people. I think that probably they were in positions they weren't equipped to do. They were in over their head and they were so focused on doing paperwork and performing functions that they really didn't get to know their staff. And when you're working in the human services field where people support people, you have to spend real time, and I don't mean just walking in and looking. I mean actually sitting down and working alongside your staff. I

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go work at BSDC on various shifts. I think that...I don't know if you're doing your job as a appropriate manager in this setting. You should have been spending enough time with the staff and the individuals to have at least known there was something going on, and I don't think that was occurring. [LR11]

SENATOR LATHROP: I do not disagree with that and we may come back to that in just a moment. [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: I understand you have a report and the State Patrol has done its investigation. Is your report based upon what the State Patrol did or is it independent investigation of the...? [LR11]

JODI FENNER: We actually did...we actually work in tandem. Our investigator participated in almost all of the State Patrol investigations, and so the report you saw is what he wrote. I haven't seen the State Patrol report so I can't speak to that. [LR11]

SENATOR LATHROP: And that was going to be my next question, and I want to ask it so that I'm clear: You have not seen any of the State Patrol reports. [LR11]

JODI FENNER: No, not at all. [LR11]

SENATOR LATHROP: You did not provide us with your investigator's report. However, you gave us a summary of the conclusions. Would that be true? [LR11]

JODI FENNER: I gave you the report he gave me. I'm sure that he has notes and all kinds of other stuff that went into that. [LR11]

SENATOR LATHROP: Well, we don't have the interviews. And if he was present during

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the interviews, your investigator, who is not part of the State Patrol, would. Is that true?  
[LR11]

JODI FENNER: I don't think we have copies of the audio. It looked like many of the interviews were audio-taped, and we don't have copies of those yet. We've requested all of that information. All of that information goes from the State Patrol to the county attorney. We've requested that information. He isn't going to release any of that, obviously until after he makes his criminal prosecutorial decisions. And in a perfect world, I would rather have waited to get all that information, but I had to act for what was best for the campus, so. [LR11]

SENATOR LATHROP: Yeah, you've explained why you moved forward. Did you come to some conclusion over when this abuse began? [LR11]

JODI FENNER: From the report that I read and which is the same thing that I've shared with you, it looked like we are confident it was occurring in June but there was some allusions that it could have begun as early as April. [LR11]

SENATOR LATHROP: I'm...not you. In some sense, and I don't want to take your deposition today, but I want to ask some questions that are more carefully framed. You've just said from the reports that you saw, these are the dates. My question is: Do you have any reason to believe that the abuse began before June 2011, or that there was abuse done by these individuals before June '11? [LR11]

JODI FENNER: I believe that anybody who would behave the way they behaved in this report, didn't start in April. I don't know...I don't know...you don't wake up in April and say I'm going to start this. [LR11]

SENATOR LATHROP: I can't imagine that five people would wake up and do it all at the same time. And so my question to you is: When is the earliest case of abuse that you



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are aware of, from whatever source, by any one of these five individuals? [LR11]

JODI FENNER: The April date is what we're aware of at this point in time. [LR11]

SENATOR LATHROP: So April 2011 would represent the beginning point of the abuse as far as you know. [LR11]

JODI FENNER: Based on the information we have. [LR11]

SENATOR LATHROP: Did your investigator interview the five people who I would refer to as the abusers? [LR11]

JODI FENNER: Yes, to the extent that they would. I believe at least one of them walked out of the interview. [LR11]

SENATOR LATHROP: The person that reported this was actually a short-termer that left BSDC, is that true? [LR11]

JODI FENNER: Yes. Well, she stopped coming to work. I... [LR11]

SENATOR LATHROP: When did she stop coming to work? [LR11]

JODI FENNER: My understanding is about two weeks before we received the report from APS. I don't have the exact date but that's my understanding. [LR11]

SENATOR LATHROP: Can you ballpark the date just so that I have some time frame? [LR11]

JODI FENNER: Well, approximately two weeks would have been around the second or third week in August. [LR11]

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SENATOR LATHROP: And thereafter, did your investigator interview that person?  
[LR11]

JODI FENNER: Yes. Yes. [LR11]

SENATOR LATHROP: And did that person indicate that they left because of what they were witnessing? [LR11]

JODI FENNER: Yeah, I believe so. [LR11]

SENATOR LATHROP: Is she one of the five people you've identified as an observer?  
[LR11]

JODI FENNER: Yes, she is. [LR11]

SENATOR LATHROP: Was she a direct care staff person? [LR11]

JODI FENNER: Yes, she was. You really are good at this whole...(laughter). [LR11]

SENATOR LATHROP: Well, I've learned to ask questions very carefully, and particularly when I get in the Capitol. (Laughter) As I read through this and as I watch this, I'm going to give you a couple of my observations, for whatever it's worth and for whatever direction this committee might be able to provide to you going forward. And it's not meant as a criticism of you, Jodi. But I will tell you it is inconceivable to me that five people would decide to start abusing at the same time. [LR11]

JODI FENNER: I would agree with you. [LR11]

SENATOR LATHROP: And that when I looked at the Department of Justice report, and

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I went back and reviewed some of it, it would have been easy for us to say as a committee, for the Department of Justice or for CMS or anybody else that looked at this, to say: We have a whole bushelful of bad apples; get rid of them and things will be okay down at BSDC. That's not what the Department of Justice concluded though. They didn't say there were abusers, get rid of them, and that will solve the problem. They said there are abusers and there's a relationship between the abuse and the overtime. The reasons are clear to anybody who has spent any time studying the population at BSDC, which is difficult. They are sometimes difficult to place in the community because they have, sometimes they have, many of them have behavioral issues, communication issues. It is a difficult population and it's difficult work. And I'll give you that it's difficult work, Jodi, but it becomes...the outcomes get worse when the overtime goes up, and that's not just Steve Lathrop's conclusion. I come to that conclusion because the experts have said that. [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: CMS has said it. The Department of Justice has said it. That was at the core of what the DOJ had to say. And one of your handouts is overtime, and I'm watching the overtime, since April 2010, on the steady increase. And I'm not making an excuse for these people; there is no excuse for what they've done. There is no excuse for what they've done. But the overtime hours are going up and that's a concern. It is a consideration expressed by the Department of Justice. This isn't me coming to my own conclusion. That should be a concern for us. And I will just say you can agree that it had some relationship to this or it didn't, but when 13 people are involved in something, there is a systemic problem, because you don't get 13 people that wake up one day and say we will abuse or we will turn our back. Something's going on. And here's the other observation I would make, and that is it is concerning to me that the only person that felt comfortable talking about what was going on there is the person that had already left. You have and you've talked about external quality assurance. You have quality improvement processes and systems in place, and there's a failure

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somewhere and I don't know where it is. I don't know where it is. But it suggest to me that the first person that saw the abuse or all five people that saw the abuse didn't feel comfortable telling somebody. And it's easy to say--and they should be dismissed, okay? I don't disagree with the discipline you're taking. But here's my concern: If they saw it, how come they didn't feel comfortable telling somebody? [LR11]

JODI FENNER: I agree. [LR11]

SENATOR LATHROP: That tells me that this is not just five people that woke up one day, almost at the same time in April, May, or June, and decided to start putting chokeholds on vulnerable people. There are folks who are not comfortable saying: Hey listen, I just watched this guy abuse somebody; do something about it. Instead, nobody reports anything but the lady who is there for a short time and quit. So I saw the article in the paper. And one of the people that was interviewed in the World-Herald article was Bruce Mason, who suggested some kind of a person who's a roving, I don't know who they would work for, who they would be with, but somebody who can go in and talk to residents, talk to staff, somebody who can go and find the hot spots, because there was a hot spot in Kennedy and no one saw it. No one saw it and no one...you know, we're going to let three managers go because they didn't see it, and they work there apparently. It's concerning. And here's, from a managerial point of view, what do we do about overtime and what do we do about the fact that employees did not feel comfortable, apparently, about telling somebody that direct care staff was putting chokeholds on the residents? [LR11]

JODI FENNER: I'll address those two things separately. The overtime...and I just passed you out a new sheet that wasn't included in your notes...actually I think it is in your notebook but I pulled it out separately because I wanted to point out when you look at our direct care staff, which are the staff that we're primarily dealing with, that work with the individuals, we still are several points, several percentage points below, with the exception of this third quarter when I have 16 people suspended for a month.

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Several percentage points below where we were in 2007. And, you know, we're not as bad as we were in '07. We're not as good as where we were before we split up the units. Quite frankly, we had to make a decision about a year and a half ago we were still really struggling with oversight and with consistency in the areas, and we had to make a decision of how to address this, and that's when we decided to break it up into five units. And we knew we would have an increase in overtime. We spoke with the Department of Justice representatives, and we all agreed that this was something we would have to do. We've also had some home movement as we've done this separation, for example. We have two homes that are currently in the process of closing. We'll move those staff into cover some shortage areas. So we know we were going to have some overtime because of that, and that is going to level out as we now where we're at where we can continue to fill the positions. We've also had a lot of turnover. We didn't have some of the screening tools we have now, years ago, and we do have people or did have people who weren't necessarily...I wouldn't say they weren't qualified to do the job, but it's a very hard job. And so really having to go through and work through performance issues, and again invite people to maybe undertake a different career. So we've had a lot of overtime in the last two years, some of it voluntary, some of it not. So overtime is an issue. We're continuing to struggle with that. I don't know a 24-hour facility that doesn't struggle with that. We have a couple of different things we're looking at. First, it is the initial hiring process. We've got to hire the right people to come in the door who are going to be there to stay long term. Other states who have used other entities who have used the talent help process, have seen very significant reductions in retention, because part of the key to retention is getting the right person in the door. The second part is, what do you do when they get there?--the training process. I think we've taken immense strides in the training process. And then that consistent supervisory oversight, and I don't mean a home manager or an administrator. I mean those shift supervisors who oversee all shifts, who work alongside the individuals and know what they're doing on a day-to-day basis. They teach through mentoring and through things like that. So I think we've got a good handle on the retention issue. We're going to have to work on that for the next several years and assess where we're doing there. On the staffing

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issue, we're going to have to continue...I mean we can't hire people we aren't qualified. I can't...I mean, I have a stack of applications at BSDC. I'm not just going to hire somebody because they are a warm body. We've done that at BSDC and it doesn't work. It's not good for the facility; it's not good for the other staff. You get staff in here who don't care and aren't committed, and that negatively impacts the current staff that you have. But that being said, our human resources department is looking at some recruiting things. I know one of the things that the recruitment manager mentioned to me is, you know, maybe we should start recruiting on Saturdays or maybe we should look at different hours so that people who have day jobs can come in and recruit. One of the things that my administrators have done, and they sit down a weekly basis...actually the AAs meet twice a week with Delvin, and they go through their overtime reports, they go through their incident reports, and they brainstorm together, because they each manage different ICFs but that all have kind of the same challenges. And so they have really gone into some what we call creative scheduling. We have a lot more part-time positions than we've ever had before, and those aren't temporary employees. Those are people who, you know: I'm a stay-at-home mom; I only want to work on the weekends because I want to be home for my kids during the week. We have a lot of people who do that. We have a lot of people who...you know, we've readjusted schedules so that it fits their life because we've looked at them and we think they're good people. They're very qualified to do the job that we need them to do but they can't work a standard shift. [LR11]

SENATOR LATHROP: Jodi, are all of these things, things that you were doing before April? [LR11]

JODI FENNER: No. These are things that after we started breaking up the units, that we really started tackling. We really had to work with... [LR11]

SENATOR LATHROP: You broke the units up two years ago, didn't you? [LR11]

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JODI FENNER: No, it's been about a year and a half before we finally got everything actually broken up and trained. [LR11]

SENATOR LATHROP: Then let me clarify my question. [LR11]

JODI FENNER: Yeah. [LR11]

SENATOR LATHROP: What are you doing with respect to overtime and with respect to identifying hot spots at BSDC in the wake of this particular incident? What's changed, or what do you intend to change, if anything? [LR11]

JODI FENNER: I think that we continue on the progress that we're doing. We continue to address everything in the individual ICFs. I mean, I don't know that...I think part of it is, when we're all said and done, we have to sit down with the State Patrol and we need to see, you know, can we look and go do further interviews about what would make somebody not want to report it. I think there's still some follow-up to the investigation that we have to do, because I don't think we've learned all the lessons from that, that we can. We don't have access to all the information at this time. And we kind of want to...yeah. [LR11]

SENATOR LATHROP: Your investigator went with the State Patrol while the State Patrol did whatever investigation it did. [LR11]

JODI FENNER: He did, but his... [LR11]

SENATOR LATHROP: And you have access to your investigator, true? [LR11]

JODI FENNER: We do, sir. [LR11]

SENATOR LATHROP: Okay. [LR11]

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JODI FENNER: But the purpose of what we have been doing is for discipline. We have to take that disciplinary action and then we have to step back and work on that with our HR and our supervisors, and say... [LR11]

SENATOR LATHROP: Okay. My question was, though, what are you going to change about overtime hours and what are you going to change about identifying hot spots or troubled areas at BSDC? What's the lesson from this that you are going to make a change in the way BSDC is run so that something like this doesn't happen again? [LR11]

JODI FENNER: Well, I can't prevent people from undertaking criminal activity. I'm not a mind reader, sir. I'm going to continue to operate my quality assurance processes. [LR11]

SENATOR LATHROP: Well,... [LR11]

JODI FENNER: I'm not changing anything drastically. If you're asking me to come here today with a new structure, a new quality improvement structure, that's not going to happen. [LR11]

SENATOR LATHROP: I'm just...you have no intention to change the course you're on with overtime and no intention to change the process of identifying... [LR11]

JODI FENNER: We're going to... [LR11]

SENATOR LATHROP: ...troubled areas at BSDC. [LR11]

JODI FENNER: That is not what I said. We're going to continue to work to reduce overtime. That's not going to happen overnight. I can't grow people in the Beatrice. I



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can't hire people who aren't qualified. Hiring has to be a selective process. It takes time, and training takes time. We are going to continue to diligently look at overtime. I think we've been very successful in the past. We got down to a 9 percentage of total wages generated by overtime at one point in time. We'd like to get back to that. But we have to look at everything at BSDC, not just one individual piece of statistical information, so.  
[LR11]

SENATOR LATHROP: Okay. [LR11]

JODI FENNER: And one of the things we could do is... [LR11]

SENATOR LATHROP: Senator Campbell has a...I'm sorry. [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: Senator Campbell has a question for you. [LR11]

SENATOR CAMPBELL: Ms. Fenner, how many total staff do we now have at BSDC?  
[LR11]

JODI FENNER: It's around 600. I don't have the exact number today. [LR11]

SENATOR CAMPBELL: Around 600. And what percentage of those 600 people were there when we discovered the major problems--what, in '06, 07? Is that accurate?  
[LR11]

SENATOR LATHROP: '07. [LR11]

SENATOR CAMPBELL: Just a ball...I mean, do you have any idea? [LR11]

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JODI FENNER: I don't have any idea. [LR11]

SENATOR CAMPBELL: Are we 50 percent or 75 percent of the staff? [LR11]

JODI FENNER: My gut, just from walking around campus, is probably 50 percent, but we would have to run HR numbers to actually get you exact figures. [LR11]

SENATOR CAMPBELL: Of the staff involved in the investigation that you've talked at, how many of them were at the facility in '06, '07? [LR11]

JODI FENNER: Several of them. [LR11]

SENATOR CAMPBELL: Several of them. [LR11]

JODI FENNER: Uh-huh. [LR11]

SENATOR CAMPBELL: But less than half of them? [LR11]

JODI FENNER: I think so. I don't want to guess. I can pull that...I think we provided you guys with a chart, and I'm sorry, I didn't bring that with me today, of the individuals. [LR11]

SENATOR CAMPBELL: That's okay, because I looked at the chart that you sent out. I spent some time looking at that, and I couldn't tell from the chart when they started employment. That's part of my question. [LR11]

JODI FENNER: Okay. [LR11]

SENATOR CAMPBELL: The other point that I guess I have to make and I want you to kind of talk about, is I totally agree with Senator Lathrop in his comment about the

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importance of training, and that's why I keep saying: How many people were there before? Because obviously, we didn't start with all 600 new people. [LR11]

JODI FENNER: We've been doing training with all 600 people, not just new staff. [LR11]

SENATOR CAMPBELL: Right. Oh, I understand that. But I've looked at the training that people received, and I couldn't identify which of those trainings would get at what Senator Harms talked about, and that was a culture change. Because, I mean, I understand that we do certain evaluation and measuring and weather and mechanical. I understand all that. But where in the training would we see a course or would we see that these folks had something that would deal with a culture change? Because we owe that, it seems to me, for the percentage of people of that 600 that were there before, and that's what I couldn't decipher from the training list. [LR11]

JODI FENNER: And a lot of the cultural strategies we've employed haven't been through classes. And what you see there are training records. You can't come to a classroom and have somebody tell you: oh, change your culture, act like you should; you know, learn the golden rule. What we've done from that perspective is we've brought people in, and this has been going on for about three years, people like Denny Reid, Tom Pomeranz, Derrick Dufresne, a lot of people who are known nationally in the DD community as leading cultural change and leading...inspiring people to do person-centered practices. But we don't bring them in and have a class. We actually bring them in, and they would have been in State Building for a week or two. Like Tom Pomeranz spent at least two weeks in various parts of our cot, in various parts of our campus, basically walking alongside the individuals, and saying: Is that really how you would treat somebody without a disability? You know, really just modeling behavior, teaching behavior, but doing it in a setting in that they're working. So you're not going to see those things in there. You're not going to see the leadership of our doctors and nurses who...and our administrators, who are in the units, in the homes, interacting with the individuals in a way that is respectful and dignified. Because again, you can't tell

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people to treat people that way. You have to show them and you have to work alongside them and model that behavior. So you're not going to see that on the paper, but I can assure you that's happening. [LR11]

SENATOR CAMPBELL: And I guess to some extent maybe I would hope that we would look at...I realize that you can't teach everybody to be kind to someone. [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR CAMPBELL: But we spend a lot of hours in education helping people understand certain systems and how relationships build and how you work with other people and how you take care of them. And I have to believe that there are some out there, there is some manner of training or course that really might be helpful to every single person who worked there. And there's where I agree, we have really good people that work there, but helping them understand that when you're...I'm watching what Senator Lathrop is doing and he's not doing something or is illegal. I really owe that to him, not that he would do that, but I owe that to him and to the people I serve that I would talk about it. All I'm saying is I hope that you might look at that. [LR11]

JODI FENNER: Yeah. And that is part of our general initial training, and I know that because I personally sat through our initial training course that all of our DT staff go through, because I wanted to know what do we tell people. And we do that with our service coordinators. I met with them yesterday, our new batch of service coordinators, yesterday. And we have that discussion that, you know, you're going to see things, you're going to develop relationships with providers that make it hard for you to tell on them, so to speak. And if you think you can't do that, then this is not the job for you. So we do that but we don't do it as a "come and we're going to teach you to be good" type training. Can we do more of it? Absolutely. But then we have to weigh that with the overtime. We have to weigh that with, you know, our staffing coverage. We have to weigh that with we only have...you know, we have limited money to spend on trainers,

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so we're not writing it off--if something comes to us. The people we spoke to, though, who were referred to us as professionals in the field, said: At this point, with as broken as they perceived BSDC to be several years ago, is you really have to do this alongside, you have to do this in the homes, you have to do this in the vocational areas. You can't do it in a classroom setting. I'm not writing off the classroom setting; just following what the information and the recommendations we've received are. But if you have ideas or if anybody has ideas, we're always open to looking at new things. [LR11]

SENATOR CAMPBELL: Thank you. [LR11]

SENATOR LATHROP: Senator Wallman. [LR11]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, thanks for coming here. You're in the hot seat there, you know. But having been through a greater fraternity of men, you know, if you're in the military or something, you have quite a test you take for...if you're in certain positions. So I can appreciate maybe Dr. Ramadan gives that to certain employees or shift workers. But we used to have a security force drive around, you know, and we don't have that anymore, do we? [LR11]

JODI FENNER: No, we don't have security on campus anymore. [LR11]

SENATOR WALLMAN: And they would go into the...I would go into the cottage sometimes with them, you know, after incidents--supposedly. And that's been awhile back. I was, lately, thankful for what you did with these other cottages. I think the cottages, the rest of them hopefully are okay. [LR11]

JODI FENNER: I think, you know, we still have...the biggest challenge is not only do we have to hire good qualified director care staff, but then we have to identify direct care staff who we believe have managerial qualities, because I think it's very important to promote from within whenever you can. And, quite frankly, for what we pay managers,

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it's very hard to recruit externally. And where is your pool? Are you going to recruit from other providers? We do that sometimes, which, you know, Mosaic and Region V don't necessarily appreciate when we hire their managers. But we do. That being said, that's a challenge. And then trying to take time to begin...what we try to do both at BSDC and in the community is, if we find somebody who believe has those qualities who we think would make them a good leader, is we've tried to start getting them to take supervisory classes before we make them supervisors--we have a handful of people who are currently doing that--with the intention that eventually they will choose to apply for a supervisory position. Sometimes you need to show people that they can do the job before they actually get the courage to apply for it. That's just something we started doing in the last six months. I don't know how successful we'll be, but we're going to follow those people and see. [LR11]

SENATOR LATHROP: Senator Howard has a question. [LR11]

SENATOR HOWARD: Thank you, Senator Lathrop. And I couldn't agree with you more when you talk about salary and overtime, and this certainly lends itself to the high turnover rate that you've got there, and training certainly is good. But as someone that worked within the department, someone that did direct services, I can tell you there is a very serious problem with an individual stepping forth to report something that's happening because the odds are stacked against them for doing that. Obviously, this person that did this has already left their employment. I would guess they probably felt they couldn't continue to work there and turn this information over to someone. And I'm thinking at the same time they probably had to distance themselves from this in order to really know who to report this to. They didn't go to the supervisory staff, they didn't go to the administration, they didn't go to you. They went to the State Patrol because they knew some action would be taken. This is not a new problem with the Department of Health and Human Services. As a matter of fact, a number of years ago there was a report written and they referred to it as the Department of Social Services circling the wagons. And I think as long as there is that fear out there, that that's what's going to

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happen, you're not going to have people that are going to be coming forth and saying: I am real concerned here. Now I want to finish this. This is something that's going to have to be put right or it's going to continue to be a problem. It's as simple as that. When someone makes an allegation, the odds are against them. One person. And this one person that made the allegation, even though they're not working there any longer, they're named as one of the five people that's being investigated, and that's going to probably be on their record because they didn't report it in a timely fashion. There is, in the statute there is a time frame for reporting. Now they probably don't know this because it's probably not their expertise, but when you add all those things up, it's really a disincentive for somebody stepping forward. [LR11]

JODI FENNER: I would disagree. I think that we have people step forward all the time for something as little as you called somebody a bad name. We don't tolerate verbal abuse, much less physical abuse and neglect. And we have people who come forward. To sit there and watch people being abused for two months and then just... [LR11]

SENATOR HOWARD: Which is exactly what I'm saying. [LR11]

JODI FENNER: Yeah. Is not acceptable. [LR11]

SENATOR HOWARD: They didn't step forward because they wanted to continue working there. [LR11]

JODI FENNER: Yeah. And I will say, in this situation, at least, what we've learned initially, and one of the reasons we're maintaining the suspensions for even people who we don't have named, we are going to maintain those suspensions until we can look into it further, because one of the managers did know. And the concern I have is if I'm a staff member and I know it's been reported to management, and they didn't do anything about it, then I'm like you, I don't think I'm...yeah. [LR11]

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SENATOR HOWARD: Exactly. Exactly what I'm saying to you. [LR11]

JODI FENNER: Yeah. And that was happening in this home. [LR11]

SENATOR HOWARD: So the person that felt they had to do something, had to leave the job. They didn't report it to anyone within the system. They felt the only way that it would be addressed was to go outside the system, and they chose the State Patrol, which was a wise choice and what they should have done. It's...you need to have a system in place where people are safe to report. [LR11]

JODI FENNER: And I think we have a system in place and I don't know why this individual didn't use that system. We have people who report all the time. I do know there was another element of...the people who said they failed to report thought that they were fearful for their safety. They were...not from us but from the perpetrators. And that was... [LR11]

SENATOR HOWARD: I was going to mention that. I was going to mention that. Again, when the person left, they didn't...it sounds to me like they didn't put in a resignation. They left; they didn't return to the job. And I would say that's an important factor of it. There were so many people involved in this that they didn't feel safe. [LR11]

JODI FENNER: Yeah. And we actually do follow-up telephone calls for people who have left. I mean we actually do follow up with individuals who have left. Oftentimes, people won't talk to us, because even though they no longer work at BSDC, it's a small community, and that's a challenge that we have to overcome. [LR11]

SENATOR HOWARD: Exactly. [LR11]

JODI FENNER: But, you know, we'll continue to look into it. But in this case I think it was even worse, because somebody...there was a mid-level manager who was aware



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of what was going on--and that person is on the list. [LR11]

SENATOR HOWARD: Or that someone could talk to and expect to get some results. [LR11]

JODI FENNER: I think, and as I mentioned before, we had already started to take disciplinary action against the administrator of the ICF, because we were...it was very clear from an external perspective that sufficient progress wasn't being made at this ICF. And so now, going into the unit is...when we removed that person...and we actually put Mr. Cook in that place, and we didn't want to put a new manager in, we wanted somebody experienced...really starting to ferret out the focus of shuffling paper and not actually supporting people in a real way, that was very clear when we put the new manager in. But it takes a very long time, again, to go through that disciplinary process. And I wish it didn't and I wish there was some way to change that system. [LR11]

SENATOR HOWARD: And sometimes handicapped people, disabled people, and children don't really have that time. [LR11]

JODI FENNER: No, they don't. And I mean I really wish we could look at an expedited disciplinary process in a 24-hour facility, but we have to follow the same procedures as if I was going to discipline a secretary in central office. And to me, that's a problem. But it is the procedures I have to follow and in accordance with the labor agreement and in accordance with the personnel regulations. It's a challenge. It really hinders our ability to do our job. [LR11]

SENATOR HOWARD: I would suggest to you the bigger problem is that people don't feel safe to report. [LR11]

SENATOR LATHROP: Senator Coash. [LR11]

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SENATOR COASH: Thank you. So I read the report. Pretty sick and angry about that. And I know you were too, and I don't want to paint a broad brush of all the staff at BSDC, because I think there's a lot of people down there that do good work every day. But as I read it, similar to what's been mentioned already, there is...in the DOJ report from several years ago, they mentioned a culture, and a culture of permissiveness. And that culture of permissiveness is part of what brought the DOJ here. There was lots of people actively or inactively just not doing what they were doing what they were supposed to do and lots of people who were permitting it. With regard to this issue, I'll put the abuse on the abusers. They did it and I look very carefully at the department's actions and I feel that you did what you needed to do to address it, and I'll put the abuse on them, but...on the abusers, but I really put the culture on the leadership of BSDC. And when Senator Harms was talking to you about what you're doing, you mentioned QA processes and selection processes, and I think as a committee we're trying to get at what kind of processes are going to address the culture. But the worst part for me was the nonreporting. And I'm convinced...I've seen the training. I know that those employees, they knew what to do. I'm not going to let them out of it because they failed to not know what to do. But it makes me nervous about what else we don't know about. And my question for you...I think you've tried to answer this so I'm just going to ask it very straightforward: With regard to this issue, why do you it wasn't reported? [LR11]

JODI FENNER: I think based on general information we're aware of, I think...we know this was a group of individuals who hung out together at the local bar, who knew each other. This wasn't like we just come to work and did this. These are people who socialized. They were friends; they were a clique. I think that the involvement of the manager in the mix probably...well, most definitely, exacerbated that issue because somebody came into this home, fresh out of leaving that training...and again, even if they didn't take the second step in reporting it to management, they didn't even call the 1-800 number. They can do that completely anonymously. They don't have to leave their name. They don't have to fear retribution. It doesn't even come to me or my staff; it goes to adult protective services, and that number is plastered all over campus. It's

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given to them at orientation. I don't necessarily believe that the failure to reports were necessarily innocent bystanders. I mean that's what we have proof of. But in my gut I don't know how you could know what you know at BSDC and be in training--I've been through the training course--I don't know how you leave that and walk into a unit and see somebody strangled and don't call...at least call the APS number. Go home that night, call the 1-800 number and report it. Don't give them your name if you're fearful of retribution. Would I have been angry that they didn't report it to management? Yes. But at the same time, at least they would have taken a step to stop it from happening. So I question the character of the people that failed to report and I also question...you know, we know what we know; we don't know what we don't know--and I think that that concerns me a little bit. [LR11]

SENATOR COASH: So you mentioned the...putting something in...an expedited termination process might be helpful to you. [LR11]

JODI FENNER: I think especially from a managerial perspective. I think with direct care staff, I think the process we have works, because people are coming in to do a very hard job. There should be teaching components, there should be progressive discipline. We do terminate for abuse and neglect. But the manager I mentioned to you, if I walk into a unit and I've got a direct care staff person sleeping, they're terminated for abuse, and that's upheld. I did terminate a manager for very poorly performing his job and for sleeping on the job--and that was reversed. You tell me where that fairness is. [LR11]

SENATOR COASH: Okay. So we...I'm looking for what the committee...and I'm asking these questions because I wanted the committee to be helpful to you, because that doesn't pass the sniff test for me either. [LR11]

JODI FENNER: It's a problem. [LR11]

SENATOR COASH: If you have any thoughts on what else, I want to hear it, because I

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think that's where we can come in and to say, we...because this is a partnership between the Legislature and your division. We all want the best and the same things. So what else can we do? [LR11]

JODI FENNER: I think...so many of the things that you've done already have been very helpful. I think that, you know, to continue it, especially as we have new members of the Legislature. The wonderful benefit of term limits is we get fresh new faces but the bad part of that is that we lose the experience and having the continued interest, whether we have a special committee or not, is extremely important. When we started this process, I don't even remember when we started this, Senator Lathrop, but I remember I was continuously getting questions about the waiting list at BSDC, and...but that was the perception that existed at the time. So I think just continued interest and involvement in whatever format is something that we appreciate. I think looking at ways we can change processes, whether they be contracting processes that Senator Krist would like to look at, or whether they be disciplinary processes...I think we can't treat the state as a whole, all across the board, as one...I mean we're a lot of different systems. When we're running a 24-hour facility, we have different needs than employees in an office environment. And I would like to see that looked at. We... [LR11]

SENATOR COASH: Okay. Let's do that then. [LR11]

JODI FENNER: Yeah. [LR11]

SENATOR LATHROP: Senator Bloomfield. [LR11]

SENATOR BLOOMFIELD: You pretty much answered by question in the process of answering one of his. I was going to ask about a method of anonymously reporting. Is there something besides the 800 number? [LR11]

JODI FENNER: They could call the police. They could...I mean, they could leave a note.

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We have...you know, they could report it to our...they could report it to anyone anonymously. We obviously prefer they follow the process so that we can take action, because one of the most important things we do when we receive an allegation is we remove the person from the home. We remove the employee who the allegations are against, because we don't want them to have that connection without employees and other...and the people we support. But I know the 1-800 number is just an easy one because it's there. It's posted so many places, I can't almost assure you, you can walk up to one of our residents and ask them what the APS number was, and they'll tell you. We've had residents call AS to have a conversation, you know: Will you come take me to lunch? So for anybody to say they don't know that phone number, I just don't buy that. [LR11]

SENATOR LATHROP: Senator Howard. [LR11]

SENATOR HOWARD: Thank you, Senator Lathrop. I just have a quick question. You've mentioned it twice that personnel reversed your decision on the employee that you fired, a management supervisory employee. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR HOWARD: Was it because they felt that the firing was not justified? Or was it because they felt the steps weren't taken, such as verbal warning, written warning, in the person's record? [LR11]

JODI FENNER: They wanted us to use progressive discipline. [LR11]

SENATOR HOWARD: Exactly what I'm asking you. So that wasn't done, and that was the decision...that's what the decision was based on. [LR11]

JODI FENNER: Not to their satisfaction. We're appealing that decision. [LR11]

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SENATOR HOWARD: So that's what the decision was based on, not the fact that the employee was sleeping on the job, as you have said, but that, in fact, you didn't go through the progressive steps prior to the firing. [LR11]

JODI FENNER: That's correct. [LR11]

SENATOR HOWARD: Thank you. [LR11]

SENATOR LATHROP: Okay. Jodi, we know you do not have an easy job and we know that there are brush fires all the time because of the nature of the work you do, and we appreciate the leadership you've shown in bringing BSDC from where it was in 2008 to where we find it today. This incident that happened more recently should not be a reflection on you, and this committee certainly doesn't want you to leave with the impression that somehow this is a judgment about you. I do think that there are some lessons to be learned and I hope that we can all reflect on them to find out what we can do to avoid another one of these occasions, whether it's a bunch of...whether it's a clique of people or an isolated person. But that we get to the bottom of it quickly and people feel like they can report it in a timely fashion so the residents are safe. Okay? [LR11]

JODI FENNER: Thank you. [LR11]

SENATOR LATHROP: So thanks for coming. [LR11]

JODI FENNER: Thanks. [LR11]

SENATOR LATHROP: Next on our agenda is the Ombudsman's eligibility presentation. [LR11]

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JODI FENNER: And I did leave you the Mosaic contracts. [LR11]

SENATOR LATHROP: Okay. Thank you. And while he is getting settled into the chair, Gary, and can I see how many people intend to testify just when we open this up? So that's look like three to me. Okay, good. Thank you. [LR11]

GARY WEISS: (Exhibit 8) Thank you for having us. I'm going to try to make my presentation as short as possible so I'm editing myself as I'm trying to read, so I hope that goes well. My name is Gary Weiss, G-a-r-y W-e-i-s-s. You have a written memorandum in front of you. We have two main concerns on the memorandum. The first concern is the evolution of eligibility for developmental disability services. The statute has not changed in many years, while the administrative codes and interim policies have been changing. In fact, they're changing as we speak. I think Tricia just sent me one at noon today. So they're changing all the time. We are concerned that these changes in the administrative codes and policies that they generate are limiting the number of people eligible for developmental disability services. The second concern that we have is that as the bar may be raising or concerned that a bar is raising, that there is a gap in services for people with the coexisting conditions of developmental disability and mental illness. I think rather than talk about those specific things, the statutes and the kind of technical pieces of it, I'd like to tell you the story of case that brought us to this. We're case-driven in the Ombudsman's Office. We're not here to write statutes or do the things that you do. But I think the story itself is the most important part, and I am going to try to read it. The individual that we referenced in the written testimony has two guardians: one is his sister, one of his sisters; and his father. I was introduced to his father in February 2009. I attended a meeting at the DD office in Omaha, which was offering options for guardians for their wards who were at BSDC. Again, this was in February 2009, a very emotional time, that people were being asked to consider changing where their guardians were living. The father told me, right away, that his son was not one of the people removed, but he was very afraid that his son would be one of the people moved next. He knew his son was high needs. He did not

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want his son to leave BSDC because his son had shown progress in the three years that he had been there, from 2006 to 2009. The evidence of that progress I found, besides obviously the father's observation, was in the report generated by--I will get it out here. This is the client service...well, I can't...the client service report that was generated by the contractors we brought in, in 2009. His son was 31 years old when he was admitted to BSDC in 2006. He spent the last 12 years prior to that, bounced around through 14 different inpatient intakes in mental health facilities--14 different intakes at inpatient mental health facilities. None of them were working. Finally, the treatment team at the Lincoln Regional Center determined his mental illness was stable and they needed to transfer him to a lower level of care, and they felt that there was a developmental disability, so they wanted him tested. Dr. Lee Zlomke did the evaluation, who I believe is still part of the BSDC team. He wrote in his evaluation, "It is clear he--the person--has suffered consistently with a severe and persistent seizure disorder that has been very difficult to completely control. The seizures developed secondary to a series of viral or bacterial infection with a high fever at approximately three and a half years of age. His seizures started around the time with a significant personality, rate of adaptive behavior acquisition, and impulse control change." So at three and a half years old, he got sick and there were significant changes in personality, rate of adaptive behavior acquisition, and impulse control. The seizure disorder and the subsequent treatments at early treatment stages left him disabled. I want to just read it very briefly from our testimony that you have in front of you and go further with Dr. Zlomke's observation. The individual's records "show significant intellectual and adaptive behavioral limitations displayed well within the development period. While these were not diagnosed, at the time, the mental retardation his scores would have allowed such a diagnosis. His limitations and failure to thrive are attributable directly to a cerebral insult of a high fever at three and a half years of age. His limitations have continued secondary to some of the intrusive treatments that have been required in an attempt to manage the seizure disorder. The individual continues to struggle with some executive functions," which he puts in quotes, "which include impulse control, problem solving under stress, and difficulty with expressive and receptive complex language skills. It is



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this examiners's opinion based on the information provided that the individual meets eligibility guidelines for developmental disability services. Given the individual's history and present functioning, it is anticipated that a carefully structured living and treatment environment"--living and treatment environment--"be necessary in order to mediate risks he continues to present to others." BSDC was somewhat successful, as I said before, in helping him through 2009. He is...the quote from that report, "He has made progress..."--this is July 20, 2009. "He has made progress with expressing himself and using appropriate social interactions and manners. This improvement in his communication skills has helped him develop better relationships with others." Well, that didn't last. Whether the frequencies of his aggressive behaviors--and he does do violent things--they became more intense. That...and that was something that was not going to be tolerated at BSDC. The father believed that his son was being mistreated. He was concerned about the son's medication and his son was reporting to him that staff were teasing him--in other words, triggering the behaviors. On September 20, 2010, Dr. Stull, the psychiatrist with the division, authored a letter that repeated much of the findings of Dr. Zlomke, with two exceptions. First, although both evaluators found the man's IQ more than one standard deviation below the mean, Dr. Stull decided that he was not eligible for DD services based on IQ, while Dr. Zlomke did. Basically, the same scores. One decided it was, one decided it wasn't. One decision was in 2006, the other decision was in 2010. The second piece that Dr. Stull believed an alternative treatment setting should be found for the individual where Dr. Zlomke believed that that living and treatment environment could be achieved at BSDC. Dr. Zlomke believed...as I said, Dr. Zlomke believed BSDC could develop a carefully structured living and treatment environment necessary to mediate the risks the resident continues to present to others while Dr. Stull feels BSDC had failed in its effort and believes the man needs to go someplace else. Please note though, Dr. Stull's letter did not say the man was ineligible for DD services. He simply said that he believed the man was not developmentally disabled based on IQ. However, when I received...however, there was a letter from Tricia Mason, administrator of community-based services, that was sent November 22, 2010...and I think I can dig it out here. She said in the letter, I do really would like to

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read this, the first paragraph I'm going to read, and this was the letter sent to the guardian: Due to the recent events surrounding your ward, pitched behaviors, more intense behaviors, the Department of Health and Human Services Division of Developmental Disabilities has determined that a reevaluation of the person's eligibility under Nebraska Revised Statutes 83-1205 needed to occur. As a result of the most recent evaluations and testing conducted by BSDC psychiatrists and psychologists, as well as a licensed psychologist from OMNI Behavioral Health, it is has been concluded that his scores and adaptive behavior scores do not meet the eligibility criteria for developmental disabilities. We had a meeting shortly after that letter was out, probably in February, I believe. About 20 people were there. DD had one option and one option only presented to the family, that the family would go to Bridges Program in Hastings. This is a...Bridges is a very small program, about ten residents. Extremely high behavioral needs, most if not all have acted out sexually. In fact, part of the program at Bridges is a sex offender treatment program, there was some program there. The man has never done anything like that. Moreover, between June '08 to July 2010, there were a total of 633 physical aggressions--remember we're talking about ten residents at the time--633 physical aggressions, 2,943 verbal aggressions, 570 acts of threats or bullying, 32 unspecified aggressions, and 76 (inaudible) in the two-year period. There was a meeting I was talking about before, about 20 people were there. Dr. Ramadan facilitated the meeting. He was encouraging the father to accept the placement at Bridges because, in his words, it was the best for his son, and that was repeated a number of times by a number of other people in that room, that that was the best, Bridges was the best place for his son. The message was repeated. The guardians visited Bridges, I went along the next day, and they decided that they did not think the program was suitable for their son. Since then, the division has made great efforts, and I want to make sure everybody understands they made great efforts to find other placement for the individual, even out of state. The one referral for placement was not made. The only place that I know of that where a referral was not made was to OMNI. The OMNI was the person who did the places. They said, well, his adaptive behavior scores, a piece of that definition of DD eligibility that they didn't meet criteria, this is the

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test--communication domain: low; daily living domain: low; socialization: low; adaptive behavior composite: low. I called OMNI. I said, is there a lower than low? Is there something like...something else? No, that's the lowest score there could be. So clearly the letter from Tricia wasn't accurate. She wasn't given accurate information, in that he does not...he has low adaptive behaviors, adaptive behavior functioning. All at-risk providers except for OMNI were contacted by...and they all turned him down. By definition, this is a gap in services in Nebraska. Just everybody was asked; nobody could do it. That's a gap in services. This person, according to Dr. Stull, needed a different placement. On Monday...this went on for a few months. On Monday, September 12, a phone call was made to his sister, and at that time was told that either he is going to go to Bridges now or tell us what you need because he's coming to your house. Now I was not party to the phone call so I'm repeating what I've been told. I actually called her that night and she was too upset to talk to me. I don't know what happened from there because I didn't witness, but to my knowledge the father, the next day, Tuesday, the 12th, called someone connected with the DOJ. That I get a phone call before noon saying that OMNI is taking the individual. So that's where he is now. The OMNI...he has been transferred to OMNI. The family is happy that an individual program based on his needs are going to be set and to this point things are working well. We had a meeting with OMNI where all of his brothers and sisters were there, his father was there. Then on September 13, that Tuesday, Director Fenner chose to direct an e-mail to senators about the case. Her observation and Ombudsman Lux's response is in your written material, and they are important for understanding the bigger...that Bridge material is very important for understanding the bigger issues--the clarity and eligibility and the gaps in services. For the purpose of this hearing in my testimony, I only wish to focus on the second and third sentence of Director Fenner's e-mail. She wrote: this individual does not have a developmental disability, although at one time he had a medical physical condition that qualified as a developmental disability. That condition has been under control for years, therefore, it no longer qualifies for DD services. It baffles me that anyone can say a person that had a medical physical condition, in this case a temporal lobe seizure disorder that caused developmental

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damage intellectually, behaviorally, and that the condition is under control, that there is no...that he's not DD eligible. Well, the only condition that I think was meant that was under control were the seizures themselves--but he had a seizure last Saturday. I don't want the point missed, the big point. We need a system that identifies the needs of consumers and that those consumers can access resources to address those needs--and I don't think we have it. [LR11]

SENATOR LATHROP: Can I ask you just a couple of questions so that I understand it better? OMNI is behavioral health? [LR11]

GARY WEISS: OMNI Behavioral Health is a private company. [LR11]

SENATOR LATHROP: So when you say he is at OMNI and he's happy there, is he now at a place that focuses on... [LR11]

GARY WEISS: They are doing a community risk assessment for the individual at Poppleton. This is the last I know. Things could have developed... [LR11]

SENATOR LATHROP: Is he in an institutional setting right now? [LR11]

GARY WEISS: No. [LR11]

SENATOR LATHROP: Where is he staying? [LR11]

GARY WEISS: At Poppleton House. [LR11]

SENATOR LATHROP: Okay. And their focus is not on developmental disabilities, but on mental illness? [LR11]

GARY WEISS: They are a developmental disability contractor. [LR11]

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SENATOR LATHROP: Oh. Okay. And your point is...I appreciate the chronology of events that you've described. Can you tell me, you began by saying that the law sets forth what developmentally disabled is but there are regulations that seem to be changing, and as a consequence... [LR11]

GARY WEISS: Yes, the Nebraska administrative codes. [LR11]

SENATOR LATHROP: Okay. Can you tell me what the law is and in what respect is the administrative code changing so that we are...and if I hear you right, you're saying this guy was developmentally disabled and then we changed the regulations and now he isn't. Is that your point? [LR11]

GARY WEISS: I don't think it was within this particular case. I don't think it was a case that we changed the law. I think that the evaluation of the individual changed, that he was and now he wasn't. [LR11]

SENATOR LATHROP: Okay. And as policymakers, what would you have us do to improve the system? [LR11]

GARY WEISS: I'm glad you asked. I...this is...I just kind of...I offer this up I had kind of anticipated... [LR11]

SENATOR LATHROP: By the way, you've done a lot of work with folks that have developmental disabilities. I appreciate all the work you've done from the Ombudsman's Office for people with developmental disabilities, particularly when the medically fragile were moved out, the work your office did or the office you're in--was very, very good and I appreciate it. What I'm looking for now, and I also have some understanding, a better understanding certainly of the person you're talking about and what happened to them. I'm looking for, now that we have this story and the chronology of events, what do you

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think needs to be different? [LR11]

GARY WEISS: I don't think the family should have been put through the kind of intimidation that they were put through. I don't think that...that the idea of moving people from an institutional environment to a community environment is an excellent goal, but it needs to be done right. As far as this particular case, they wanted to send him to Bridges and they were perfect...the division was perfectly content to send him to a program that was not going to help him. [LR11]

SENATOR LATHROP: And you think that was motivated by the desire to have him out of BSDC? [LR11]

GARY WEISS: Yes. In fact, in Director Fenner's e-mail she specifies what her motivations were. [LR11]

SENATOR LATHROP: Okay. And is there some policy change that we can make or what would you have us do? [LR11]

GARY WEISS: (Exhibit 9) In the...and you haven't had the opportunity to read our written testimony. This is taken from HHS, on the federal level. And I don't offer this...we don't offer this as, like, gospel or anything like that. But it's to show something that could be different. This is the Developmental Disabilities Assistance and Bill of Rights Act of 2000. And what it does is takes out the idea that someone's mental illness could prevent them from getting services in developmental disabilities. [LR11]

SENATOR LATHROP: Okay. [LR11]

GARY WEISS: I mean that right now it seems to me that there are kind of silos that people with mental illness have a very difficult time accessing, particularly people that where the disability may be borderline, have a difficulty of them accessing the kind of

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lived, what Dr. Zlomke talked about, the living environment as opposed to the treatment environment. They have a very difficult time accessing that and that's where I think something can change. Whether it's the responsibility of DD, the responsibility of behavioral health, that's not our place to say. [LR11]

SENATOR LATHROP: Okay. I appreciate that and you don't have to spend a great deal of time on this subject and your thoughts about it, and your insight is helpful. [LR11]

GARY WEISS: Yes. Thank you. [LR11]

SENATOR LATHROP: Anybody...questions? I see none. Gary, thanks for coming down and for waiting all your day for your opportunity. If I...we're ready for the public comment portion of this, and I see that it's a little bit before 4 o'clock, and I'm not going to impose the light system. But I will ask you to try to keep it inside of five minutes if you can. [LR11]

MARY ANGUS: Surprisingly, I think I can, Senator. [LR11]

SENATOR LATHROP: Well, good. [LR11]

MARY ANGUS: My name is Mary Angus, M-a-r-y A-n-g-u-s, and I'm representing ADAPT Nebraska, which is grass-roots advocacy on behalf of persons with disabilities. We believe in the civil rights of persons with disabilities and their right to inclusion and full participation in their communities. I'm not...as you can see, I kind of put my testimony together as we were sitting here. It's changed several times over the course of the last day or so. In response to something that you repeatedly asked, Senator Howard, I was called by an employee at BSDC, and I believe he's probably spoken with you, Senator Lathrop, and I know he's spoken with your aide Doug. He called me after Googling about BSDC and finding my name repeatedly. He called me because he said I was a passionate person about this issue and he needed to have more people hear

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about it. He talked about several 16-hour days in a week. He talked about the exhaustion. He talked about his sense that he was actually sometimes working in his sleep. That goes back to what I think you were implying, is there's a fear or, I don't know, that they're not going to be listened to. We heard that, Senator, during the meetings down at Beatrice when you talked with staff there too. It was that they've been...you know, this was a different administration. But even when they did speak up, it wasn't followed through on. But I would say that what we're seeing right now in the abuses being alleged at this point is not just simply due to overwork. You know, we've talked about these folks, you know, that are going in there are really pretty sadistic and you don't just show up at work one day and decide you're going to beat somebody up or choke them until they pass out. I would say that the torture that these individuals experience time and time after time, despite the attempts to reorganize the institution and under several different administrators, shows that that culture we talked about has been institutionalized. It's not going to go away. It hasn't gone away. These issues have been present for decades. Not just this year, not just in 2007, but for decades and generations. What it's got to do is it's got to end. It's got to end, and it's not going to end until people are transitioned out of Beatrice in a purposeful way, and including the supports, services, and funding that's necessary to do that appropriately. Instead of blaming the residents, we've got to take responsibility for the consequences of that trauma that they have been experiencing. We're talking about a lot of these behaviors are the result of being traumatized repeatedly over, some of them, an entire lifetime. We're talking about posttraumatic stress responses, we're talking about self-defense from that person's point of view. The transition is not going to be successful without a lot of work in the community services. And some of this is going to be similar to what Gary just spoke about with the problems with the way the systems are providing services or denying or allowing eligibility for services. There are barriers to that being successful, and among those is the way people are being denied successful, and among those is the way people are being denied authorization or eligibility for services by the Division of Behavioral Health, the Division of Developmental Disabilities, and the Division of Medicaid. These barriers are also present for people who are already in the community.



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The Division of Developmental Disabilities interprets, and this is the same section Chapter 83, Section 1205, the definition of developmental disabilities, as excluding anyone with a cooccurring mental illness in developmental disability from eligibility. More reasonably we could take that same section and read it to mean that if the developmental disability is caused by the mental illness, they wouldn't be eligible. More importantly, the DD services, the rights act that Gary mentioned, does not include any exclusion or any mention of mental illness as a problem in terms of a developmental disabilities. And if you look at developmental disabilities, it's any disability that occurs before the age of 22. So a person with a mental illness at age 9 has a developmental disability. That's not the way our law is being interpreted. At the same time...at the same time, Magellan, the behavioral health carve-out from Medicaid, has been denying services for people who have any kind of a DD list in their book. If there's an autism or another mention of some kind of developmental disability, by practice if not by policy that's happening, and that pattern can be seen in the reports that are made to us and to other advocacy organizations in the state. So you are denied services for developmental disabilities because you have a mental illness. Behavioral health under Magellan, which is Medicaid, denies you services based on the fact that you have a developmental disability. We're talking about a Catch-22 here. Then you add the fact that in 2010 Magellan added one more criterion for their medical necessity, and that is that a person is motivated to treatment. Now a person who goes to their medical sessions, a person that takes their medications, a person that follows the directions of the doctor is seen as motivated. If that same criterion were to be applied to someone going into the emergency room with a heart attack, they could be denied authorization for services if they ate bacon, if they failed to exercise, if they didn't take their medications or they missed their doctors' appointments. That would be seen as malpractice if the doctor did that. This a discriminatory practice by Magellan against people with behavioral health issues that is not seen in any other area. Plus, when you go in and look at...so that's Medicaid, that's behavioral health, and that's developmental disabilities. DHHS has been really impeding people's access to treatment in a way that I don't know how we can condone. On top of that, when you look at the child welfare

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situation, we have children who are inappropriately being denied services for the exact same reasons. We have children whose families who have Medicaid coverage--it used to be, you recall, used to be they had to place then in order to get Medicaid. Now children with Medicaid are being placed with the state as foster...as wards, rather, because Magellan is denying them services and DD is denying them services, and the only way they can get those is to access child welfare funds. So now Medicaid is saving money because they're not spending money on those behavioral health needs. Child welfare is paying the bill. And guess what? Child welfare doesn't get a 40-60 cut from the feds. Medicaid does. But Medicaid budget goes down while child welfare goes up, and we have the catastrophe that we're having right now with our children. This interaction between those divisions and this interplay of this...I mean I can't even come up with a word to describe how ludicrous this all is. We have to do something to change that. We have to expect the division, the department, to show up more transparency, more accountability, and to do the job we've charged them with. It seems like we are being told nothing, we're being given the runaround, we're being...there's just dodgeball going on. They don't want to give us any information. And I think that you guys are in a position to do something about that, maybe by legislation that changes the way developmental disabilities are described, maybe by oversight of Magellan that requires that they not do things that are going to save money somewhere--and this is before we go to at-risk. They don't have a financial motivation for denying services under the current administrative services organization contract. They will under a full risk. And with that, I'm going to close because I could go on forever. [LR11]

SENATOR LATHROP: I'm sure. And a lot of it sounds like the work that the Health Committee has been doing,... [LR11]

MARY ANGUS: Yes. [LR11]

SENATOR LATHROP: ...the Magellan and the mental health issues I think Senator Campbell has been working on all summer. [LR11]

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MARY ANGUS: Yeah, and the Ombudsman's report that was given to you shows a perfect example of how one of those children's families was so disrupted by this whole situation. [LR11]

SENATOR LATHROP: Okay. Thanks, Mary. [LR11]

MARY ANGUS: Do you have any questions? I'd be happy to answer them. [LR11]

SENATOR LATHROP: Senator Howard does. [LR11]

SENATOR HOWARD: Thank you, Senator Lathrop. Just a quick one. Since it's my (inaudible). You know, I have to agree with you, it really boggles my mind why the state of Nebraska chooses to not use the Medicaid where there is a federal match to offset the cost, but instead, and I don't know the real reason for this--if they've got themselves in a bind with the federal government or if there is some other reason--but why they choose to go to child welfare funds, which--and this is really important--to make clear that these are all state dollars, these are IV-B funds. I don't...this is costing us more as a state. In previous administrations, it's always been, well, let's see how we match up the needs, the state dollars, and the federal dollars. And that's not going on now. [LR11]

MARY ANGUS: And if I may add, once that child, especially a child with a developmental disability, as has to access child welfare funds in order to get services, those services end when the child welfare money is gone because he's no longer a child. So he's not going to be eligible for DD services because he hasn't been using them prior to that. [LR11]

SENATOR HOWARD: Yeah. I don't understand the reasoning or the thinking behind this. [LR11]

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MARY ANGUS: Good thing it is a weekend. We've got a little bit... [LR11]

SENATOR HOWARD: Yeah. (Laugh) We can think about it all weekend. [LR11]

MARY ANGUS: Thank you. [LR11]

SENATOR LATHROP: Thanks, Mary. Appreciate it. [LR11]

MARY ANGUS: Thank you very much. [LR11]

SENATOR LATHROP: The next testifier. You look nervous. [LR11]

BRENDA STINSON: I am. [LR11]

SENATOR LATHROP: You don't need to be. [LR11]

BRENDA STINSON: My name is Brenda Mae Stinson and I'm not even prepared. I just came in because I was invited here. [LR11]

SENATOR LATHROP: Brenda will you spell your last name for us? [LR11]

BRENDA STINSON: S-t-i-n-s-o-n, Stinson. My son is Austin Bower. And because of the gaps in services and he has an intellectual disability, one of the district judges in the state of Nebraska informed us that the state of Nebraska was inadequate to take care of individuals like you, and he had no other place but to put him in prison. And my son has a lot of what was mentioned about the adaptability issues and social skills and is very vulnerable to predators. And everywhere we looked, the doors were shut. And what is a parent to do? I go every Wednesday and go visit my son and ask him how he's doing. You might want to ask about treatment, living environment. He's in a room that is no bigger than your bathroom, 23 hours a day, and is let out into a dog kennel, basically, to

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stretch one hour a day. Is that how the state of Nebraska is wanting to treat individuals with intellectual disabilities, DD, mental health? That is what my heart as a mother...he's 23 years old. He was with Region V for years and we worked with him in the schools. He is a perfect example of the gap. That's all I have to say. [LR11]

SENATOR LATHROP: Any questions? Thank you. [LR11]

JACK NICHOLS: Senators, thank you. I've been here before. My name is Jack Nichols, N-i-c-h-o-l-s, and I'm here to expound upon some of the testimony that was here today. I'm going to start out with an analogy that don't make sense, but I'll make it make sense. Years ago, people only could jump freight cars but they had to get out before it got into the station so the railroad guys wouldn't arrest them and beat them up, whatever. So one fellow standing there waiting to get out wasn't getting out quick enough, someone pushed him regardless of where he landed, just to empty the train. With that thought in my mind, I feel my son was pushed out of the train. Now the testimony we had before in 2008 and stuff, I bragged on BSDC. I still brag on BSDC not because it's perfect, but it's because it's the best thing going. But in the attempt of removing him off the train, we came up with any time he had an anger incident, we would call the sheriff, we would call the State Patrol. We sent him behavior crisis center in Lincoln. We contacted--not we; I'm talking about the state--contacted Lincoln Regional Center. No, he's been here; he doesn't meet your needs...our needs. So we have went through the service coordinator. She has contacted me several times. And I says, okay, this needs to be a life situation. We can't send him somewhere for a year, can't send him somewhere for a week. We need to send him somewhere for a lifetime. So with that in mind, we're doing everything we can with the state to disqualify him. Call the State Patrol and try to get a criminal record on him. Try to send him to the Crisis Center to get him a mental. We won't stand up, the state are not standing up to his needs, and it was clearly, to me, that he was going to be removed from BSDC. And I cooperated with the service coordinator. She sent letters of permission for referrals. They sent a blanket one to several states. They got something from Texas. I signed the okay for them to send his records because it

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was his kind of a blanket one, you know, 35-year-old that needs residential services. Well, when they found out he was a behavior problem, they turned him down. The second effort we had was New Hampshire was interested. The state of Nebraska sent my daughter and her husband to New Hampshire. It was an eye-opening experience there because they're 20 years ahead of us, is the estimate as to how people are treated. So as a family we kind of considered and says, okay, we can make that work beings he would change different doctors and maybe a different environment even though it was 2,000 miles, maybe, away. The only thing is, we discussed then how possibly we would need to work out a deal where we wouldn't have to pay for visitations, because I visited my son every bit of 30 times from Omaha to Beatrice last year, and I had no problem with that. But 2,000 miles would be a little different. So we even got to the point where the administrator from New Hampshire came to Nebraska. I don't know if he did the intake on my son. All of sudden, communication went completely blank between the state and me. But he was here. At that time, he announced that, it was probably six months to hear, waiting period, maybe more, because they did Massachusetts and they did Connecticut and they had waiting on that. So why we were even sent to New Hampshire I have no idea, to build our hopes up. But right now I understand many states, and Nebraska is not one of them, has a combination mental, DD, behavior, all in one pocket, so there isn't an argument between he's not ours, he's theirs. They just address the problem and get it done. So I think that's the only suggestion I can give is that we combine the issues so we don't have, like the lady that was here before me and the thing Gary talked about. We don't have that gap. We don't have that argument between what pocket does it come out. It's still going to come out of the state no matter what. Get together on it. Let's get it (inaudible). Thank you very much. [LR11]

SENATOR LATHROP: Okay. (Inaudible) sure. Thanks for coming down again, Jack. We appreciate your thoughts. [LR11]

JACK NICHOLS: Sure. Appreciate what you guys are doing. [LR11]

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SENATOR LATHROP: Yeah. Thank you. [LR11]

JACK NICHOLS: Thank you. [LR11]

SENATOR LATHROP: Another testifier. [LR11]

THOMAS JUDDS: I appreciate the opportunity to be here. My name is Thomas Judds, J-u-d-d-s, and I represent a company called Midwest Housing Equity Group, and they were mentioned earlier this afternoon as one of the investor partners in the Mosaic projects. I had no intention of testifying. In fact, I just learned of the meeting a couple days ago, but I felt the need that it was on my heart to come and testify, especially sitting here. And first of all, I want to say my heart goes out to the families and the individuals that have had some abuse here of late, which is very troubling and just very concerning. So my prayers go out to them. What I want to is that I know there have been issues regarding the lease-up of the Mosaic properties, and I met with that group just a couple days ago at our office. My opinion is, and I don't want to point fingers here, but I understand by sitting here I feel like there's some people pointing fingers. There might be issues on both of those agencies, and I'm not here to dissect that. What I'm here to do is offer that these two groups get together and meet and find solutions so that we can get this housing that's empty, that's being used by the state's resources, to utilize those resources to the maximum. My position at Midwest Housing Equity Group is one to raise the investor capital across companies across this state and to use that money as equity for affordable housing. And I truly believe in this development with Mosaic, and so I feel like there is a need there for this housing and I hope we can find those residents and house them there to get those services and move them to community-based housing. So that's my objective here. And I also offer the opportunity of my time to help those two sort through whatever those issues are so that we can accomplish the lease-up, so. [LR11]

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SENATOR LATHROP: Looks like they're still here and you're welcome to try to mediate that. (Laughter) I think everybody on this side of the table would welcome that level of cooperation, because we've heard a lot today but that's troubling that we are paying for housing that's not being utilized, so. Senator Wallman has a question for you, Mr. Judds. [LR11]

SENATOR WALLMAN: Yeah, thank you, too. And, you know, I had a meeting with the homeless vets. Do you have a organization for housing for them like Habitat for Humanity or something like that, also, or don't you? [LR11]

THOMAS JUDDS: In our portfolio, we do not at this time. A project that we recently did... [LR11]

SENATOR WALLMAN: So I can get in contact with you, though, if I have some...? [LR11]

THOMAS JUDDS: Yes. Yes, you may. And I could give you my business card after that. [LR11]

SENATOR WALLMAN: Please do. Thank you. [LR11]

THOMAS JUDDS: You're welcome. [LR11]

SENATOR LATHROP: Great. All right, I think that's all of the...thank you for your testimony. Someone else is raising their hand, okay, which is fine. You know, we open it up to public comment. Is there anyone else, or is this the last person? What? Did you just raise your hand? [LR11]

TARA HARPER: Yes, I did. [LR11]



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SENATOR LATHROP: All right. We're going to use the light on you though. Welcome to the committee. [LR11]

TARA HARPER: My name is Tara Harper, T-a-r-a H-a-r-p-e-r, and I'm here on behalf of my son. He's nine years old and he was adopted when he was four and a half years old. He was placed in our home, first as a foster child, and then we were able to adopt him on National Foster Day...National Adoption Day, nine months later. And so he's been living with us for five years. And I also have two-year-old twins that are biological. And Tyler has always had severe behavior since he's lived in our home. He was exposed to drugs prenatally and then after his mom, that's how he came into state custody was because of over...his mom was overmedicating him. And so he's always had behavior problems, but it got to the point probably a year ago where he was putting my other children in danger and he was putting my family in danger, breaking us apart, and there was no sense of stability in the home. My husband does construction and he works odd hours, and so I was faced with having to deal with these severe behaviors, retraining my son. I used to be a behavioral therapist at the Med Center, and so I know about severe behaviors and I know about restraining and basket holds and positive reinforcement, everything like that. But everything that my son has went through for behavioral supports, it just got to the point where he was aggressive, he broke windows, he would...the glass went all over my younger son's shoulders and down his shirt. And it got to the point where I took him to Immanuel Hospital to admit him, and they did a psychological evaluation. I spent three hours of my time there with my son, sitting there just with them to tell me that I should call Munroe-Meyer on Monday and talk to his therapist and that they couldn't admit him because of his intellectual disability and because they're an acute care facility. And I know that because I had clients that were not able to be admitted, children his age. And so I called the police and the police came and the police said that they couldn't remove him from my home because they would take him to Immanuel Hospital. So I self-reported me and my husband to CPS, and CPS said that they couldn't do it; the police needed to do it. And so the twins left for the weekend and I kept them away from my son, and tried to find respite any way I could to

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keep them...you know, to keep...have some extra support at home. And it happened again. I called the police. They said they couldn't remove him, and the police officer was actually the same one that had just come to my house a month ago before that. And he said that...he's like, I'm really surprised he's not even in the system yet; can't you get him in the system quicker? And I was like, I don't know what to do; I'm asking for help in any way possible. And so I called CPS again and I reported, and they said they would assign somebody in two days to talk to me, and then I called back there next day and I said I can't handle it. He's breaking everything in his room. He doesn't have anything left in his room. He's hitting my kids. He's cussing at me, threatening to kick me in the face. And the CPS worker said she would call me back, and she called me back to tell me that her supervisor told me that as a parent it's my job to protect my child and all of my children, and if that meant barricading my bedroom with my twins in my room, that that's what I had to do to protect them from my son. And so nobody helped me, and so I wrote an affidavit to the county attorney the next day, and I submitted it to the attorney, and they sent it to a judge and the judge asked for him to be removed within two hours of him signing it. So the sheriff came over and took my son, and he's now in emergency foster care. But now I am...because he has an intellectual disability and we're trying to get him on the DD waiver. I just found out last week that he qualifies for the DD waiver, that because my son isn't displaying any behaviors in this foster home because it's a good setting and it's great and the foster mother cares about him and it's perfect, and she's even licensed as a host home, that because he's not displaying behaviors, that he's not going to get DD funding. Because he's in a good place and so the only options that are presented to us is that he can come home or he can be put in foster care, in a traditional foster care home, which would restrict him from living in the home that he's been living in for two months now where we do visits every week. And he's comfortable and it's going great, but instead he'll get stuck in the foster care system or I can bring him home and have the same thing happen all over again. When I know I work for an organization that provides services for people with intellectual disabilities, so I know it costs so much less to keep a child in a host home versus keeping them in foster care. I know it always comes down to money, and I'm just asking you to think about it from the

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business aspect that it would be so much better for my child to get DD funding and maybe not be displaying behaviors. But that's a good thing, and so why not pay for a host home that costs \$50 a day versus foster care? I just don't get it. I don't know why I have to have my kid in the system for things to work out. And so far, in the last two months, they have not provided a single service to my son, and they're pressuring us to bring him home. But they haven't provided any therapy at all to help him with his aggression, so. [LR11]

SENATOR CAMPBELL: Jodi would you have time to visit with her, because I do think that you all...you are nodding and wanting to talk to her. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR CAMPBELL: And so if you could just stay for a little bit, Ms. Fenner will talk to you. [LR11]

TARA HARPER: Oh, good. Thank you. [LR11]

SENATOR LATHROP: Sure. No, I'm glad you...I was going to look to you anyway because... [LR11]

SENATOR CAMPBELL: (Inaudible). [LR11]

SENATOR LATHROP: Yeah, it's a little more...it almost sounds "safe haven." [LR11]

SENATOR HOWARD: It is a safe haven. It would have been a safe haven. [LR11]

SENATOR CAMPBELL: But they can help her, I think. [LR11]

SENATOR LATHROP: Yeah. [LR11]

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JOAN O'MEARA: My name is Joan O'Meara, O'M-e-a-r-a, and my daughter is Cindy O'Meara, my claim to fame, and she is at BSDC and has been there for many years. She is now 56 and she left our home at nine and a half years. A very tearful parting, but we have been very, very happy where she is. She was one of the 47 sent out, was very unhappy with that, and thanks to you people and to Jodi Fenner, she is back and loves it. We have a facility that is growing in many fields. The medical field can't be beaten. It's wonderful. We have the majority of great people working with the children--I call them children. Jodi Fenner has established many programs, and that's important. I do want to thank this group of people. You have done a wonderful job for us and have stuck by us for many years, and I hope that it's going to be a permanent one. Can we count on it, I hope? And that's all I have to say. [LR11]

SENATOR LATHROP: Senator Coash. [LR11]

SENATOR COASH: Thanks, Joan, for coming down. You go to BSDC pretty frequently to visit your daughter? [LR11]

JOAN O'MEARA: Oh, yes. Yes, uh-huh. [LR11]

SENATOR COASH: Well, I... [LR11]

JOAN O'MEARA: They know me. (Laughter) [LR11]

SENATOR COASH: I'm sure they do. Your standard as a mom is the standard we ought to strive to. I mean, I don't think we can strive to a higher standard than that of a mother and how their children are being treated and cared for. You heard all the questions about--and you've read the newspaper--about the abuse. And that's concerning to us. [LR11]

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JOAN O'MEARA: It is. [LR11]

SENATOR COASH: What is your take on that? [LR11]

JOAN O'MEARA: I think it was one of the most horrendous things to happen in many years at BSDC. [LR11]

SENATOR COASH: Are you worried about something like that happening to your daughter? [LR11]

JOAN O'MEARA: No. You have to realize that the campus is divided into sections, and my daughter happens to be one of the lucky ones to be in a cottage. And the people there are very, very good at the work that they do, and I think it's one of the best cottages on the campus. But then every mother thinks that of the other cottages, which is right. I think what happened here was an unfortunate happenstance. Why it happened, I think we have to do a lot of investigation so that it doesn't happen on any other part of the campus. I do believe one thing that's important: I've been attached with BSDC for many years, and when...I go as far back as Sage and maybe even before that. But at any rate, there was a ruling that every shift there would be someone that would go around to the places to check to see if they needed anything, was everything going right, was there a problem. And we haven't done that in the last few years, and I think that we need to go back to that. That's an important factor. And the fact that we used to have the security system, that was important. They went around and they weren't just for security. If there was a problem, they could help with that problem of both physically and also "intaking" them to maybe a doctor or something. But finances have dictated something else. Money runs the country, gang, let's face it. [LR11]

SENATOR LATHROP: Well, it's not unimportant. [LR11]

JOAN O'MEARA: No, it isn't. [LR11]

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SENATOR LATHROP: I don't know if it's running the show but it's... [LR11]

JOAN O'MEARA: It's darn near it. [LR11]

SENATOR LATHROP: Yeah, it's important and we can't get lost on that either. Joan, thank you for coming. [LR11]

JOAN O'MEARA: But I want to thank you all. [LR11]

SENATOR LATHROP: It's good to see you again. Okay, this is really our last person? Anybody else out there? Okay. I'm not going to turn the watch on you...but if you can. [LR11]

TERRY KRUSE: I'll try to keep it as short as possible. My name is Terry Kruse. I'm Brady Kruse's father. Most of you know who I am and why I'm here. Brady was placed at BSDC when he was one year old, and he was placed there because we couldn't handle it any longer, my wife and I and my three-year-old daughter. You've all heard that story, most of you. And he spent 34 years there until he was displaced. He was one of the 47 displaced, placed in the hospital. And I spent ten months running back and forth from North Platte to Lincoln, talking to you, talking to the Governor, talking to Jodi, and trying to take care of him at the hospital and make sure his needs were met. During this time, I spent enough time with enough of you to figure out that there are people here in this building that want to do the right thing--a lot of people. But I have also figured out, I think a lot of you the big problem is, is you don't get the right information at the right time. You're so indulged with so much information about so many different things that it's so difficult to separate all that out to make the right decisions and to do the right thing. And I guess my goal here, and it always has been, is to let you know what it is like from the other side as a parent or a guardian, and that's what I've tried to do. The decision to place your child, at one year old, four hours away from home, and

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place that baby in the arms of somebody that you don't know, is the most difficult heartbreaking struggle that...it's incomprehensible, and the guilt that runs with that is never ending and it's always there in the back of your mind. So I wanted to find out today exactly how many people were on the waiting list that were waiting for residential placement, and I never got a number. [LR11]

\_\_\_\_\_: 1,700. [LR11]

TERRY KRUSE: 1,700... [LR11]

SENATOR COASH: For residential? [LR11]

TERRY KRUSE: ...are waiting for residential placement. [LR11]

\_\_\_\_\_: Well, they're waiting for (inaudible). [LR11]

TERRY KRUSE: Okay. This state has 37 beds as far as I could figure from the information I've gotten in the last 24 hours, that are unoccupied. There was a struggle for months and months and months to get six facilities developed and get the 47 displaced into those facilities. And here we are, two years later, and we still have empty beds. Okay, I listened to a lot of the opinions and a lot of conflicting stories. Let's find out why and let's take care of that. This is a continuous problem, and I'm telling you if we have 1,700 people on the waiting list, waiting for residential placement, we need to get busy. We need to find funding and we need to build more facilities and get them going. These families are being destroyed, I have told you and told you and told you. When a family comes to the point where they have to, are forced to place their loved one, that family is being torn apart. Most of the time it's a one-parent deal. One parent has bailed and doesn't...and leaves the other one with the rest of them. Now if there are siblings involved--and I've told you this too--if there are siblings involved, I can't tell you the damage that my three-year-old daughter went through, and she is almost 40 now,

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and what that has done to her over the years of living with this stress of one year. These siblings are going to end up in five, ten, 15 years, drawing money out of Health and Human Services, or even worse, will be in the penal system. I guarantee it. You can look at the statistics. They're there someplace. We have to address this now. I have asked and asked, please, whatever you can do for funding, whatever you can do to facilitate more residential residences, that needs to be done. There's no better example than the people you've just seen. This is what...you've just seen it, what I've tried to get across to you for three years. These families get torn apart. And we've got 1,700 of them out there? A hundred years ago when BSDC was built, that Unicameral and that administration had money problems. They had money problems back there, but they built the facility, they manned it. And 35 years ago when I placed Brady, it was an example for the country--and example for the country. People from all over the country were coming to Beatrice to see that and to form their own in their own state like that. So I'm asking you, let's step up to the plate and let's put our heads together. We've got a lot of smart people in this building that want to do the right thing. So please, please let's get this done. Let's save some families and let's do what I've heard three of your constituents on the floor in the last two years have stood up and said, very boldly: We take care of the people in Nebraska. Let's do that. And I'm going to leave you with one final note, just I...I earned this time, sir. [LR11]

SENATOR LATHROP: Sure you did. [LR11]

TERRY KRUSE: I'm going to leave you with one final note. The three-year-old little girl who lived through a year of hell, at the age of 38, when her brother died, asked me to put this on his tombstone: Every soul brought into this world serves a purpose. And these people that we're all fighting for, they serve a purpose. My son did more good in 35 years than I could ever imagine that I could even halfway accomplish, and I'm 63 years old. So I'm asking for your help once again, and I'll be back. And you all know that if there's anything that I can do in any way, I will be here. So I thank you. Thank you. [LR11]



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SENATOR LATHROP: Thank you very much again. I think that wraps up our hearing for today. Thank you all for coming, for your participation and your input. [LR11]