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Transcriber's Office

Health and Human Services Committee
February 04, 2016

[LB895 LB1033 LB1039 CONFIRMATION]

The Committee on Health and Human Services met at 1:00 p.m. on Thursday, February 4, 2016, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a briefing on the Department of Health and Human Services Division of Developmental Disabilities, a gubernatorial confirmation for the Division of Developmental Disabilities, and a public hearing on LB895, LB1039, and LB1033. Senators present: Kathy Campbell, Chairperson; Sara Howard, Vice Chairperson; Roy Baker; Sue Crawford; Nicole Fox; Mark Kolterman; and Merv Riepe. Senators absent: None.

COURTNEY MILLER: (Recorder malfunction--some testimony lost) (Exhibit 1)...performance, honoring individualization, and promoting customer choice and self-determination. I look forward to working closely with you, the people we serve, their families, our providers and advocacy organization, and our state and federal partners to ensure that Nebraska citizens with developmental disabilities receive the best possible services that we can provide. Our agency mission is to help people live better lives, and the Division of Developmental Disabilities is dedicated to fulfilling this mission for those we serve. I'm happy to answer any questions you might have. [CONFIRMATION]

SENATOR CAMPBELL: Thank you. Questions from the senators? Senator Riepe.
[CONFIRMATION]

SENATOR RIEPE: Senator Campbell, thank you. Thank you for being here. I had a curiosity question maybe as much as anything. Were you with the Iowa Department of Human Services when Jessie Rasmussen was there? [CONFIRMATION]

COURTNEY MILLER: Yes. [CONFIRMATION]

SENATOR RIEPE: Okay, just curious. Some Nebraska roots. I guess my second question would be...is, what do you see as your three top priorities? I always feel you have to limit them down. Do you have three of those that are pressing on you, maybe keep you up at night?
[CONFIRMATION]

COURTNEY MILLER: An improvement in customer service and making our customers feel that we want to serve them. We want to be there for them and to support them, to give them meaningful days, and support their life choices. That's priority number one. The second is to answer how to best move forward...best practices, how can we be the best that we can be. Third

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would be accountability and building those relationships with our stakeholders, with the Legislature, and building some bridges. Those would be my top three. [CONFIRMATION]

SENATOR RIEPE: Thank you. Good ones. [CONFIRMATION]

SENATOR CAMPBELL: Do you have a follow-up, Senator Riepe? [CONFIRMATION]

SENATOR RIEPE: No, I do not. Thank you, Chairman. [CONFIRMATION]

SENATOR CAMPBELL: Other questions? I have a question, only because we've had a question in our office. Explain to me what is a priority 1. Is that someone who is coming off the list and they have...their needs have risen to the top? What is a priority 1? [CONFIRMATION]

COURTNEY MILLER: So I don't have the statute in front of me, but I know that priority 1 is a term that's established in statute under the DDSA, or the Developmental Disability Services Act. And it indicates the status or the circumstances in which an individual then rises to the top of prioritization to receive services. And off the top of my head, I can say homelessness, the threat of homelessness, not having their basic needs met of food or shelter. Those are the individuals...and I'm sure there's more circumstances, but off the top of my head, that's what I recall. But I can follow up with you on exactly what... [CONFIRMATION]

SENATOR CAMPBELL: I would appreciate that, just to have some idea. [CONFIRMATION]

COURTNEY MILLER: Absolutely. [CONFIRMATION]

SENATOR CAMPBELL: And on the waiting list, and I probably should have asked this earlier, but on the 3,800, not all of those people want services today. Is that accurate? [CONFIRMATION]

COURTNEY MILLER: Correct. It is a combination of those that are past their date of need, meaning they needed something from us yesterday, and those that have a date of need in the future. So perhaps a family has placed their child on the registry of unmet need, but not specified a surface...I'm sorry, a service, but indicated that perhaps when they're 21 that they would like adult day services through the Entitlement Program of the DDSA. [CONFIRMATION]

SENATOR CAMPBELL: And not all of those folks receive a service coordinator or a case manager, is that correct? [CONFIRMATION]

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COURTNEY MILLER: At this time, no. [CONFIRMATION]

SENATOR CAMPBELL: About how...just approximately what percentage of the 3,889 would have a coordinator? [CONFIRMATION]

COURTNEY MILLER: I have that answer. Of the 3,889, 2,600 do not have a service coordinator. [CONFIRMATION]

SENATOR CAMPBELL: Okay, and they want one? [CONFIRMATION]

COURTNEY MILLER: We're going to reach out to them and ask them if they would like one. [CONFIRMATION]

SENATOR CAMPBELL: You got to find that out. Because that was something that was, you know, new to me when I came to this committee and watched all that, was the fact that some people didn't need services right now, but they still are on that list because their needs are in the future. When Senator Coash calls and he has come into the room, when he calls another meeting of the special committee, I think it would be helpful for them to have a breakdown of the 3,889 as to how many have coordinators, how many are waiting for services in the future, and maybe...would they be in like 5-year increments, Director? I mean, because some people wouldn't need services for what...how long a distance...five years in the future? [CONFIRMATION]

COURTNEY MILLER: Oh, I think that...I mean, a child who is born with a developmental disability or has a diagnosis their family can place them on the registry of unmet need before they leave the hospital and we would accept them on the registry. It is a good measurement tool of who we anticipate needing service, but it doesn't encompass everybody. [CONFIRMATION]

SENATOR CAMPBELL: It might be helpful to...and I'm asking for Senator Coash, but it might be helpful to the committee to break that down somewhat, so that we have some idea. Because I think too often we get the impression that all of those people need services today and we hear about states who just, you know, say well, we've wiped out the waiting list. Well, that's somewhat misleading, isn't it? [CONFIRMATION]

COURTNEY MILLER: Yes, I agree. [CONFIRMATION]

SENATOR CAMPBELL: Because there's always people who will be coming on that registry, would that be accurate? [CONFIRMATION]

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COURTNEY MILLER: Absolutely. [CONFIRMATION]

SENATOR CAMPBELL: So if you could break that down, it might help the special committee, because I think there's a number of freshman senators who could use that background. Anything else? I guess that's it. [CONFIRMATION]

COURTNEY MILLER: Wonderful. [CONFIRMATION]

SENATOR CAMPBELL: The committee will take action on your appointment and then send it to the floor. We have to report to the floor everything, so thank you very much. [CONFIRMATION]

COURTNEY MILLER: Okay, thank you. [CONFIRMATION]

SENATOR CAMPBELL: And if we need something, we will know where to find you. [CONFIRMATION]

COURTNEY MILLER: That's right. [CONFIRMATION]

SENATOR CAMPBELL: That concludes our report from the department and our gubernatorial confirmation hearing, so we will go to the regular hearing schedule this afternoon. Once again, those who have walked into the room, I'll kind of go through the basics again. Make sure your cell phone is turned off. If you are intending to testify, we would ask that you complete one of the orange sheets on either side of the room as legibly as you can. And when you come forward, you can give your orange sheet to Elice. And if you have handouts...we don't require them, but if you do, we would like 10 copies. If you need assistance with that, you can ask the page to help you. We do run the light system here in the committee. You have five minutes, it will be green for what seems like a long time, and then it will go to yellow and you have one minute, and it will go to red and I will be trying to get your attention. When you sit down, we would like you to identify yourself and spell both first and last names for the transcribers to hear that, okay? I think we'll do one more round of introductions, because we've had some people add. So Senator, you have to start off again. [CONFIRMATION]

SENATOR FOX: All right. Senator Nicole Fox, District 7: downtown and south Omaha.

SENATOR KOLTERMAN: Senator Mark Kolterman, District 24: Seward, York, and Polk Counties.

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SENATOR BAKER: Roy Baker, District 30: Gage County, part of Lancaster County.

SENATOR HOWARD: Senator Sara Howard, I represent District 9 in midtown Omaha.

SENATOR CAMPBELL: And I'm Kathy Campbell, representing District 25 in east Lincoln.

JOSELYN LUEDTKE: Joselyn Luedtke, committee counsel.

SENATOR CRAWFORD: Sue Crawford, District 45: eastern Sarpy County, Bellevue, and Offutt.

SENATOR RIEPE: Merv Riepe, representing District 12, which is Millard, Ralston area.

ELICE HUBBERT: Elice Hubbert, committee clerk.

SENATOR CAMPBELL: And our page.

ALLIE COUFAL: I'm Allie, I'm the page. Political science, UNL, from Papillion.

SENATOR CAMPBELL: Thanks much. We will open the first hearing of the afternoon, LB895, Senator Coash's bill to require a report regarding the Beatrice State Development Center and the Bridges Program. Welcome, Senator Coash. [LB895]

SENATOR COASH: Thank you, Senator Campbell, it's good to be here in front of the Health and Human Services Committee, my home away from home...from Judiciary. And I am Colby Coash, C-o-a-s-h, and I represent the 27th District, here to introduce LB895, which would be considered a committee bill from the BSDC Special Investigative Committee. It is a bill to require the Department of Health and Human Services Division of Developmental Disabilities to develop a plan and report regarding BSDC and the Bridges Program in Hastings. The intention of LB895 is to ensure that HHS creates a long-term plan for BSDC, the Bridges Program, and their residents. The LR32 Special Investigative Committee on developmental disabilities held two hearings last year, at which several members of the HHS Committee attended. They provided updates by the department on BSDC and Bridges. For the record, my testimony will include information from those hearings, in order to incorporate some findings for the reasons as to why I introduced this bill. BSDC has served people with intellectual and/or developmental disabilities and related conditions since 1887. However, the manner in which support has been provided have changed dramatically over the years. But the purpose has remained consistent--it

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is and was a state facility run by state government. I will note that in the latter part of the last century, BSDC was seen as a model for services. So why is a plan important? In its heyday, BSDC supported a couple thousand people, today it serves 116 people and 5 buildings are no longer used for anything more than storage. The campus was built to serve many, many more. The quality of life for those that are there is greatly improved with the more individualized space and room, however, the overhead remains. To put these 116 individuals in perspective, we need to understand that no one has been admitted to BSDC since 2012, and only 4 have been admitted since 2010. The census trajectory is clearly going down. BSDC represents some of the most medically fragile and behaviorally challenged individuals, with disabilities. The budget for BSDC, Bridges, and the associated community-based services is roughly \$450 million. With no more intakes into BSDC, the census will continue to decline and the costs will remain high, and so a plan must be put in place now. LB895 requires the HHS to include several elements in their comprehensive plan. First, the department will conduct an analysis of BSDC and Bridges and their needs, and the ability to serve them in the community, and the continuum of services offered to people with disabilities. The plan shall take into consideration the preferences of the people at BSDC and Bridges, as well as nationwide trends in similar facilities. The plan will also include the cost-efficiency of services provided at BSDC and Bridges, an analysis of the facilities, and long-term structural needs of those facilities at those two locations. The report will examine census trends and future needs for services and the level of community integration for residents who are in those two facilities. LB895 also requires that HHS to analyze the U.S. Supreme Court decision in Olmstead v. L.C., and provide an analysis of Nebraska's compliance with that decision. Public hearings would be conducted to receive input from interested stakeholders, the public, and the families of the people who live there. And lastly, LB895 requests a report from DHHS with all of the elements I just mentioned to be submitted on or before November 15 of this year. I have spoken with the newly-appointed director, Ms. Miller, prior to the introduction of this bill, regarding putting a plan in place. And I know that as a new director, Ms. Miller has uncovered some financial problems regarding to miscalculated rate methodology that was not approved by the feds, where over \$12 million will need to be repaid to the federal government. She is working with the feds to avoid additional penalties and I do not want anything to jeopardize those negotiations. But I do believe a mid-November deadline gives the department adequate time to know where they stand with the feds and gather the necessary information required in this bill. So thank you for your time. [LB895]

SENATOR CAMPBELL: Thank you, Senator Coash. Questions from the senators? Senator Riepe. [LB895]

SENATOR RIEPE: Senator Campbell, thank you. Senator Coash, I again commend you for taking on this task. It is certainly not an easy one, and certainly fraught with a lot of challenges. Is the Department of HHS now doing something regarding strategic planning, or is that on hold until you get through your November study? [LB895]

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SENATOR COASH: Well, I think there's...I mean, the department as a whole, I assume, will have a strategic plan. The Division of Developmental Disabilities also has a plan, we actually discussed that plan during a different bill that I'm looking forward to seeing. I am not aware of a particular plan for BSDC and Bridges, going that narrow, and that's why LB895 I believe is important. [LB895]

SENATOR RIEPE: I have a follow-up question, if I may. [LB895]

SENATOR CAMPBELL: Sure. [LB895]

SENATOR RIEPE: This is a Curious George one. You talked about five buildings that are used for storage, and my imagination is that these are fairly big buildings and I'm trying to get into my head...I mean, I believe in hoarders, but what could fill five buildings of storage? [LB895]

SENATOR COASH: I don't know. Maybe Senator Baker could answer that question, as I'm sure somebody from the department could. But when we asked for kind of just a broad analysis of how many buildings are being used, how many buildings are vacant, what are they being used for, one of the...I didn't get much deeper than five of the buildings are currently being used for storage. What they're storing, I don't know. [LB895]

SENATOR RIEPE: Thank you. Thank you. [LB895]

SENATOR CAMPBELL: Senator Howard. [LB895]

SENATOR HOWARD: Thank you, Senator Campbell. Thank you, Senator Coash, for bringing this to us. I wondered if you could comment on the fiscal note that asks for four contractors to help with the report. [LB895]

SENATOR COASH: I don't have a comment. The department has seen what I want...what I feel is important for this Legislature to know. Those are all...and that was a result of quite a bit of discussion with members of the LR32 committee saying if we're going to mandate a report, what do we want to make sure we include? Granted the time line is pretty short, but I think all of the information is there. It will take some time, I assume, to put together some stakeholder meetings. And I feel strongly that the preferences of people living there and their families should be included as part of this report. But if they say it's going to take \$75,000, at this point I don't have any reason to dispute that. [LB895]

SENATOR HOWARD: Thank you. [LB895]

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SENATOR CAMPBELL: Other questions, Senators? I know you'll be staying, because you have the next bill. [LB895]

SENATOR COASH: That's right. [LB895]

SENATOR CAMPBELL: So thank you, Senator Coash. We will go to our first proponent for LB895. Good afternoon. [LB895]

MICHAEL CHITTENDEN: (Exhibit 1) Good afternoon, Chairperson Campbell and Senators. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n. I'm the executive director of the Arc of Nebraska. We are an advocacy agency that has nine local chapters and we are affiliated with the Arc of the US. We come here in support of LB895; we would like to see the report and a plan for BSDC. We do recommend, and have recommended, to the special investigative committee that that plan be one of a long-term closure, one that takes into consideration the personal needs and plans of each individual and gives them enough time to transition into the community. But we do feel that it is time for BSDC to have a plan for closure. Citing concerns that we've heard over the years, we always hear of the safety of the people at BSDC, that there's a safety issue for them to be served in the community. While we know that, time and again, there are abuses at BSDC, as there are in the community, to be fair, so we know that we can't holistically ensure somebody's safety just because we segregate them from the rest of the community. As a matter of fact, we would argue that current studies show that there is more safety when you're in the eyes of the community, as opposed to being segregated. The laws around segregation, specifically the ADA and the Olmstead decision, show that we need to move into community inclusion. Time and again, we see that the district courts are saying that people who cite personal choice do not have an opportunity to say that the state has to ensure that. The state is not obligated under the ADA, just because of personal choice, to support state-funded institutions. And as a matter of fact, because CMS and the Department of Justice are changing their direction, we will have issues going forward with the federal government. They will not pay for those institutions or those programs that they consider to be segregating, and we really need that federal money coming in to help all of the people in Nebraska with developmental disabilities. Finally, it would be better stewardship. We've seen, time and again, that community-based programs are more cost-effective and more efficient. I've given you some resources: the State of the States; and the Case for Inclusion, through the United Cerebral Palsy Group. I would like to state...I'll let you read through the rest of my testimony. I would like to state that since the special investigative committee in December, I have been talking a lot with parents and guardians who have children or loved ones in BSDC. We understand their concerns. We know that we have to, as the Arc, we have to advocate for them too. So we understand person-centered planning, and we want them to have the choices. We also encourage them to understand that just because they choose an institution does not mean that you and the state have to provide it, and it

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does not mean that we, as taxpayers, have to continue to support that. That's the end of my testimony now, and I would look forward to any questions you would have. [LB895]

SENATOR CAMPBELL: Questions, Senators? Senator Riepe. [LB895]

SENATOR RIEPE: Senator Campbell, thank you. You talked in your presentation about support for long-term closure. I'm not trying to pin you down specifically, but are you talking 5 years, 2 years, 10? Some general number? I won't hold you to it, I'm just curious. [LB895]

MICHAEL CHITTENDEN: Sure. I don't know the individuals at BSDC, so it's very hard to...I thank you for not pinning me down. But I think realistically somewhere between 5 and 10 years would be an appropriate time. We do recognize there are certain issues with the individuals at BSDC, whether they are behavioral in their nature or medical in their nature. And so there will be need to have a lot of planning time, a lot of transition time for people to leave that facility and get out into the community, and make sure that everything is in place with providers in the community, so that they succeed. Because we've seen, disastrously, in the past where people have been moved, specifically with medical frailties into nursing homes, some of those people died because it was just a quick, knee-jerk reaction to a medical issue. We don't want that; we want it planned out. We want to take all of their important quality of life considerations into consideration and make that plan happen. It doesn't have to be as long as 10 years, but I could see it, you know, some of them being as much as 10 years. And I think that's something that the department can work with the feds to continue, you know, getting funding during those times. [LB895]

SENATOR RIEPE: Okay, thank you. [LB895]

SENATOR CAMPBELL: Senator Crawford. [LB895]

SENATOR CRAWFORD: Thank you, Chairwoman Campbell. And thank you for being here. What I heard you say is a concern about CMS funding. I don't think that's one of the items on the list for the examination to consider. Is that something that you would see as an important consideration for this kind of study to include? [LB895]

MICHAEL CHITTENDEN: Absolutely. I believe that, and I'm going off of a PowerPoint that was just presented last night at one of our functions...approximately 57 percent of the funding that goes to developmental disability services in the state of Nebraska comes from the federal government. And if they are no longer going to fund those things that they consider institutions or to be, by nature, some sort of segregation, that could amount to quite a bit of money. When

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you look at the numbers, again, roughly \$400,000 per year per person right now at BSDC. And to take away, you know, over half of that money puts a huge burden on the state. And so we would suggest...as it says in my testimony, we would suggest that that money initially follow the person, so that proper supports are in place. But then you titrate that down to what we would consider a therapeutic level, a level of support that meets their needs, is cost-effective, but keeps them safe and potentially the public safe, especially with behavioral concerns. [LB895]

SENATOR CRAWFORD: Thank you. [LB895]

SENATOR CAMPBELL: Any follow-up, Senator? Senator Kolterman. [LB895]

SENATOR KOLTERMAN: Thank you, Senator Campbell. Mr. Chittenden, I'm kind of taken back by your point number three, better stewardship of the taxpayers' money. I understand that it costs us a lot of money to keep it open. [LB895]

MICHAEL CHITTENDEN: Yes. [LB895]

SENATOR KOLTERMAN: But to say it "overpays for services that are antiquated by nature, proven not to be safe for the individuals that live there, and are not in keeping with the best practices of the field"...it will "leave Nebraska vulnerable to federal government pulling its matching funds." [LB895]

MICHAEL CHITTENDEN: Yes. [LB895]

SENATOR KOLTERMAN: What about some of these other organizations in the state that get a lot of money from the federal government? Is that going to hold true for them as well? There's one in Axtell, there's another one in Beatrice. [LB895]

MICHAEL CHITTENDEN: Sure. We would suggest that those also be closed. Yeah, there are matching funds that go to those, and those funds will be taken away by the federal government. On the whole, the Arc has long been a proponent of the community inclusion. So any institution, by nature, we feel should be closed and we should strive to make sure that each individual within all of those settings is successful in the community. [LB895]

SENATOR KOLTERMAN: But is that the Arc's position, or is it the Arc of Nebraska's position, or is that the federal government's position? [LB895]

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MICHAEL CHITTENDEN: I can only speak for the Arc of Nebraska; I will not try to speak for the federal government. Although, we have seen CMS change its definition of what is community inclusion, and they have stated that they will not pay for those things going forward. That's why we have transition waivers that Director Miller has been talking about. We have to transition those waivers to better match community-based employment, community-based residential services. It all has to do with community inclusion. And we know that the Department of Justice, over the last year and a half, has come to an agreement with two different states-- Oregon and Rhode Island--to close sheltered workshops that they think by nature...now, I can't tell you what workshops those look like and how they look in those states. I know that our system is very preferential to sheltered workshops right now, but they've gone into those two states and they've come up with agreements to close all sheltered workshops. Because again, the Department of Justice is saying by nature, those are segregated by nature and people need to have community-based employment. [LB895]

SENATOR KOLTERMAN: But they haven't come out...in Nebraska, they have not come out and said we want you to close these down? [LB895]

MICHAEL CHITTENDEN: No, they have not said that in Nebraska. Although, I would assume that eventually they will get around to all states. [LB895]

SENATOR KOLTERMAN: Okay, thank you. [LB895]

SENATOR CAMPBELL: Other questions? Mr. Chittenden, one of the questions I have is just because the residents at BSDC live in the cottages, in your view is that into the community? [LB895]

MICHAEL CHITTENDEN: No, it would not be my view. And based on the CMS rules that have recently come out, anything that is on the premises of an old institution or adjacent to an institution is considered to be an institution. So CMS would probably disagree with that as well. [LB895]

SENATOR CAMPBELL: One of the figures that I had asked of the department and will continue, I'm sure, under that special committee looking at it was whether there were people who were on the registry waiting for services or looking for services had indicated that for BSDC. And the last time I asked the question, the department said, to their knowledge, no one. So that was part of the information that Senator Coash's special committee will take a look at also, in addition to the statistics that he quoted at the beginning. [LB895]

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MICHAEL CHITTENDEN: Yeah. Well, it seems as though there's no open door right now, and we would agree with that practice, if not policy. Simply adding more people into it is not going to get rid of the issues that we will face going forward as a state. And again, if we're not a part of the community, we're segregated. And if we were to continue and actually increase the census there, I think that would...I think the federal government would take notice of that--Department of Justice, CMS--and I think they would have issues with that and cut funding maybe even quicker than they might normally. [LB895]

SENATOR CAMPBELL: Any other questions, Senators? Thank you very much. [LB895]

MICHAEL CHITTENDEN: Yeah, thank you. [LB895]

SENATOR CAMPBELL: Our next proponent is coming forward. Good afternoon. Thank you. [LB895]

DAVE MERRILL: (Exhibit 2) Chairwoman Campbell and members of the Health and Human Services Committee, my name is Dave Merrill, D-a-v-e M-e-r-r-i-l-l, and I'm the executive director of Region V Services. And I am testifying on behalf of the Nebraska Association of Service Providers, an organization representing specialized service providers in the state of Nebraska. Before I go to my testimony, you were just considering an appointment, and I have to tell you that Courtney is the eighth division director I've worked with during the course of my career, and I've never seen a better start to a relationship. And we've had some other good directors as well. So my testimony on this bill has to do with my experiences in community services, as it relates to BSDC. As a community-based service providers, we support the efforts of the Legislature and the Division of Developmental Disabilities to provide a continuum of services to people who experience developmental disabilities and their families. In 1980, I was the area director for Region V services in Fairbury, and we contracted with the state of Nebraska to move 16 people from BSDC to the community. Their average age was 33 years old, the average length of time that they had lived at BSDC was 29.5 years. So people who had lived a long time at BSDC. We only had one criteria for movement: the family could not be opposed. As a result of that, we ended up supporting a wide range of medical and behavioral needs that are very similar to the people living at BSDC now. And I believe for every person currently living at BSDC, we can identify someone in the community that has a similar level of need and issues to be addressed. At the same time, I wanted to go back to something that used to be provided at BSDC as a community support service, was inpatient treatment. So if somebody had some issues with their medicine or behaviors, instead of just...it gave us an opportunity. There was an inpatient treatment at BSDC, people would stay for 30 or 60 or 90 days, meds could be adjusted and behaviors could be addressed, and then they would return to the community. The last administration did away with that program for some reason, and we're suggesting that it's a

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service that would be needed. For those of you familiar with the crisis center in Lincoln, it is very similar to the behavioral health site, but with a focus on developmental disabilities. It doesn't necessarily have to be at BSDC, but we do need the resource somewhere in Nebraska. Providers in the state of Nebraska have a long history of supporting people with complex needs in the community. As you look at the long-range plans for BSDC, we offer our support and expertise to assist in any way that you think is appropriate. Thank you, and I'd be happy to answer any questions you may have. [LB895]

SENATOR CAMPBELL: Questions from the senators? Senator Riepe. [LB895]

SENATOR RIEPE: Thank you, Senator Campbell. I have heard the number that virtually everyone that lives in Beatrice has at one time or another either worked at the home or had someone who worked at the home. Is that an ongoing long-term problem that the placement of the home? Should there be a future one, that the logical spot has to be in a more urbanized, labor-intense area? You're a labor man, right? [LB895]

DAVE MERRILL: I am actually, because we have a program in Beatrice...it's one of our fastest-growing programs and will probably be our next area program in the community. So I'm familiar with the labor in the area and the whole notion. But I think it's a factor, but I don't think it's the biggest factor probably, in terms of labor. There are a lot of people that still drive from Lincoln to Beatrice to work there. Or from the southern area of Senator Baker's districts. [LB895]

SENATOR RIEPE: Do you live in Beatrice? [LB895]

DAVE MERRILL: No, I live in Lincoln. [LB895]

SENATOR RIEPE: Okay, okay. [LB895]

DAVE MERRILL: Region V serves southeast Nebraska, though we are just expanded. We just started a program in Bellevue, it started in September. [LB895]

SENATOR RIEPE: Okay, thank you. [LB895]

SENATOR CAMPBELL: Other questions or comments? I had the pleasure to serve on the regional governing board when Dave was...and is still the director. [LB895]

DAVE MERRILL: She raised me from a pup. [LB895]

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SENATOR CAMPBELL: I doubt that, but you certainly are a great expert in terms of what works in the community, so thank you very much. [LB895]

DAVE MERRILL: Thanks a lot. [LB895]

SENATOR CAMPBELL: Our next proponent? Okay, those in the hearing room who are opposed to the bill? Those in a neutral position? Good afternoon again. [LB895]

COURTNEY MILLER: Thank you. For the record, my name is Courtney Miller, director of the Division of Developmental Disabilities, C-o-u-r-t-n-e-y Miller, M-i-l-l-e-r. And I didn't prepare a testimony, but I wanted to provide some clarifications. And I have many of the questions that have been asked today, and we are working on a plan. We have started our plan, and we started it with Bridges, anticipating a CEO for BSDC to come along shortly, which we are blessed. And so we have started the assessment of Bridges to check compliance with the home and community-based rules for the Medicaid waiver. But what I wanted to clarify is the funding. And so to alleviate any confusion regarding how intermediate care facilities are paid for, for Senator Kolterman's question, they are approved as a state plan service, through the centers of Medicare and Medicaid CMS, and that is currently in the Code of Federal Regulation, is in our Nebraska state plan, that we cover intermediate care facility services both as a state facility under BSDC and privatized facilities are licensed as well in the state of Nebraska. And I am not aware that CMS has had a discussion of removing that service as a Medicaid coverable service within the state plan. But it is not a waiver service under the home and community-based waivers, so they are very different rules that we operate from. So I just wanted to provide that clarification and answer any other questions that you have. [LB895]

SENATOR CAMPBELL: Other questions for the director? Thank you for that...oh, I'm sorry, Senator Crawford. [LB895]

SENATOR CRAWFORD: I just wanted to understand...thank you, Chairwoman Campbell. And thank you, Director Miller, I just wanted to understand what you were saying there. Are you saying that the strict rules about segregation and institutional care apply to waivers, but not to the funding source that we have in our state plan that covers BSDC? [LB895]

COURTNEY MILLER: That's a great question. There are two types of services: there's institutional services and then there's your alternative services through home and community-based waivers. And that is a choice to not enter into a facility such as a nursing facility or an intermediate care facility and receive services in the home. And so there is very distinct rules around those, and they're governed by two different governing bodies within CMS: One is state

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plan services and one is the home and community-based services, and they are different. [LB895]

SENATOR CRAWFORD: And... [LB895]

SENATOR CAMPBELL: Go right ahead. [LB895]

SENATOR CRAWFORD: And the institutionalized care that's in the state plan, that would still have to comply with the Olmstead decision as well? To correct use? [LB895]

COURTNEY MILLER: Yes, for individual choice, absolutely. But we are in full compliance with CMS with the Beatrice State developments that are...in regards to ICF licensing, as well as payment through Medicaid for the Code of Federal Regulations expectations. [LB895]

SENATOR CRAWFORD: Thank you. [LB895]

SENATOR CAMPBELL: Okay, Senator Kolterman. [LB895]

SENATOR KOLTERMAN: Thank you, Senator. And thank you, for trying to clarify that. Would that also pertain to these private institutions that aren't operated by the state? [LB895]

COURTNEY MILLER: Correct. Same rules. [LB895]

SENATOR KOLTERMAN: Thank you. [LB895]

SENATOR CAMPBELL: I think what Mr. Chittenden is trying to say here is that some of this may be coming down into the path of the future, based on what we heard last night. Not necessarily affecting our current facilities, but it may eventually affect those current facilities. And I think that's what he's trying to raise with the committee. And if I'm incorrect, I'm sure he will let us know. But all of our facilities at this point meet the regulations, as we understand it, at least. Would that be accurate, Director, my saying that? [LB895]

COURTNEY MILLER: That is accurate. As a clarification, the home and community-based waivers serve a variety of populations that also impacts...I mean, when we say institutional care, we're referring to intermediate care facilities and nursing facilities. And so that's the discussion that I have not heard myself or from my colleagues come out of CMS, is that they would remove those services as being Medicaid-coverable services. [LB895]

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SENATOR CAMPBELL: But I think what we're trying to do is say in the future this may be a part of what we all will be asked to deal with. Senator Kolterman, does that answer your question? Thank you very much. [LB895]

COURTNEY MILLER: Thank you. [LB895]

SENATOR CAMPBELL: Anyone else in a neutral position? Okay, Senator Coash, you can close. [LB895]

SENATOR COASH: Thank you, Senator Campbell. Thank you, members of the committee. Just to reiterate what Director Miller and Mr. Chittenden talked about, as I have been chair of this committee, I have had the opportunity to talk with national leaders in what is happening to places like BSDC. I've talked with experts outside of our state who are watching and participating in the future of places like BSDC, and what the director said and what Mr. Chittenden said is accurate. Across the state...across the country, excuse me, the federal government is saying places like BSDC are not in the community, they are segregating and, as a result, if a state wants to keep them going, the state is going to have to pay for it all themselves. And we know how expensive that is, because for a while, we had the federal money go away from that. The word community was used dozens of times in this hearing. A community is not a place that you go to, you don't just pick up and go to the community, it is a place you live. And I think that's the real difference between what we have in a place like BSDC and in contacts into the community. We are spending a lot of money on this, and we owe it to the people who live there, and we owe it to the taxpayer to decide how best that should be spent. No one is asking for BSDC services, not one person on the wait list is saying get me there. All right, now some people...there's qualifications and things like that, but I haven't run into anybody. And I think if anybody, it would be me. People would say BSDC is the best place and I can't get in, I'm not hearing it. There was a good point brought up, and I would certainly consider a friendly amendment from the committee if adding funding sources as a criteria or as an additional element to be included in this report. I think that was you, Senator Crawford, that brought that up, but I would consider that to be a smart addition to this bill. We shouldn't be afraid of planning. We have the opportunity through this bill to write our own destiny as a state, what do we want things to look like. And this is an important part of that discussion, and I appreciate your time. [LB895]

SENATOR CAMPBELL: Thank you. Any other questions? Senator Riepe. [LB895]

SENATOR RIEPE: Senator Coash, thank you. Would you consider something that if we amended it to say that we make the accomplishment of being out of the in-home business in five years? My sense is you have to have pressure on to get anything accomplished. [LB895]

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SENATOR COASH: To get out of the institutional? [LB895]

SENATOR RIEPE: We're out of the institutional business in five years, as a push. [LB895]

SENATOR COASH: I'm okay with it. [LB895]

SENATOR RIEPE: Okay, I was just curious. Thank you. [LB895]

SENATOR CAMPBELL: Okay, any other questions or comments, Senators? Thank you, Senator Coash. That concludes our hearing on LB895. And we move to...oh, sorry. Items for the record? [LB895]

ELICE HUBBERT: I have nothing for the record. [LB895]

SENATOR CAMPBELL: See. All right, we will move to LB1039, Senator Coash's bill to define and redefine terms relating to developmental disability. Senator. [LB1039]

SENATOR COASH: Thank you again, Chairwoman Campbell. Colby Coash, C-o-a-s-h, representing the 27th District here in Lincoln. Introducing LB1039, a bill to clarify the definition of the term "intellectual disability." The current definitions in statute are in multiple locations, lack consistency, and no longer reflect clinical best practices. This update will add clarity and consistency with generally accepted psychological standards. The term "intellectual disability" is not consistently defined in a manner that is objective or that accurately reflects medical or psychological practice, this has resulted in courts making judicial findings that someone who has an intellectual disability who doesn't meet the criteria used by HHS or Medicaid. Specifically, under the DD Services Act, and intellectual disability is currently defined as a "sub-average intellectual functioning." In reality, a person of below average intelligence would not qualify for a diagnosis until they were significantly sub-average; it generally equates to an IQ of 70 or below on a valid IQ test, where 100 is considered average. As currently written and interpreted by at least one court, every Nebraskan who has a below average IQ, but is far from having an intellectual disability, will qualify for services. This leaves the state vulnerable to potential lawsuits which HHS cannot defend. LB1039 would define intellectual disability that is consistent with the generally accepted psychological standards, this definition fits the best practice methodology that is federally recognized, and makes clear that for purposes of the Developmental Services Act, an intellectual disability is a subcategory of a developmental disability. It is also subject to the adaptive functional limitation requirements up to institutional level of care for equal application of eligibility to all DD programs, including Medicaid. This bill updates the language of the statute regarding the primary areas of adaptive functional activity to

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reflect current best practices. LB1039 does not significantly impact the registry of needs, and better reflects how the department already provides services. The bill aligns with services the department is offering now and mirrors the federal definition. The level of care is the main change. This should not result in any loss of services for current people who are receiving services. I spoke with stakeholders regarding this definition of disability on page 3, line 3 as recently as last night, and there may be some concern that the inclusion of the word "physical" on line 4 might include...might exclude, excuse me, coverage for people with autism. That is certainly not the intent, I am willing to work with the department and the committee to address that concern. And I am happy to answer any questions. This bill was brought to me by the department and so they will also be here to answer some questions for you. [LB1039]

SENATOR CAMPBELL: Questions, Senators, or comments? Senator Crawford. [LB1039]

SENATOR CRAWFORD: Thank you, Chairwoman Campbell. And thank you, Senator Coash. I was just curious why there was a designation of something happening before the age of 22 years. [LB1039]

SENATOR COASH: I'm sorry. [LB1039]

SENATOR CRAWFORD: Sure. I wondered why it was designated as something that must happen before the age of 22. What's the underlying reason why? [LB1039]

SENATOR COASH: I believe the department will correct me if I'm wrong, but it is my understanding that that may mirror a federal definition. [LB1039]

SENATOR CRAWFORD: Okay, thank you. [LB1039]

SENATOR CAMPBELL: Any other questions? Thank you, Senator Coash. Will you be staying to close? [LB1039]

SENATOR COASH: Yeah, I am needed at Judiciary to chair the committee, and so I will waive closing. [LB1039]

SENATOR CAMPBELL: Okay, thank you very much. And we'll get back to you on that possible amendment. Okay, our first proponents for the bill? [LB1039]

COURTNEY MILLER: Good morning again, Senator Campbell. [LB1039]

SENATOR CAMPBELL: I guess it's good afternoon. [LB1039]

COURTNEY MILLER: (Exhibit 1) Members of the Health and Human Services Committee, my name is Courtney Miller, C-o-u-r-t-n-e-y M-i-l-l-e-r, I am the director for the Division of Developmental Disabilities in the Department of Health and Human Services. I am testifying today in support of LB1039, which standardizes the definition of intellectual disability and allows the department to use best practice methodology in making fair and equal developmental disability eligibility determinations. I want to thank Senator Coash for introducing this bill on the department's behalf. In order to be eligible for services through the Developmental Disabilities Services Act, or the DDSA, which provides for a state-funded entitlement, an individual must meet two standards: have a diagnosis of a developmental disability; and have adaptive functional limitations that meet a need for an institutional level of care. Currently, the term intellectual disability is not consistently defined in statute in a manner that is objective or that accurately reflects medical or psychological practice. Under the DDSA, an intellectual disability is defined as "sub-average intellectual functioning," as Senator Coash referenced, referring to activities such as learning, reasoning, and problem solving. One way to measure intellectual functioning is an IQ test. A person would not qualify for a diagnosis unless they are significantly sub-average, generally having an IQ of 70 or below on a valid IQ test on which 100 is considered average. As the statute is currently written, we agree, and generally interpreted, that Nebraskans who do not meet the sub-average standard may qualify for services. LB1039 standardizes the definition and also makes clear that an intellectual disability, for purposes of the programs administered through the Division of Developmental Disabilities, is a sub-category of a developmental disability. LB1039 also uses the term adaptive function, which means one's ability to adjust to a situation. In order to qualify for services from the Division of Developmental Disabilities under the federally-approved waiver, an individual must meet institutional level of care criteria, which are determined by the adaptive functioning of the individual based on seven major life activities that are included in the federal code. LB1039 aligns the seven major life activities with best practices within the categories of practical skills, social skills, and conceptual skills, as identified by the American Association on Intellectual and Developmental Disabilities; the Diagnostic and Statistical Manual of Mental Disorders, or the DSM-5; and the International Classification of Diseases, ICD-10. Practical skills include areas such as personal care, occupational skills, safety, use of money, and telephones. Social skills include those such as interpersonal skills, social responsibility, self-esteem, and the ability to follow rules and obey laws. Conceptual skills include areas such as language and literacy, use of money, use of telephone time, and self-direction. LB1039 streamlines and clarifies eligibility determination based on this best practice methodology, using the source of reference for clinicians in their area of expertise. In closing, LB1039 is aligned with our mission of helping people live better lives, as it standardizes the definition of intellectual disability, it promotes the use of best practices, aligns the statute with the relevant source documents in this area of clinical expertise, and provides clarity on eligibility for the individual, their family, advocates, our federal partners, and the public to ensure

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appropriate utilization of tax dollars to serve those individuals who qualify for services. This bill would not impact those individuals currently receiving services through the division. I'm happy to answer any questions that you may have. [LB1039]

SENATOR CAMPBELL: Questions, Senators? Director, would it affect anyone who is on the registry? [LB1039]

COURTNEY MILLER: No, it would not. [LB1039]

SENATOR CAMPBELL: Anything else? All right, thank you very much for your testimony. Our next proponent? Those who oppose the bill? Those in a neutral position? [LB1039]

MICHAEL CHITTENDEN: (Exhibits 2 and 3) Good afternoon again, Senator Campbell, Senators. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n, I am the executive director for the Arc of Nebraska. We are here today to testify in a neutral capacity, regarding LB1039. We are also providing testimony on behalf of NASP, the Nebraska Association of Service Providers. First of all, we want to be very clear that we applaud the efforts of Senator Coash and the director and the Department of Developmental Disabilities. This is no easy task, and we like where they are heading. However, we always will be watchful for any unintended consequences when it comes to people with developmental disability. And in that light, we would like to raise a few questions and offer a few suggestions. Question number one: How will we, as a state, ensure individuals with disabilities that may not qualify under updated definitions continue to receive services? I know that the director just said that that would continue, as did Senator Coash; we just want to make sure of that. Individuals have made personal, economic, and healthcare choices based on their qualifications as it stands now, and they deserve our continued commitment to those services. Question number two: How will individuals with IQ scores near, but above, 70 be treated under the law? Will a standard deviation for testing be considered? Question number three: How many individuals with developmental disabilities are also diagnosed with a mental illness? As advocates, we have had experiences with individuals for whom mental illness and chronic physical disability or intellectual disability are all fundamentally connected. Historically, these people are subject to...oh, I missed a spot there, sorry. These individuals with these circumstances should be afforded the opportunity to participate in either mental health system or the DD system, or receive a combination of both to ensure that their needs and best interests are met. Many individuals who score a mere 70 on the IQ have significant limitations. Further, some people are difficult to test in standard and properly administered and valid intelligence quotient tests, and/or score differently on different tests or in different circumstances, so we offer these suggestions. Suggestion number one: We suggest that individuals be offered testing options and opportunities that illustrate their true IQ, and those that truly do not qualify should be assessed to explore their ability to qualify for other supports and

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services. If the standard deviation is to be considered, the statute should state significantly sub-average, not significant, because this term has true statistical meaning. We suggest that an automatic review of any person scoring within one standard deviation higher than 70 are conducted with an emphasis on considering any impairment in the adaptive functioning that they might have. We would suggest that any IQ test that is being used to determine eligibility be administered within the period of being 18 to 22 years old. Being declined services for an IQ test that was taken earlier in life is not getting a true picture of who that person is when eligibility is being determined or considered. And one last point to please consider, there are a high number of people who are not currently receiving services or supports from the state of Nebraska, but are people with an intellectual or developmental disability. Most of them are adults living with parents that are becoming elderly and will soon not be able to care for their family member. As this happens, we will need to establish some sort of criteria for eligibility as old records will have been lost or are non-existent at this point. We are offering our ongoing support and assistance to this committee and to the Department of Developmental Disabilities to achieve the best definition possible. [LB1039]

SENATOR CAMPBELL: Questions, Senators, on the testimony? Okay. I just...were you here for the report from the department, Mr. Chittenden? [LB1039]

MICHAEL CHITTENDEN: Part of it, I did have to step out briefly. [LB1039]

SENATOR CAMPBELL: Okay, that's all right. I just wanted to mention that one of the items on the list of looking ahead is cross cutting team with the Division of Behavioral Health. And I'm sure you would support that, with your testimony. [LB1039]

MICHAEL CHITTENDEN: Absolutely. And I think we are making some strides in looking at the way managed care is going to happen in the future. So there are some of those possibilities. I think one of biggest stressors that I would go back to my testimony, is that we don't have a real number, but we feel it is a significant number of individuals who do have an IDD, who are living with their parents, who have done a great job with them over the years. But mom and dad are becoming too old to take care of them anymore. And those records are lost, those school records are lost, you know. There's no way to determine that the developmental disability occurred between 18 and 22. And without those records, those people could be in a gap that we don't really want to have in this state. [LB1039]

SENATOR CAMPBELL: Okay. Have you had an opportunity to go over your points with Senator Coash and the director? [LB1039]

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MICHAEL CHITTENDEN: Yes, we have been in constant contact. Overall, we support where they're going with this; we just have a few tweaks, suggestions that we'd like to see addressed if possible. [LB1039]

SENATOR CAMPBELL: Okay. We'll make sure Senator Coash has a copy of the testimony and go from there. [LB1039]

MICHAEL CHITTENDEN: Absolutely. Yeah, I'm going to give it to him right now. [LB1039]

SENATOR CAMPBELL: All right, that would be great. Do you have an extra copy for the director? [LB1039]

MICHAEL CHITTENDEN: No, but I will get you one. [LB1039]

SENATOR CAMPBELL: All right, anyone else in a neutral position? Okay, Senator Coash...oh, I'm sorry, sir. Good afternoon. [LB1039]

SEAMUS KELLY: (Exhibit 4) Thank you. My name is Seamus Kelly, S-e-a-m-u-s K-e-l-l-y, and I'm an attorney who represents people with disabilities, their families, and caregivers. I'm also a member of the Nebraska Planning Council on Developmental Disabilities, on the Special Education Advisory Council, and a past member of the State Rehabilitation Council. But most importantly, I'm a father of four children with disabilities, including two who have developmental disabilities. And although I'm heavily involved with the disability community, I'm here not representing anyone else; I'm just here speaking for myself as a concerned parent and citizen. So I'm here today to provide a neutral testimony on LB1039, primarily to point out some concerns that I have that didn't quite rise to the level of opposition. Like Mike had said, I'm in favor of clarifying the definitions, getting everything lined up, but I do have some concerns about some of the wording of the bill. The first is regarding the definition of intellectual disability. I'm concerned that the firm cutoff of a 70 IQ may exclude some people who should otherwise receive services, especially in light of the current CMS definition of intellectual disability requires a person meet three criteria, which are similar to the criteria in the proposed language here. However, they allow for an intellectual functioning level of below 70-75. They write in that sort of range which can catch the people who are really right on that borderline. So if you are maybe somebody who has had the IQ test several times throughout childhood...so like maybe you're in that 68, 69, 70 range, if you happen to have a really great day testing so you score 71 on the last test that's being submitted for eligibility, you would then be ineligible, even if you still had all of the same adaptive limitations that they already have had their entire lives. So I feel that amending it or changing...adding that language or that range would catch those people, because they still would have to be assessed for their adaptive limitations. So it's not...it wouldn't, you

know, open the doors to more people, but it would protect some people who are really close to that edge and making sure that they at least get the opportunity to look into their adaptive functioning to see if they actually would qualify. And the second, and more concerning to me...and I was very happy to hear Senator Coash mention it in his introduction, is that wording in the definition of developmental disabilities found on page 3 of the bill, lines 3-5. Because my reading of that, the current language says that it's a severe chronic disability other than intellectual disability. And the proposed language of the severe, chronic physical or intellectual disability, I believe, will have the unintended consequence of excluding people who don't have either a physical disability or an intellectual disability, but who still have a developmental disability and are currently now eligible for services. Primarily that would be a lot of people with autism spectrum disorders who meet all of the other adaptive limitations, but don't have an IQ below 70. So I was very happy to hear that that's being addressed. And I believe simply removing the word "physical" from that would solve that problem, because then it would read again "severe, chronic disability." And that's really all I have. I thank you for your time and I'm happy to answer any questions. [LB1039]

SENATOR CAMPBELL: Thank you, Mr. Kelly. Questions from the senators on the testimony? Thank you very much. Okay, I will call one more time for neutral testimony. [LB1039]

JANINE BROOKS: I'm sorry, I don't have copies for everybody, but I'll leave what I've got. [LB1039]

SENATOR CAMPBELL: That's just fine. [LB1039]

JANINE BROOKS: (Exhibit 5) Good afternoon. For the record, my name is Janine Brooks, J-a-n-i-n-e B-r-o-o-k-s. I am not only the parent to an individual who is finally receiving developmental disability services, but I am the self-advocate for the Autism Society of Nebraska, and I wish to talk to you about LB1039. Although I have a few issues with the wording, I'm going to glaze over that because my main concern...my primary concern has to do with the exclusion of individuals who may very well qualify for developmental disability services because they had a chronic behavioral or mental health issue as a child. This meets under the revised adaptive functioning definitions, lines 13-21 on page 2, but they have an IQ that's above 70. I am being told that LB1039 aligns with the federal definition, but it is not necessarily so if childhood onset behavioral health or mental health issues are not acknowledged with some form of accommodation that allows for an individual to access services that would allow for him or her to live a better quality of life. Let me explain; my daughter is a perfect example. She is presently 29, she does have a diagnosis of autism spectrum disorder, but she did not receive that diagnosis until 2006, when she was 19. Prior to that, my daughter had all kinds of other diagnoses, mostly on the mental health side. They all stood out and were defined as lifelong

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disabilities--these include schizoid affect and also dementia. My daughter did not acquire her autism as an adult, even though the state of Nebraska kept telling me this. I had other psychologists telling me that they were seeing the forest and not looking directly at the tree--that tree being autism. It was very sad. In July of 2006, my daughter was returned to me after being sent to a dual-diagnosis residential care facility in Sioux City. She was rejected from the facility because she had been given a diagnosis of dementia; we found that out later to be autism and her executive functioning showing really, really low. She also had short-term memory issues which helped to explain that, and they only told me it would get progressively worse. I came home with her, we went to Region VI to align her services and we applied for developmental disability services--this was in August of 2006. She was denied because the autism was given to her at age 19, and they said that she had dementia and that they believed it was drug-induced. I had to go back and get more information to different psychologists, we walked the reports over there; Senator Mello helped me. And again we were turned down, told that again she doesn't have this as a child, she acquired it as an adult. Using the new DSM-5 definition, it states in there that autism spectrum disorder can be diagnosed, and is most often diagnosed now, as an adult. It was concerning. We had to wait until she was 27 years old so that we could afford to get an attorney through Legal Aid to go through the process of the appeal. We went through the informal dispute resolution, we then went through the appeal, and we had to file in Lancaster District Court, where we finally had a judge say no, she has a developmental disability. This happened in October--10 years without service. And she sat at home and she did nothing for 10 years, even though I went and asked for help. I couldn't access things on the other side because they were labeled developmentally disabled, and I couldn't access things on the behavioral health side because she had a diagnosis of autism. So for 10 years she sat at home, as do many others in our community. I spent all of my time and energy instead of working with her, working for her cause. And I feel real sad about that, because she's now 30 and she could be looking at marriage and life. The last thing I want to say...I kind of went off track here...is that many of these kids--I call them kids, they're not--like Allye, live in basements and bedrooms, living off of Xboxes and PlayStations, perhaps getting out every once in awhile. But even though they have their issues since childhood, and they are chronic issues, they are still denied services, even though they are getting SSI. I ask that we go ahead and look at this LB1039 and really make sure that we're not going to have any cracks in there that exclude these individuals like my daughter that do need these helps. That's all I have to say. [LB1039]

SENATOR CAMPBELL: Thank you, Ms. Brooks. Any questions, Senators? Thank you for coming today, and your testimony, and your longtime advocacy. [LB1039]

JANINE BROOKS: Thank you. Thank you, Senator Campbell. [LB1039]

SENATOR CAMPBELL: Anyone else in a neutral position? Items for the record? [LB1039]

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ELICE HUBBERT: (Exhibit 6) We have a letter from the Nebraska Psychological Association in a neutral capacity. [LB1039]

SENATOR CAMPBELL: We will close the hearing and we will take a five-minute break before the last hearing. [LB1039]

BREAK

SENATOR HOWARD: (Recorder malfunction)...to create an advisory committee relating to persons with disabilities within the Department of Health and Human Services. Senator Campbell, go right ahead. [LB1033]

SENATOR CAMPBELL: (Exhibit 1) Thank you, Senator Howard and members of the committee. I am Kathy Campbell, K-a-t-h-y C-a-m-p-b-e-l-l, and I represent District 25, and I am here to introduce LB1033. LB1033 is intended to bring Nebraska into compliance with federal law. The Americans with Disabilities Act and the US Supreme Court require states to provide services to people with disabilities in the most integrated setting appropriate to their needs. The Court's decision in Olmstead v. L.C. held that people with disabilities cannot be kept in segregated, isolated institutions, and those people could be and choose to be served in the community. Nebraska is at risk of being found in violation of the law for several reasons. And one is we still have some people, as we saw last night in the data presented, we still have some people with disabilities in segregated and isolated settings; and two, because Nebraska has no comprehensive strategic plan to integrate people with disabilities into the community settings. LB1033 would recognize that such a plan be developed by 2018. In its application of the Olmstead decision, the U.S. Department of Justice has considered states to be in compliance when they have developed a comprehensive, effectively working plan, and is implementing that plan. Therefore, the first step toward compliance is the development of an Olmstead Plan. The bill would direct the Department of Health and Human Services to review elements of a plan that may already be in development...and I want to emphasize there, may be already in development probably should be that are already in development...to coordinate with other agencies that administer programs which serve people with disabilities and to work with an advisory committee to develop the Olmstead Plan. Coordination of programs and interested parties is essential for creating this comprehensive plan. A plan should identify barriers for such issues as housing, employment, transportation, education, and individual choice. Identification of barriers is fundamental, because if one area of life is segregated, it affects all others. And while many programs to serve people with disabilities are administered through the Department of Health and Human Services, some of those programs fall within other state agencies, for example, the Department of Roads, the Department of Labor, the Department of Economic Development, the Department of Education, the Department of Corrections; and I'm sure there are more. They may

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also be the state agencies through which federal funding could flow, depending on what Nebraska's state Olmstead Plan says. The Department of Health and Human Services is best suited to pull together its own divisions, as well as other agencies and interests. I know the department has already initiated a redesign of its long-term services and supports and you will note that statement in their fiscal note. I applaud the leadership and staff at DHHS for taking this step on the road to developing a comprehensive plan. However, in the eyes of the US Department of Justice, independent components that are not part of a comprehensive strategy, do not constitute a bona fide Olmstead Plan. Other states without a comprehensive strategy to serve people in the most integrated settings have been sued by the Department of Justice. Nebraska has experienced one such intervention already, when the Department of Justice found that the state's operation of Beatrice State Developmental Center was in violation of a federal law. As you know, that led to the Legislature creating a special investigative committee on BSDC. Not surprisingly, in its 2008 report, this committee of our colleagues recommended that Nebraska develop an Olmstead Plan. At least one other report made this same recommendation, and this was the 2014 report that was issued by the Division of Behavioral Health by a consultant, and that was the technical assistance collaborative that was retained by the division to review its systems of services. It's well past time to bring all of the components together. I want to emphasize that the department does have components of this plan, and now, with their work on the initiative and this bill, we can bring those all together and have a plan. Since LB1033 was introduced, I have learned of two key interests that are not mentioned in the advisory committee: persons with disabilities who represent self-advocacy organizations and vocational rehabilitation. Both were in an original draft of the bill and somehow in the final draft they did not get in there. So I do have an amendment for you. I want you to know that I've had an opportunity to take over...to take a look at the department's letter, which they have sent to you. And I don't know whether Director Miller will be testifying, but we certainly will sit down with the department and clarify some of their suggestions that are in the letter, and we appreciate that. This is meant to be a collaborative effort among many agencies in state government to get us to an Olmstead Plan. We have a number of people that want to testify on this bill, so we may want to wait and see if there's any questions at the end, unless there's something you really need to know now. Anybody? [LB1033]

SENATOR HOWARD: Are there any urgent questions for Senator Campbell? Senator Riepe. [LB1033]

SENATOR RIEPE: I don't know if it's urgent, I'm just trying to relate how this relates to Senator Coash's LB895. Can you help me out on that so, as we go forward, I have some feeling? [LB1033]

SENATOR CAMPBELL: Absolutely. Senator Coash's plan...that bill specifically wants a strategic plan on the Beatrice...BSDC. He also has, and we had no idea that each of us were

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working on this, but he also has a component about finishing the Olmstead Plan. So he and I have decided that we'll work together and figure out, and so it would probably come out in one bill, rather than mentioned in two bills. Does that help, Senator Riepe? [LB1033]

SENATOR RIEPE: Okay. Yes, very much, thank you. [LB1033]

SENATOR CAMPBELL: Okay. And I'll have the page hand out to you...this is the amendment that I'm talking about, that you can take a look at. Thank you, Senator Howard. [LB1033]

SENATOR HOWARD: Any other questions for Senator Campbell? Seeing none, you'll stay to close? [LB1033]

SENATOR CAMPBELL: Yes, I will. [LB1033]

SENATOR HOWARD: Thank you. We'll take our first proponent for LB1033. Good afternoon. [LB1033]

DIANNE DeLAIR: (Exhibit 2) Good afternoon members of the Health and Human Services Committee. My name is Dianne DeLair, spelled D-i-a-n-n-e DeLair, D-e-L-a-i-r. I'm the senior staff attorney with Disability Rights Nebraska, and I'm here to testify in strong support of LB1033 today. I'm not going to read my written testimony, although I think it's important that we all understand the law behind the Olmstead decision and Title II of the ADA, which is directly implicated. There's a lot of discussion about Olmstead...Olmstead Plans. I'm going to try to help you understand what is an Olmstead Plan and what isn't, and why Nebraska needs one; and we need it now. So as Senator Campbell mentioned, LB1033 creates a work group within HHS to not only develop that Olmstead Plan, but to also implement that plan. The decision in Olmstead was back in 1999, and at that time, the Department of Justice suggested, and highly recommended, that states develop their own Olmstead Plan on how it will deliver services to people with disabilities in the most integrated setting. Now Olmstead was decided 17 years ago, and over three-quarters of the states in this country have formal Olmstead Plans. Some states have elevated Olmstead planning to a cabinet-level position in the executive branch; other governors have established executive orders, creating Olmstead planning commissions. The state has nothing that resembles an Olmstead Plan, and as Senator Campbell noted, we've been warned. And I'm here today to sound the alarm that Olmstead is not only about getting people out of institutions, it has moved far beyond that. This state is behind in many, many different areas. In the work that I do and have been doing over the past 15 years, I go to where people live in this state. I go all over the state to private facilities, to group homes, and to our state-run institutions. What I can tell you is that the law on Olmstead and the Americans with Disabilities Act has become more refined and narrow, and so what the Department of Justice and other

public entities are looking at when a lawsuit is initiated is not just about what public institutions you have, but they're going much deeper. What are the policies, what are the funding streams? Is the state over-relying on private institutions and not providing the community services people need in the community so that they do not get re-hospitalized, so they are able to live independently? Now this might shock you, but Olmstead covers private facilities, and I go out to visit mental health centers and assisted living facilities that are completely segregated, where people with mental illness are being warehoused right now as we speak. Now I mentioned that a state's reliance on segregated private institutions puts that state at risk of litigation, and I'm going to read this quote, because it is very important. This is from the Department of Justice: "A public entity may violate the ADA's integration mandate when it: (1) directly or indirectly operates facilities and/or programs that segregate individuals with disabilities; (2) finances the segregation of individuals with disabilities in private facilities; and/or (3) through its planning service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs." What does that mean? Olmstead applies to privately-run nursing homes, day programs, adult homes, nursing facilities, children's psychiatric facilities, students in special education classrooms or more restrictive educational settings, individuals who are frequently readmitted to state psychiatric hospitals, seen in emergency rooms, or the chronically homeless. Nebraska has not addressed any of these categories. The history of planning in this state is piecemeal and it's done through singular division planning. What I'm telling you is go through that whole list of people and where they live, the types of disabilities people have, whether it be intellectual disability, traumatic brain injury, we don't have a plan. And so if you want to know what the next class action lawsuit will be in this state, pick one of those areas. I'm telling you--it's not if, it's when--and it's going to be the Department of Justice or it will be a private entity. I think we should do this planning as a state. Collaboratively we need to come together, and just as Senator Campbell mentioned, the various entities that are mentioned in LB1033, those are the entities that need to come together. It is a very, very big process, but it's a systems change and it's a civil rights issue. And what I'm telling you is we are not immune to the Department of Justice coming back to this state. And I apologize, I've gone over my five minutes. But I would be happy to answer any questions that you have. [LB1033]

SENATOR HOWARD: Senator Baker. [LB1033]

SENATOR BAKER: Thank you. Are you aware of states who have done this well? [LB1033]

DIANNE DeLAIR: I have followed states that have instituted Olmstead Plans and are doing a pretty good job of it. Although, just because you have a plan doesn't mean...you know, just because you call it an Olmstead Plan doesn't pass federal legal muster. And I would give the example of Minnesota who, it took them three years to get an Olmstead Plan approved by the federal court and the only reason they decided to construct an Olmstead Plan and develop a

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commission was that they were sued, a very similar lawsuit to the one here with the Department of Justice and BSDC. [LB1033]

SENATOR BAKER: So do you know of a state that does have their ducks in a row? [LB1033]

DIANNE DeLAIR: I would also point to New York; there's a lot of stakeholder input. You can go to their Olmstead website. I think they are very clear. What a lot of states do when they do get sued, they have to bring in a consultant to help them plan and sort through this. And I would also mention that Vermont has a very good Olmstead Plan...and just to give you an idea--this is 100 pages--because you have to specifically have measurable concrete goals; you can't just say we moved people out of the regional center and BSDC. That's not how this works. And I guarantee you what we're doing now is not going to pass federal court muster. [LB1033]

SENATOR BAKER: I have one more. [LB1033]

SENATOR HOWARD: Absolutely. [LB1033]

SENATOR BAKER: This has absolutely nothing to do with our situation here, but have you studied what other developed countries do with their handicapped people? [LB1033]

DIANNE DeLAIR: You know what...to go back to a historical point, Nebraska actually used to be cutting edge; people would come from around the world to learn what we were doing when we were depopulating BSDC and a lot of our state mental health institutions. Some of the countries in Norway and Sweden, I'm somewhat familiar there, but what I know is what's happening in the U.S. and what the law says. [LB1033]

SENATOR BAKER: Thank you. [LB1033]

DIANNE DeLAIR: Hopefully I answered your question, Senator. [LB1033]

SENATOR HOWARD: Senator Riepe. [LB1033]

SENATOR RIEPE: Thank you, Senator Howard. Thank you for being here. Are you proposing that we look at having a commission, per se, that reports then directly to the Governor or to this committee? What do you think on organizational structure? And then a second follow-up question, and that would be it sounds like we're on borrowed time and, you know, we don't like

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lawyers, so we don't want the Justice Department here. And then how do we avoid having more attorneys come in by the busload into our state? [LB1033]

DIANNE DeLAIR: I agree with you, Senator. We are on borrowed time, and I don't like attorneys that much either. I think the organizational structure of LB1033 is really good. HHS, the six divisions are included in that planning structure, but it is important that we have other state agencies which are mentioned in the advisory council--Department of Roads, Department of Education; and those are all part of it. I think it's a great first start...first step in not only developing the plan, but then moving into the implementation. And just as I said, just because you have a plan does not protect you. Right now, the state of Nebraska would not be able to use the fundamental alteration defense if we are engaged in litigation. [LB1033]

SENATOR RIEPE: But if we're moving in the direction, we stand a better opportunity to avoid litigation? [LB1033]

DIANNE DeLAIR: Well, the DOJ has approached that with other states who have been in their planning process. However, what they look at is how long ago was Olmstead decided--it was 17 years--and what does your plan look like? (a) 17 years, (b) we don't have a plan. So I'm not stating our odds are all that high. [LB1033]

SENATOR RIEPE: And time flies is not an excuse. [LB1033]

DIANNE DeLAIR: No, Senator. And also the fact that we have been put on notice, and this TAC report, there's a link to it in my testimony, but if you turn to page...it's actually in a footnote. And as Senator Campbell had stated, they hired this Technical Assistance Collaborative, which is a very good organization that comes in and helps states do Olmstead planning, they do help with supportive housing, and they also clean up the mess when DOJ comes in and they help them get on the right track. Although the Technical Assistance Collaborative was hired to look at some community integration on the behavioral health side...you have to look at footnote 11, Nebraska does not have an Olmstead Plan that addresses any disability group. And that's not coming from me, that's coming from a consultant that the department hired. And I do realize they are doing planning, I know that they are doing a long-term study, they have a white paper they've issued. I know they've contracted with the Technical Assistance Collaborative to look at a housing solution. But we cannot do this piecemeal; that does not pass legal muster. [LB1033]

SENATOR HOWARD: Other questions? Seeing none, thank you for your testimony today. [LB1033]

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DIANNE DeLAIR: Thank you. [LB1033]

SENATOR HOWARD: Our next proponent testifier for LB1033? Good afternoon. [LB1033]

ALAN GREEN: Good afternoon. Senator Campbell and members of the Human Services Committee, my name is Alan Green, A-l-a-n G-r-e-e-n. And I just want to get it out there, I am not an attorney. I am though executive director of the Mental Health Association of Nebraska, and we are the only peer-run behavioral health service organization providing nonclinical, recovery-oriented mental health services to people, helping them regain control of their lives through peer support, crisis diversion, prevention, wellness education, supported employment, and ongoing community-based supports. MHA has been actively involved in the system transformation since the introduction and passage of LB1083 in 2004, and we see the current legislation as the next step in Nebraska's efforts to transform its outdated service model to one that truly supports individuals living with severe mental health and substance use issues reach their highest potential. In addition to beginning the move from state institutional services to community-based services, LB1083 also provided for the inclusion of consumers and their families at every level including, but not limited to, their inclusion and involvement in all aspects of service design, planning, implementation, provision, education, evaluation, and research. These two groups were inadvertently omitted from the first draft proposal of the bill, and I'm not sure if that's what you were talking about with your amendment. So I would just like to urge the committee to consider including families and the individuals that actually receive these services as a part of the process with this committee in an advisory capacity. The recovery-oriented philosophy believes that diagnosis and labels do not define the individual, and we believe that people diagnosed with the scariest of ailments can, and do, respond and excel with proper support. Far too many individuals determined to be incapable of living independently have been institutionally raised, and thus denied the opportunity to learn life's lessons that the rest of us learn growing up. And much of their disability arises out of a lack of opportunity, rather than an illness or disease or cognitive impairment. MHA has seen great success in helping individuals gain or regain and maintain their independence through supported employment, and housing, wellness education, and community reintegration support. Nebraska has made great strides in these areas since embarking on behavioral health reform, but it still has a long way to go to alleviate the soft bigotry of low expectations and fully transform an old traditional service model to one that effectively and efficiently gives everyone the opportunity to live the life they choose. LB1033 and its proposed advisory board can help DHHS with the development of a true Olmstead-based strategic plan for Nebraska. None of us are as smart as all of us, and together we can give everyone the opportunity to live Nebraska's good life. Thank you. [LB1033]

SENATOR HOWARD: Thank you. Are there any questions for Mr. Green? Seeing none, thank you for your testimony today. [LB1033]

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ALAN GREEN: Thank you. [LB1033]

SENATOR HOWARD: Our next proponent testifier for LB1033? [LB1033]

MICHAEL CHITTENDEN: (Exhibits 3 and 4) Good afternoon again, Senators. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n, I am the executive director for the Arc of Nebraska. We are here to strongly support LB1033, which would create an Olmstead commission or committee. We feel that the Olmstead decision backs the premise that segregated is not equal. By creating a commission or a committee, the state of Nebraska will be on its way to complying with the Americans with Disabilities Act. An Olmstead committee will begin the process of addressing the waiting list in helping DHHS/DD shift its financial attention to home and community-based services. Well, that's not the only thing it will accomplish. These services are historically more cost-effective and help to serve more people for the same amount of money spent on institutional settings. Additionally, it will help Nebraska ward off potential issues with CMS and the Department of Justice. And I think Dianne did a fine job of talking about that, so I won't waste any time on that. The Olmstead commission will not only help Nebraska move forward to avoid the financial issues and the legal litigation, but it will also help Nebraska families. Currently, the United Cerebral Palsy report, the Case for Inclusion, has Nebraska rated very low in some key categories. Overall, we have a ranking of 37 out of 51--so that's the 50 states plus Washington, DC. We have a ranking of 32nd for tracking the health, safety, and quality of life. And while you think 32nd might be bad, I would like to inform you, and it's included in my testimony, that we are tied with 19 other states for dead last, with a 0.0 point scale in that category. And finally, and I think what is the most egregious of numbers, is that we are 38th in keeping families together. We know that there are families out there who are currently giving up their children because they can't get services. As currently stated, there is no plan to help these folks. To give up your legal rights to your child so that that raises them to a Level 1 priority is unacceptable. The Olmstead commission can help DHHS accomplish providing supports to these folks, with better planning and better financial management. By utilizing all of the many agencies that could and should contribute: Voc Rehab, the Department of Education, DHHS/DD services, behavioral health, the DD Planning Council, Assistive Technology Partnership, and so many others including stakeholders--people with disabilities themselves. The state can truly move forward in supporting people with IDD and other disabilities to live their lives and not merely exist. I am open for any questions you might have. [LB1033]

SENATOR HOWARD: Are there any questions for Mr. Chittenden? Seeing none, thank you for your testimony today. Our next proponent? Good afternoon. [LB1033]

JONI THOMAS: Good afternoon, Senators. My name is Joni Thomas, J-o-n-i T-h-o-m-a-s, and I'm here to testify as a proponent for LB1033. I am the executive director for the Center for

Independent Living of Central Nebraska Incorporated, serving people who experience disabilities of all disabilities across the lifespan throughout 39 counties, from Grand Island west--so greater Nebraska. Since the Supreme Court's Olmstead decision that unjustified segregation is a violation of the ADA, the movement related to transitioning from institutions to community-based setting has gained momentum nationally. This is evident in the federal Money Follows the Person Grant, designated specifically to transition individuals from institutions into the community; and Nebraska has such a grant. The community-based rule from CMS defining what constituted community and noninstitutional settings, and Nebraska is working on incorporating these rules. And the Workforce Innovation and Opportunities (sic: Opportunity) Act added a fifth core service for centers such as mine, mandating transitioning out of institutions, which we have always done in Nebraska. LB1033 and the creation of the advisory team increases that momentum in Nebraska, and brings us closer in line with this monumental legislation of 1999 and the ADA, now 25 years past signing. As with all things in life, services for people who experience disabilities are multifaceted. People who experience disabilities rarely have singular needs. Our agency works with individuals who may experience an intellectual disability as well as a mental health issue. Someone may have a brain injury and a physical disability, etcetera. The combinations are endless, which makes it essential to work in tandem with other organizations, agencies, and state programs, as outlined in the creation of this advisory team. That's the real purpose of LB1033, to develop a continuum of care in the least restrictive setting. In order to accomplish this, it is necessary for all agencies and stakeholders to work together to ensure the promise of Olmstead has achieved. I believe that centers for independent living have much to offer in this team. Centers have decades of experience assisting people who experience disabilities, live successfully in the community, and have transitioned individuals from institutions before it was popular or mandated. This is, however, only one part of Olmstead. Others will need to come together to provide the supports and services necessary for people who experience disabilities. We believe this team will bring Nebraska to living the intent of the Olmstead decision. We urge the forward movement of LB1033 to demonstrate the state's commitment to achieve compliance with the federal Americans with Disabilities Act of 1999. And I am open to any questions. [LB1033]

SENATOR HOWARD: Thank you. Are there any questions for Ms. Thomas? Seeing none, thank you for your testimony today. [LB1033]

JONI THOMAS: Thank you. [LB1033]

SENATOR HOWARD: Our next proponent for LB1033? Good afternoon. [LB1033]

J ROCK JOHNSON: Good afternoon, Madam Chair and members of the Health and Human Services Committee. My name is J Rock Johnson, it's spelled J Rock, R-o-c-k, Johnson, J-o-h-n-

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s-o-n. I support this legislation and commend Senator Campbell for bringing it forward. Nebraska needs this advisory committee and LB1033 to develop an Olmstead Plan because the Americans with Disabilities Act--the ADA--was passed by a bipartisan Congress in 1990 to prevent and eliminate discrimination of people with disabilities. The ADA forbids state or local governments or agencies from discriminating against a person because of his or her disability. In Olmstead, the Supreme Court interpreted the ADA to mean that unnecessary segregation of people with disabilities is discrimination under the ADA. This has been expanded to apply when states fail to provide community-based services or find placements for individuals in the most integrated community settings. A good Olmstead Plan has concrete actions; it has steps in varied areas to achieve the promise of the ADA and provide individuals with options to live and work in the least restrictive environment and the most integrated settings possible. It must be more than just a vague assurance that future options will be available. It cannot merely describe a state's history of increasing funding for community services and decreasing the population in institutions. I am a person affected by a disability, and that has impact on me and others, in my class, in the areas of housing, employment, transportation, education, and individual choice. One area of life that has segregated characteristics can affect other areas. For example, segregated transportation often acts as a barrier for those with disabilities to choose to interact with others and discourages competitive employment because no transportation options are available. Someone in a segregated environment cannot get to work, cannot save money, cannot live on his or her own, cannot have choice. This is why an Olmstead Plan must span across various areas, as indicated in LB1033, and have concrete, measurable steps to integrate individuals with disabilities. I respectfully ask for the committee to support LB1033, as amended, and include the people who actually use the services or, on the other hand, are unable to use services, for they do not exist. I'm willing to take any questions. [LB1033]

SENATOR HOWARD: Thank you. Are there any questions for the testifier? Seeing none, thank you for your testimony today. Are there any other proponents for LB1033? Is there anyone wishing to testify in opposition? Anyone wishing to testify in a neutral capacity? Seeing none, Senator Campbell, would you like to close? [LB1033]

SENATOR CAMPBELL: Yes, I would, briefly. I do want to say I thank the testifiers who came forward. We certainly had a great interest in a number of people, but we felt that we wanted to give you an idea, and maybe not in numbers of people, but to try to give you an idea of the number of people, Nebraskans with disabilities, who really count on and advocate for the completion of the Olmstead Plan. And I want to thank Claudia Lindley, who put much of the work of this bill together, and also is an advocate for people with disabilities. And she makes all the difference in the office, in terms of how we look at these issues. So...what questions might you have? [LB1033]

SENATOR HOWARD: Senator Riepe. [LB1033]

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SENATOR RIEPE: Thank you, Senator Howard. I have two quick questions. Would this advisory committee be an advisory committee to the Health and Human Services Committee or is this an advisory to the executive side of the equation? [LB1033]

SENATOR CAMPBELL: Senator Riepe, I see it as an advisory to the executive, to DHHS, the department itself. [LB1033]

SENATOR RIEPE: Okay. [LB1033]

SENATOR CAMPBELL: I think when the department puts together all of the components in this plan, they certainly need to hear from people who advocate for, provide services, and those people from families, and those with disabilities. If we aren't clear enough about that language of inclusion, we certainly will change that and make it very clear that we see families and people with disabilities represented. [LB1033]

SENATOR RIEPE: So it would still afford the committee an opportunity for oversight. [LB1033]

SENATOR CAMPBELL: Absolutely. [LB1033]

SENATOR RIEPE: The other question that I have is one of curiosity again. Now why has it taken 17 years? It seems like it's a real up hill. [LB1033]

SENATOR CAMPBELL: You know, Senator Riepe, I'm not sure I have the answer for that. People behind me, who have advocated for years, may be able to tell you. It isn't as if the Olmstead Plan and our need for it has not been touched upon, as you can tell from the 2008 report of the special committee on BSDC and the consultant that was here that Ms. DeLair mentioned. So it's been a period of time, but I don't think that it was as much of an emphasis for the department as it might have been for the advocates and people who have watched this. You know, it's sort of like well, let's deal with the immediate and then we'll kind of get to this. That's why I put the bill forward, frankly, was to say: We need to do this, we need to pull this together and we need to set a time line for it to be done. Would I like it done tomorrow? Absolutely. But as Ms. DeLair had said, one state spent three years trying to put this together. So we do think 2018 is pretty aggressive line. The fact that they have a consultant...you know, I want to really say I was pleasantly surprised. Think of, Senators, how many fiscal notes that we've gotten from the department with not an implication of what they might need, because they have already got the consultant in place. So I'm hopeful we'll move with great speed. [LB1033]

SENATOR RIEPE: Well, thank you for your tenacity. [LB1033]

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SENATOR CAMPBELL: I think the people behind me are the people with the tenacity.
[LB1033]

SENATOR HOWARD: Any other questions for Senator Campbell? Seeing none, Elice, are there items for the record? [LB1033]

ELICE HUBBERT: (Exhibit 5) We have a letter from the Department of Health and Human Services, Sheri Dawson, that was distributed earlier. [LB1033]

SENATOR HOWARD: All right. And with that, we will close the hearing for LB1033. We will be going into an Executive Session, so we ask that if you're leaving, you do so quickly and quietly. Thank you. [LB1033]