

HILGERS [00:00:00] Welcome, everyone, to the public hearings for the Exec-- Executive Board. My name is Mike Hilgers. I'm the Chair of the Exec-- Exec Board. I represent District 21 which is northwest Lincoln and Lancaster County. We will start our public hearing today with some self-introduction-- introductions, starting to Senator Hughes.

HUGHES [00:00:18] Dan Hughes, District 44, ten counties in southwest Nebraska.

HILGERS [00:00:31] Are we waiting for our--

LOWE [00:00:36] John Lowe, District 37, late.

HILGERS [00:00:34] Our committee clerk is Paige Edwards. Our legal counsel is Janice Satra, to my right. Our page today is Katie Andersen from Lincoln. The other members, given our schedule today, we were still in session until 12:15, and so they will be joining us I'm sure over the next few minutes. Our-- we have one item on the agenda today which is LR104. The order of proceedings will be Senator Walz will open, then we'll have proponents testify, we-- we'll have opponents, and then neutral. Those who wish to have had written testimony submitted for the record should have sent it in by 5:00 yesterday. We have a three-minute notice on a-- typic-- we tend to, given the timing over this lunch hour, we tend to have three-minute periods for proponents, opponents, and neutral testifiers. We'll do five today just given what I-- what appears to be-- well, we have one item on the agenda that I don't think we'll have a time consideration, so we'll do-- we will do five minutes. I would remind everyone to please turn off any cell phones or anything that makes an audible noise. And with that, we will get started with the-- with the first and only item on our agenda, LR104, Senator Walz.

WALZ [00:01:41] Thank you. And good afternoon, colleague and colleague and colleague. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I'm here to introduce LR104. LR104 is a re-- reintroduction of the LR296, State-Licensed Care Facilities Oversight Committee, as per the recommendation in the report. If you take a look at the handouts I've provided you, you will see an amendment clarifying the scope to include any facility that has recently been closed or placed in receivership. The reason for the introduction of LR296 in the first place was due to the death of a veteran living in one of the facilities, state-licensed care facilities. I have handed out the story to all of you in case you have not seen it or would like more information, but I will give you a quick summary here. Back in two-- in September of 2017, a veteran died in the care of Life Quest at the Coolidge Center due to the VA being closed and the staff waiting to address or send-- the symptoms until the VA opened again on Monday. She suffered from life-threatening symptoms for three days before passing away, and I just want to make a comment that there were plenty of other residents and people who were asking that this person get help that she needed. About three months before this incident occurred, the Department of Health and Human Services found countless violations at the care center and nothing was done to protect the residents inside. This lack of urgency in this life-or-death situation is shocking and needs to

be addressed, which leads me to this question. Why was Life Quest facility still running after the-- after the Department of Health and Human Services created an 81-page report of violations during June and July of 2017? This is why I'm bringing forth the LR104 which would recreate a State-Licensed Care Facilities Investigative Committee within the Legislature. This committee would be there to provide oversight to the facilities and ensure that the Department of Health and Human Services is taking adequate steps to support them. Unfortunately, Life Quest at the Coolidge Center is not the only care facility that is falling short in providing adequate care for its residents. During the LR296 investigation, there were a number of instances where residences-- residents were being mistreated, neglected, and abused, and there are too few instances being taken seriously. We have also seen a number of facilities go into receivership over the past year. The goal of the resolution is not to shut down these facilities but to help us figure out how we can better support them as a state-- I'm going repeat that-- how we can better support them as a state, and ensure DHHS is properly executing the responsibility to oversee and address the issues they encounter. Here are a few of the issues that were found by the committee last summer: a lack of facility inspectors or surveyors; a need for a separate staff to investigate complaints versus just routine investigations or inspections, which would provide another safety net; DHHS was not very responsive to the committee in a timely or forthcoming manner-- as we asked questions, it seemed to be very vague, very vague answers-- a need for better coordination with first responders; a need for a contingency plan in the event a facility does close and prevent residents from becoming homeless. Oops, sorry. These were only a few of the recommendations made by the committee and there's still a lot of work to do. The Department of Health and Human Services has many responsibilities and can oftentimes be overworked, I understand, but they still have a job to do. This committee is needed to help ensure that they are getting the work done as well as help us learn as a Legislature how we can support them and assist them in doing their job. Last year was the first year where the State-Licensed Care Facilities Investigative Committee was in action. This committee met six times. We visited 12 facilities and recommended 20 changes that would improve Nebraska's state-licensed care facilities. There are many changes that can still take place and I believe that we should try our hardest to get them done. With that, I would be happy to try to answer any of your questions.

HILGERS [00:06:12] Thank you, Senator Walz, for your opening. Are there questions? I have a brief-- or just a couple, if I might. So the-- what was LR-- what was the number of the LR that passed last--

WALZ [00:06:23] LR206.

HILGERS [00:06:23] LR296, and that one, Senator Walz, that was a that was an oversight committee, correct?

WALZ [00:06:29] It was an investigative committee.

HILGERS [00:06:30] Would the-- as-- if I-- my memory, and I could go back to the records just so I'm-- initially, the green copy of that LR, the initial copy of the LR was investigatory, which included subpoena power.

WALZ [00:06:44] Right.

HILGERS [00:06:44] And then it was, if I recall correctly, it was amended by the Exec Board--

WALZ [00:06:47] To an over-- yes.

HILGERS [00:06:48] --to an oversight committee.

WALZ [00:06:49] You're right, correct.

HILGERS [00:06:49] And so I wanted to make sure because I believed that the LR in front of us, LR104, is styled as an investigatory committee and not an oversight committee so it would sort of revert back to the original proposal from last year. So is that right? Do I have that right?

WALZ [00:07:04] Yes.

HILGERS [00:07:07] OK. Thank you. I just wanted to make sure that the rec-- record was clear. So was that a-- so was the LR296 Committee, was it a formal recommendation to continue its work?

WALZ [00:07:17] Yes, it was--

HILGERS [00:07:18] And was-- was the recommendation to have an oversight committee or was the recommendation to have an investigatory committee or was it specified at all, do you know?

WALZ [00:07:25] I don't recall.

_____ [00:07:28] I don't think it's specified.

WALZ [00:07:29] Sorry.

HILGERS [00:07:29] OK. I-- I-- I-- because I guess my question just goes to understanding the work that was done last year, if there was-- if it was the-- the recommendation of that committee to have an investigatory committee, because I know that was a change last time, and so I just wanted to get a feel for reasoning as to why it was-- why instead of continuing an oversight committee, it was going back to investigatory committee.

WALZ [00:07:54] Right. I don't know the answer to that.

HILGERS [00:07:54] OK. Thank you very-- thank you very much. Are there other questions? And I'll note that Senator McCollister has joined us, so--

WALZ [00:08:02] Maybe I'll find out for you.

HILGERS [00:08:02] Thank you, Senator Walz. Will you be sticking around for closing?

WALZ [00:08:05] Yes.

HILGERS [00:08:06] OK, great. Thank you very much. First proponent for LR104. Welcome. I'll note that Senator Bolz has joined us. We'll probably have a few other members joining us since we just recessed. Welcome.

JERALL MORELAND [00:08:36] Thank you. Good afternoon, Senator Hilgers, members of the-- other members of the Executive Board. My name is Jerall Moreland, J-e-r-a-l-l, Moreland, M-o-r-e-l-a-n-d. I am here today representing the Ombudsman's Office in the capacity of deputy ombudsman for institutions. I want to thank Senator Lynne Walz for inviting me to share several comments and views concerning LR104 which is a reintroduction of a similar committee created by LR296 in 2018. This office views LR104 as another step to continue exacting the right balance of extended legislative oversight to an area that has significant issues. As you may recall, LR296 Committee recommended in its report that while the committee had made significant progress, much work remains to be done. The report outlined specific areas that needed additional study and recommended that the work of this committee should be re-established in 2019 with a final report due to the Legislature in December of 2019. Based on my involvement with the LR296 Committee and observations from working individual complaints to the office, I would concur with the assessment of much work remains to be done. That is why, as you may recall, recently I was in front of this committee and shared with you what was observed in many of the places that we visited by the LR296 Committee. Due to these observations, in my view, increased oversight of the assisted living system should be considered. This type of examination, as suggested in LR104, would continue effectuating a more robust view of the problems associated with assisted living facilities by gaining an understanding of the many complexities of issues surrounding assisted living facilities. The Ombudsman's Office participated in the LR296 Committee, site visits, and meetings. During some of these site visits we received feedback from residents about stories of assault-- assaults, sexual assaults, safety issues, and a general lack of dental/medical-- medical care opportunities. This feedback also corresponded in part with individual complaints brought to our office. Therefore, I would share that while many facilities appear to do a good job, others we believe pose a health and safety risk to the individuals living in them. The Ombudsman's Office will support a LR-- LR104 as needed and will continue to work on oversight and accountability issues surrounding assisted living facilities. And in closing, while the DHHS licensure

regulations division surveyors are very knowledgeable with what they do, unfortunately, I am left to question, is the state doing the best it can in terms of allocating appropriate resources to handle assisted living compliance oversight responsibilities? Thank you, and I can address any question or provide additional observations as needed.

HILGERS [00:11:27] Thank you, Mr. Moreland. Are there questions? Seeing none, thank you for coming down, for your testimony. Thank you, sir.

JERALL MORELAND [00:11:35] Thank you.

HILGERS [00:11:39] Next proponent for LR104. Welcome.

DIANNE DeLAIR [00:11:55] Good afternoon. My name is Dianne DeLair, spelled D-i-a-n-n-e D-e-L-a-i-r. I'm the senior staff attorney with Disability Rights Nebraska. That's our state's recognized protection and advocacy system here in Nebraska. Over a year ago, I sat before this same committee testifying in support of LR296, urgently recommending that you not only address the tragedy that occurred at Life Quest in Palmer, Nebraska, but also looking at this as a bigger systemic issue because that's really what it is, is it is a system of failure in our state of delivery of behavioral health services. And I would like to-- to thank Senator Walz for introducing LR296 last year and also this year LR104. The committee did a tremendous amount of work in that period of time and I want to commend them for the very thorough recommendations outlined in the report. I'd like to address a couple of different issues that have not been brought up and that is our state's responsibility under the Americans With Disabilities Act and Olmstead v. L.C., and the way we are running our behavioral health services in this state is putting us at risk of litigation and litigation that stems from violation of the ADA and Olmstead. I want to thank the Legislature for approving LB570 that will continue our work as a state to develop our own Olmstead plan and provide implementation of that plan. However, as you know, Olmstead, having a sufficient plan only provides a defense to our state if we are not living up to the requirements and the well-settled federal law that exists in our country over the last 20 years. And so these two issues dealing with LR104 and also LB57-- LB570 blend together. Just as some background, I've been a senior staff attorney at Disability Rights Nebraska practicing law for 19 years. As part of my duties there, I help implement and monitor facilities all across the state of Nebraska where people with disabilities live, work, or receive an education. I have visited all of the facilities that the LR296 Committee has toured many times, and I commend that group for getting out there and actually seeing how people in our state are living with severe and persistent mental illness in the "community-based system."

HILGERS [00:15:08] Attorney DeLair, do you have any last thought? We're-- we're at time.

DIANNE DeLAIR [00:15:12] Oh, was that five minutes?

HILGERS [00:15:14] Yeah.

DIANNE DeLAIR [00:15:14] [INAUDIBLE] OK. Just to address the one question that was asked--

HILGERS [00:15:19] Well, maybe-- well, maybe I'll stop you there. I'm sure someone will ask you that question.

DIANNE DeLAIR [00:15:21] OK. Perfect.

HILGERS [00:15:21] But just so we're keeping within the time frame, are there any questions from the committee Senator Bolz.

BOLZ [00:15:25] Would you please finish your thought, Ms. DeLair.

DIANNE DeLAIR [00:15:28] Yes. A question was brought up about the change in language from LR296 to LR104 with the inclusion of subpoena power and providing broader investigatory responsibilities to the committee and I highly urge you to keep that language within LR104, and the reason being is that that committee did not get the responses that were I believe not in good faith. But I think if you're going to really get to the truth of what happened at those facilities and what is not happening with implementation of certain recommendations, that committee, in order to get to the truth and get answers, will need to have that specific power. And we've tried it once without it. I urge the committee to take it to the next level so it can get its work done.

BOLZ [00:16:28] A couple follow-up--

HILGERS [00:16:30] Please.

BOLZ [00:16:30] --questions, if I may. The-- the first is I have had some conversations with Senator Friesen about their multiple attempts to get the information they were looking for and his challenges in trying to get that in a timely manner in order to develop the report. Could you refresh my memory in terms of what specifically we are looking for that we haven't been able to see yet that will inform our decision making? Could you just put some color to it?

DIANNE DeLAIR [00:16:56] Absolutely. Last year Dr. Michaels [SIC] who I believe was the head of Public Health, I believe was asked questions before this committee involving the investigations at Life Quest in Palmer and he gave some detailed questions. Those were followed up by the committee but were not answered. And particularly what I think we need to be looking for is, what was the breakdown in communication? What happened when an 81-page report, investigators out at a facility for two weeks, and the place was left open? And I think we need answers to that and we need to know what policies and procedures were in place or what has changed since that time. Also, the committee should be able to ask Behavioral Health, the division, where are we at on the technical assistance collaborative report? The

recommendations made in two separate reports by our own consultants, where are we at on that? Where's the supported housing program? Where are we at about having the regions reach out to this population of vulnerable people that are not a part of their planning process? These are very complicated problems and we need to get down to the business of getting them answered and so we can move forward with the work that's already been done.

BOLZ [00:18:32] Very good. Thank you.

HILGERS [00:18:35] Thank you. Just piggybacking on the question that Senator Bolz just asked and your answer, subpoena power versus asking those types of questions, I mean, the-- you can ask those questions and then you can serve a subpoena. Subpoenas have the force of law in requiring certain things, so I think when-- when I-- I think I'd-- I would ask the question, can you provide some more specific-- specificity to your answer of, you know, we would want to know where are we at because, you know, in the context of a subpoena that could be give us policies or give us all these e-mails or give us communications. And-- and it would require careful crafting from likely some sort of attorney or counsel from the committee's part as well as doing it in a way that's not overburdensome. You know as an attorney discovery can be very burdensome depending on how it's drafted. So can you maybe provide some more specificity as to what this-- what the subpoena would provide that--

DIANNE DeLAIR [00:19:20] Well, I think you would want--

HILGERS [00:19:21] --that wouldn't be provided through just asking some of those questions? Please, go ahead.

DIANNE DeLAIR [00:19:25] Excuse me. So, yes, you would want to-- definite-- I think there is a way to carefully craft those questions based on the work that's already been done. I would want to not only subpoena the particular investigators who are involved in the creation of those reports but-- and any notes or discussions that were had surrounding did somebody, say, send an e-mail, do you think we should close this place down, do you think we should get people out of this facility, what should we do. I don't see that as a problem as far as narrowing down those issues. But also with respect to the TAC reports, I think it would give the body another avenue to get the information that is needed. So I hope that answers your question a little bit.

HILGERS [00:20:22] No, that certainly helps. I think, and you may not know the answer to this question, but do you know if any the investigators were-- were lawyers or would-- would any of those-- that-- that information be subject to like an investigatory privilege of any kind?

DIANNE DeLAIR [00:20:33] No. The investigators I believe were through the Division of Public Health regulation and licensure and typically those investigators are registered nurses

HILGERS [00:20:45] OK. And then do you know-- and maybe-- maybe the answer might be no or the answer might be you don't know. Do you know if anyone has gone to the work or the committee has gone to the work or-- of putting together some specific, narrowly tailored or crafted requests of the types of information that might be subject to a subpoena?

DIANNE DeLAIR [00:21:01] Yes, they have. And those questions, as far as I know based on my view of the report and work with some of the senators, is that those questions were not answered or responded to.

HILGERS [00:21:13] And that would be in the report?

DIANNE DeLAIR [00:21:16] Correct. I think there is language in there that suggests they did not receive the answers that were requested from the Division of Behavioral Health and possibly Public Health.

HILGERS [00:21:28] Thank you. Are there further questions?

BOLZ [00:21:29] Can I ask--

HILGERS [00:21:30] Please, go ahead.

BOLZ [00:21:31] --just one? In terms of process, have-- have-- had any of that information been requested through a Freedom of Information Act request?

DIANNE DeLAIR [00:21:38] Not that I'm aware of. Yeah, I-- I don't know the answer to that, Senator.

BOLZ [00:21:44] Would-- would a request like that get to the information you're looking for or do you need that additional power?

DIANNE DeLAIR [00:21:50] I think you would need the additional power to actually interview or question witnesses. As far as whether or not those documents would be pro-- produced or a claim of privilege would be made, I don't know.

BOLZ [00:22:05] OK. Thank you.

HILGERS [00:22:05] Thank you, Senator Bolz. One follow up just on that and then I'll go to you, Senator McCollister. So the subpoena power that's being contemplated by LR104, would that-- that sort of was inferring that it would be a subpoena duces tecum, in other words, for-- for documents. But it sounded like what you're suggesting is a deposition subpoena power. Is that-- is that a fair observation that I just made?

DIANNE DeLAIR [00:22:26] Yes, Senator. It would be similar to the powers that were granted for the Special Investigative Committee for Corrections.

HILGERS [00:22:37] Do you know if there would be any limits either-- either there had been-- either limits in that context or contemplated here on the number of deposition subpoenas that could be issued, I mean, in-- in--

DIANNE DeLAIR [00:22:46] I think that-- that would have to be determined by the committee.

HILGERS [00:22:50] OK. Thank you. Senator McCollister.

McCOLLISTER [00:22:54] Yeah. Thank you, Chairman-- Chairman Hilgers. With reference to subpoenas, have you had occasion where DHHS has refused to answer your questions or have been unresponsive to any of the requests for information?

DIANNE DeLAIR [00:23:09] Senator, as to my knowledge, the working group, LR296, the committee did have issue with receiving answers to some of their questions. I'm not a part of that committee, but I did follow the work of the committee closely.

McCOLLISTER [00:23:28] Thank you.

HILGERS [00:23:30] Thank you, Senator McCollister. Further questions? Thank you for your testimony, Attorney DeLair. Thank you very much.

DIANNE DeLAIR [00:23:35] Yes.

HILGERS [00:23:35] Other proponents for LO-- LR104? Seeing none, anyone wishing to testify in opposition? Welcome.

DARRELL KLEIN [00:23:57] Good afternoon, Senator Hilgers and members of the Executive Board of the Legislative Council. My name is Darrell Klein, D-a-r-r-e-l-l K-l-e-i-n. I am deputy director for the Division of Public Health in the Department of Health and Human Services, and I am here to testify in opposition to LR104 on behalf of the department. As you know, it proposes to create a State-Licensed Care Facilities Special Investigative Committee of the Legislature. L-- LR104 is very similar to LR296 from last year, so my testimony will echo last year's testimony a bit and also includes steps we are currently taking to resolve any founded issues. And I-- I will mention up-front that the remainder, the printed part of my-- of the handout relates to Behavioral Health. And Sheri Dawson is here to respond to any questions you might have, but I won't be going over that in my verbal testimony here. As you know, the Division of Public Health licenses 12 types of facilities and we have more than 4,000-- I think it's pushing close to 5,000 facilities in the state. And I'd like to address what the licensed facility is, the review process, and the role of the department. The Health Care Facility Licensure Act is created to protect public health and

safety by providing for licensure of healthcare facilities and services and for the development and enforcement of basic standards. Facilities that have achieved licensure have demonstrated compliance with the standards of operation, care, and treatment provided in the facility and physical plant standards. Inspections are conducted by trained surveyors to determine a facility's compliance with the regulations specific to that licensure type. State statute sets out the time lines for reviewing applications, conducting inspections, reporting findings of noncompliance, investigating complaints, and taking disciplinary action. There's often a misunderstanding about the role of the department and the time frame in which the department takes action. These statutory time lines are necessary because the entities that operate the healthcare facilities have due process rights. The statutory process includes time lines that allow facilities and opportunity to correct deficiencies. And in situations where people reside in a facility, the resident and or their guardian are responsible for decisions regarding the resident's care with the department's role to evaluate whether that facility-- excuse me-- is safe to operate. I'm going to skip over the references to Behavioral Health that are contained there to meet the time line. After reviewing the circumstances that led to the introduction of LR296 last year, the department has added new leadership, that includes me, and we are looking at every possible option to recruit and retain surveyors for all types of healthcare facilities. The department believes these changes need to be implemented and evaluated before the need for an investigative committee is explored, and then the information in the following pages contains aspects of the-- of the LR that would duplicate-- create duplicative work for the Division of Behavioral Health. And I wanted to thank you for the opportunity to testify today, thank you for your time, and I'm happy to answer any questions you may have.

HILGERS [00:27:21] Thank you, Mr. Klein. Are there questions? Senator Hughes.

HUGHES [00:27:23] Yes, thank you, Mr. Chairman. Thank you, Mr. Klein. So in here you have you're looking at every possible option to recruit and retain surveyors.

DARRELL KLEIN [00:27:32] Yes.

HUGHES [00:27:32] Are you increasing the number of surveyors or just filling vacancies?

DARRELL KLEIN [00:27:37] Step one, we're looking to fill the vacancies. When-- I-- I've been asked this question not-- not just by-- by the Legislature but internally as well. And for me, step one is to get every single vacancy filled and then see what our periodicity is for our surveys and inspections. And at that point, I would be able to determine whether we have a sufficient number, if we keep the positions filled, or if we would need to ask for more, so--

HUGHES [00:28:04] So how many-- how many vacancies do you have today?

DARRELL KLEIN [00:28:08] Let me go by facility type. The-- the actual death that has been discussed is in the area-- that was also-- that was actually-- was-- was then a mental health

center. And in that area we out-- we are authorized to have seven surveyors and we have one vacancy. In-- in the area for long-term care and assisted living facilities, we have 34 authorized surveyor positions and we currently have five open. I believe one of those openings is soon to be filled.

HUGHES [00:28:47] OK.

DARRELL KLEIN [00:28:47] So it's not perfect yet, but we're making progress and we're aware of the issue.

HUGHES [00:28:51] OK. Thank you.

HILGERS [00:28:51] Thank you, Senator Hughes. Senator McCollister.

McCOLLISTER [00:28:53] Yeah, thank you, Chairman Hilgers. A couple of years ago I served on ACCESSNebraska's committee that reviewed some of the problems associated with on-line applications for food stamps and-- and that effort. And the-- the committee itself, and increased focus by the administration, resulted in some very good activity and-- and we resolved that problem and the committee disbanded. Do you have any kind of dashboard system at all that you employ that would-- might resolve some of the problems we've seen here?

DARRELL KLEIN [00:29:28] Yes, we ab-- absolutely. We're tracking clear across the board from-- from the time it takes to report-- or, excuse me, to process applications to the receipt of information that there might be a problem and-- and our response to it. I was looking for some of the figures that I had in testimony to an earlier bill and I didn't find it. But we have-- we have some statutory requirements. We have in addition to those basically policy requirements. And then we had the figures as to how quickly we were getting out there. And-- and I can give you the numbers in terms of what's required by the regulations, but we have a dashboard. Right now we're beating it. There were some changes and there's-- you folks have all probably heard about how we triage and we use kind of a-- a federal standard. We're-- we're following the federal standard in terms of whether an incident is isolated or widespread and then the severity of the-- either the actual injury or the risk of injury. And of course those situations move up to the front. The-- the federal government, for the certified facilities, which would be long-term care but not assisted living, they kind of tightened up what they decided would require a more immediate response. So a consequence of that was in 2017, since there were more circumstances, conditions, reports that would merit an immediate response because of the level or the threat of-- of the risk, that impacted our ability to do the routine surveys and so that we were focusing on the matters that would be most likely to present a substantial threat to people, and that kind of be impacted on-- on the routine. But in 2018 we have vastly improved on that. And I don't pretend to be Harry Truman, but it was quite clear to me that, when I was hired for this position, the buck stops with me and--

McCOLLISTER [00:31:34] Great. Thank you. And can you provide some of the-- the most recent dashboard reports?

DARRELL KLEIN [00:31:37] I can do that, I can do that. I-- I tried to bring them with me so I could give you actual figures, so--

McCOLLISTER [00:31:43] Thank you, Mr. Klein.

DARRELL KLEIN [00:31:45] Yeah.

HILGERS [00:31:45] Thank you, Senator McCollister. Senator Bolz.

BOLZ [00:31:48] A-- a few questions for you, and some of them relate to the information provided by Director Dawson, so I'll let you guys figure out how to respond here. But I guess I-- I don't-- I don't want to be anything other than diplomatic, but I also want to speak plainly, so I hope you take this gently.

DARRELL KLEIN [00:32:04] You won't hurt my feelings.

BOLZ [00:32:06] If-- if there's so much oversight and you have what you need in terms of licensure and we're following all these regulations, why do I get pictures of black mold? Why do I hear stories about bedbugs? Why are these conditions so poor if we're doing everything right?

DARRELL KLEIN [00:32:22] The standards that are set by regulation after public hearing-- this is-- this is also not a super diplomatic thing to say, but the-- the standards we set for healthcare facilities are essentially minimum standards and in-- in that regard, we're looking at the staffing and the care and the treatment that are-- that are provided to folks. There is another element of choice involved in-- in where folks send their loved ones to live. That has an impact. There are economics. It's a business; it's a business model.

BOLZ [00:32:58] Do you have the power to increase those regulatory standards?

DARRELL KLEIN [00:33:03] Through the-- through the regulatory process, yes.

BOLZ [00:33:06] Is that in-- in the works? Are you working on that actively now?

DARRELL KLEIN [00:33:08] I think we're looking at every-- actually, we're looking at 200-some sets of regulations for revision right now.

BOLZ [00:33:15] OK. Is there a role for policymakers in that if-- if we're-- if we need-- if we have a need to increase the regulations, isn't there a role for this committee to also bring--

DARRELL KLEIN [00:33:24] Clear--

BOLZ [00:33:25] --state policy along with that?

DARRELL KLEIN [00:33:26] Clearly.

BOLZ [00:33:27] Clearly. Good. My other questions are-- I noted that the-- the-- so I think that there are-- you make some fair points in terms of choice, in terms of options, in terms of business models. But I think there's also a role in public policy in terms of alternatives. And I do appreciate that we were able to find some resources for an alternative in terms of the housing assistance program, but I just-- I want this committee to hear what I heard in Appropriations. If I'm remembering correctly, and somebody can correct me, there's-- there's something like 350 people on the waiting list for the housing assistance program and we're going to be able to serve about 50 more. Am I in the ballpark? Does that sound about right?

DARRELL KLEIN [00:34:06] That's outside of my kin but--

BOLZ [00:34:09] OK. Well, maybe-- maybe we can get that accurate information. But the-- Sheri is nodding at me. Hey, I'm not-- must not be too far off if Sheri is nodding at me. So the point I'm trying to make is that we've made some progress in terms of that funding, but we've still got 300-and-some folks who need a better alternative. My-- my last question is, can you give me examples of what has actually changed in response to the 2016 TAC report?

DARRELL KLEIN [00:34:31] The TAC report, I think I'm going to-- you-- you're looking at Behavioral Health sort of things, so I would defer to Sheri for that. Do you guys want to finish questioning me and bring Sheri up? What is your preference?

BOLZ [00:34:46] That sounds fine.

DARRELL KLEIN [00:34:49] OK.

BOLZ [00:34:49] Thank you for-- thank you for the dialogue.

DARRELL KLEIN [00:34:50] Yeah.

HILGERS [00:34:50] Any other questions? Do-- has the-- has the department taken a position as to whether it would be opposed to having an-- a reauthorization of the oversight committee versus an investigatory committee?

DARRELL KLEIN [00:35:01] I think that the oversight would be-- it would-- that would be acceptable to us. We have taken-- I-- I've seen some of the-- I-- I wasn't in this position at the time, so I wanted to let you know that I-- I have reviewed the report. I think some of the

responses from the department that were seen as being nonresponsive were due in part to the timing. There were some questions about what had happened and I believe there was a personnel matter pending at that time. There were some questions about specific facilities that the department had gone out to look at and those facilities' due process rights hadn't-- hadn't run through. So I anticipate-- I-- I will simply say that the person who was in charge of the section that licensed the mental health centers is no longer with the department. And for-- for various reasons, not-- not insinuating they're completely related, but the two deputy directors have since left and now we've replaced-- for Public Health we now have three deputy directors, recognizing in part of the volume of the work. And my-- my directive was to dig down into the day-to-day runnings of the program so that I knew what was going on and I could do what I could do to improve it. So it's a little bit of a different structure. a little bit of a different approach, and there's been a change in the personnel involved.

HILGERS [00:36:33] OK. Thank you, Mr. Klein.

BOLZ [00:36:35] Can--

HILGERS [00:36:35] Senator Bolz.

BOLZ [00:36:35] I-- I was just going to say maybe to let you and the committee off the hook, maybe Director Dawson could just follow up with the answers about the TAC report in writing. If you just want to give me a separate update, that would be fine.

SHERI DAWSON [00:36:48] I could testify neutral and clarify some things, however you want to do it.

HILGERS [00:36:50] Given the timing of the timing, if it's okay, Senator Bolz--

BOLZ [00:36:53] Given the timing--

HILGERS [00:36:53] --maybe we'll do it off-line.

BOLZ [00:36:54] --that-- that information in another manner would be fine.

HILGERS [00:36:56] Thank you, Senator Bolz. Any other questions? Thank you, Mr. Klein, for your testimony.

DARRELL KLEIN [00:37:00] Thank you.

HILGERS [00:37:01] Senator Stinner, didn't you--

STINNER [00:37:02] No.

HILGERS [00:37:06] Thank you. Other opponents for LR104? Seeing none, anyone wishing to testify in a neutral capacity? Seeing-- no. Yes. No, yes, yes, no. We do have a neutral testifier. Welcome.

SHERI DAWSON [00:37:25] OK. Thank you. Thank you for allowing me to testify in the neutral capacity. I just wanted to do some clarification of some of the testimony. The TAC report--

HILGERS [00:37:40] Would you mind stating and spelling your name.

SHERI DAWSON [00:37:44] Oh, absolutely. My name is Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I serve as the director of the Division of Behavioral Health.

HILGERS [00:37:53] OK, go ahead.

SHERI DAWSON [00:37:53] OK. And the TAC report, I can provide you an update, and in fact we provide updates publicly in regards to that. The TAC report has been incorporated into our behavioral health strategic plan, which is from 2017 to 2020, and then certainly, as the Olmstead consultants have the same consultant that did our TAC report, is now working with DHHS on the Olmstead planning. They have also checked where we are in progress and that will be incorporated into the Olmstead plan. One of the recommendations from the TAC report was to really look at how many people are being discharged into stable living. And we have established that as a dashboard we check that on a monthly basis. We targeted 85 percent. We've been hitting about 79, 80 percent. We're not quite to the target. But when we look at the data for the individuals that are discharged, I think it's also a misnomer to say that individuals with severe and persistent mental illness are all going to these assisted livings. When we look at-- our division serves 32,000 people a year and these are people that aren't Medicaid eligible and don't have insurance. When we look at where individuals are discharged, we only have about 1.1 percent that are going to assisted livings. We have about 40 percent that are going to a private residence, about 1,400 that go to a private residence with our housing assistance. We have about 17 percent that go to private residence but still have like some care that comes into their setting. And so there are a number of individuals with severe and persistent mental illness that are not going into assisted living. So having said that, there certainly is a lot of-- and I'll come back to the TAC report-- individuals. Senator Bolz, you mentioned how many people were waiting-- waiting for our housing-related assistance which is targeted for people with severe and persistent mental illness by statute. And that housing-related assistance this last year served 1,001 people. The 50 that are on the waitlist, were assessed and had a severe and persistent mental illness, were coming out of either LRC or preventing hospitalization and did-- there was a wait of individuals for housing-related assistance. The other 300, or whatever that number that you provided, Senator Bolz, are people that come to the housing coordinators in the region to talk about needing housing, and so they might not qualify for housing-related assistance. So it depends on if you look at there's still need for housing versus how many really are waiting and

approved for the housing-related assistance and waiting. One of the other TAC recommendations was that the Department of Health and Human Services have a housing coordinator that can really look across divisions at housing needs and help people get to where they need to be served. And we have-- that position is in our State Personnel, Department of Administrative Services, getting classified right now. So we look forward to having that position come on very quickly after we get the OK.

HILGERS [00:41:39] Director Dawson, just--

SHERI DAWSON [00:41:40] Yes.

HILGERS [00:41:40] --just in the interest of time--

SHERI DAWSON [00:41:41] Oh, OK.

HILGERS [00:41:41] I don't know how-- where else you were going there, but there might be--

SHERI DAWSON [00:41:45] I was--

HILGERS [00:41:45] --some follow-up questions. OK?

SHERI DAWSON [00:41:48] Yeah. If-- if I could, I just want to clarify that the-- the progress on the TAC report is available--

HILGERS [00:41:52] OK.

SHERI DAWSON [00:41:55] --and happy to provide that.

HILGERS [00:41:53] Appreciate it, Director Dawson. I'm sure if we have questions, we'll follow up outside of the hearing context.

SHERI DAWSON [00:41:57] OK. Thank you.

HILGERS [00:41:57] Seeing no other questions, thank you for your testimony. Anyone else wishing to testify in a neutral capacity? Seeing none, do we have any letters? We have no letters. And, Senator Walz, you are welcome to close.

WALZ [00:42:11] I'll try to make this quick. First of all, I just want to thank people who came in to testify today. This is an important issue that deserves our attention, as it did last year. We're dealing with a very vulnerable population and a struggling industry. These facilities really do provide a great service to their communities and without them the residents' quality of life would be severely diminished. I do want to just make another couple points here. I did have a

conversation with Mr. Klein the other day, and it was a really good conversation. I appreciated him sitting down and talking with me. But just a couple of points that I want to reiterate. Facility leadership is vitally important to a well-run facility. Administrators' training also needs to be accessed for possible improvements and for improvements or additions to curriculum and requirements. I think that the committee needs to be able to get the information it needs. And I just want to give you a couple of examples of the questions that we asked and the answers that we received last time we met with the committee. I know that, you know, there is new leadership> But just because we have somebody new, doesn't mean we're going to get the answers that we absolutely have to have. So for example, we asked, have any new policies, procedures, guidelines, or initiatives been put into place as a result of the information obtained during the investigation? And about six times after asking questions like this the answer was: The department's review shows that we have the proper pol-- proper policies and procedures in place for regulatory control of licensed facilities. Apparently, as Senator Bolz pointed out, that is not the case because if we did have proper procedures and policies in place, we would not continue to see people being abused and neglected. I have a list. I don't know if you guys got the recommendations from the committee, but if you would like those recommendations, I can get you those instead of going over them. The committee may want to add language into looking into the closures of the ALFs over the last year and also add language to look into the receiverships over last year. And I guess with that, I would try to answer any of your questions that you might have.

HILGERS [00:44:45] Thank you, Senator Walz.

WALZ [00:44:46] I know that we're in a time crunch here, so--

HILGERS [00:44:48] You're worse off than we are.

WALZ [00:44:50] Yeah.

HILGERS [00:44:50] I think you have an Exec Session a few minutes. Are there questions for Senator Walz? Seeing none, thank you.

WALZ [00:44:55] Thank you.

HILGERS [00:44:56] Thank you very much for your closing. And that closes the hearing on LR104 and our hearing for the day. Thank you, everyone.