[LR11]

The Developmental Disabilities Special Investigative Committee met on Thursday, April 30, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a meeting regarding the Beatrice State Developmental Center. Senators present: Steve Lathrop, Chairperson; Greg Adams; Arnie Stuthman; and Norm Wallman. Senators absent: John Harms, Vice Chairperson; Abbie Cornett; and Tim Gay. Members of the Committee on Health and Human Services present: Senator Kathy Campbell and Senator Mike Gloor. [LR11]

SENATOR LATHROP: We have, so the record reflects this, this is a meeting of the LR11 Committee which managed to get two of its members here, and Senator Adams and myself are on the LR11 Committee and we have Senators Gloor and Campbell from the Health Committee. Today we're going to visit with Dr. Ted Kastner who has been retained by the state to do assessments of those people at BSDC, and maybe you could start by telling us a little bit about your professional background and your involvement with the state and our developmental disabilities services division. [LR11]

TED KASTNER: Certainly. Okay, my name is Ted Kastner. I'm actually trained in four different areas. My first specialty was pediatrics, but since then developmental disabilities, something called neurodevelopmental disabilities, and then I went out and got an MBA-type degree so I have a board certification in management. But my clinical work has been primarily providing healthcare, mental health, and behavioral services to people with developmental disabilities. Right now, I run an organization that provides healthcare services to 3,500 people with developmental disabilities who live in the community, and we have seven offices and I drive all over New Jersey every day to one office or the other, seeing patients and working with my staff. I began doing consulting-type work in the late '80s. I've worked for the Department of Justice; I've worked for 15 or 20 states; I've been to probably 40 ICF/MRs around the country. I actually worked with Thomas York, who I believe you've met, in 1992 and 1993. [LR11]

SENATOR LATHROP: Actually two of us have met Mr. York. [LR11]

TED KASTNER: Okay. [LR11]

SENATOR LATHROP: He was the attorney for the state in their appeal from the decision of CMS, and the members of the Health Committee I don't think have met Mr. York. [LR11]

TED KASTNER: Okay. [LR11]

SENATOR LATHROP: But he was a lawyer for the state of Nebraska. He is a fellow from Pennsylvania and represented us in our appeal. [LR11]

TED KASTNER: Right. And when he worked for the state of Pennsylvania I was his consultant, and I think we were the only state to ever beat the U.S. Department of Justice at trial. Since then, he and I have worked together and it was through him that I met John Wyvill and individuals here in Nebraska. [LR11]

SENATOR LATHROP: And I was taking my coat off and putting it over there and thinking about another question I was going to ask you. Did you say your background, you're first and foremost a medical doctor? [LR11]

TED KASTNER: Yes. I am a physician. Correct. [LR11]

SENATOR LATHROP: Okay, terrific. What was your first involvement with this state? [LR11]

TED KASTNER: I was first contacted by the state in mid- or early April of 2008, actually, regarding the need for an interim management team at the facility, and we submitted a

proposal which was not accepted at the time. And then in June, Mr. York contacted me in regard to his need for assistance in preparing for the CMS appeal. [LR11]

SENATOR LATHROP: That June contact would have been to serve as a witness and not to perform any consulting work with the state at that point in time? [LR11]

TED KASTNER: Correct. [LR11]

SENATOR LATHROP: Let me back you up to the April '08. In April of '08, that would have been shortly after we lost our certification to CMS and the DOJ report came out. Am I putting that in about the time frame? [LR11]

TED KASTNER: Roughly. I wasn't aware of the DOJ settlement at that time. I don't know when that was... [LR11]

SENATOR LATHROP: I don't think it had been settled yet... [LR11]

TED KASTNER: Right. [LR11]

SENATOR LATHROP: ...but the report had come out indicating that we had serious problems at BSDC. [LR11]

TED KASTNER: I have seen those reports. They all say that. They all say things are horrible. You know, it's litigation so they're going to say something terrible. But I was well aware of the... [LR11]

SENATOR LATHROP: You wouldn't disagree that some of the examples in there are examples of things that are horrible though. [LR11]

TED KASTNER: You know, actually I can't...I don't even recall reading their complaint

letter. [LR11]

SENATOR LATHROP: Okay. But your proposal to the state would have come in the wake of the DOJ report and CMS decertification. Is that right? [LR11]

TED KASTNER: Sure. That was all...that was all going on. [LR11]

SENATOR LATHROP: And in April of '08, who did you make a proposal to? [LR11]

TED KASTNER: I think it was Mr. Wyvill's office. [LR11]

SENATOR LATHROP: And what did you propose to do? [LR11]

TED KASTNER: We were, at that point, proposing to place an interim management team. I believe there was a vendor or contractor in place and they were leaving and there was a need for another team. [LR11]

SENATOR LATHROP: And would that have been Liberty Consulting Group? [LR11]

TED KASTNER: I believe they were exiting. [LR11]

SENATOR LATHROP: So if we did the timing, sometime in the spring of '08, when things start to become acute down at BSDC, Liberty is brought in. And on their way out you made an offer on behalf of a business we'll talk about in just a second to bring in a management team to run BSDC. [LR11]

TED KASTNER: Correct. [LR11]

SENATOR LATHROP: What was the name of the group that you represented when you made that proposal? [LR11]

TED KASTNER: Well, the proposal we submitted in April was on behalf of my organization: Developmental Disabilities Health Alliance. [LR11]

SENATOR LATHROP: And that's a business? [LR11]

TED KASTNER: Yes, it's my practice. [LR11]

SENATOR LATHROP: Nothing wrong with that. [LR11]

TED KASTNER: No, no, it's kind of my practice. [LR11]

SENATOR LATHROP: Yeah, there's nothing wrong with that. [LR11]

TED KASTNER: It's the healthcare organization that serves the 3,500 people in New Jersey. [LR11]

SENATOR LATHROP: And if accepted, what would you have...what would that proposal...what would you have done under that proposal? [LR11]

TED KASTNER: I can't quite recall but I believe it was fairly broad because there was a need identified for a variety of managers, including the CEO and I believe four senior managers and possibly medical director. I can't recall the details. [LR11]

SENATOR LATHROP: You think it would have replaced the CEO, the medical director, and three or four top management people at BSDC? [LR11]

TED KASTNER: I believe so. I am not sure. [LR11]

SENATOR LATHROP: All right. And was that in some kind of a written proposal that

you made to Mr. Wyvill? [LR11]

TED KASTNER: Yes. [LR11]

SENATOR LATHROP: Was that in a competitive process or did you do that on your own? [LR11]

TED KASTNER: Well, we wrote it... [LR11]

SENATOR LATHROP: I mean, were you a single vendor pitching a service? [LR11]

TED KASTNER: I believe it was competitive because we were not awarded the contract. There were... [LR11]

SENATOR LATHROP: Did somebody else get it? [LR11]

TED KASTNER: Yes. [LR11]

SENATOR LATHROP: Who got it? [LR11]

TED KASTNER: I don't know the name. There is...there are currently staff at BSDC that have been placed through another vendor. I can't remember the name of the vendor. [LR11]

SENATOR LATHROP: The proposal you made in '08...this is the first I knew about this. Somebody may have told me. I'm not suggesting that it's been concealed from me... [LR11]

TED KASTNER: Okay. [LR11]

SENATOR LATHROP: ...but it does lead me to ask some questions about it. If your proposal that you submitted in '08 was not accepted, when did you learn of that? [LR11]

TED KASTNER: Oh, shortly after we submitted it. I believe there was a fairly quick turnaround on the part of the state. [LR11]

SENATOR LATHROP: And did somebody else...was somebody's proposal accepted at the same time... [LR11]

TED KASTNER: Yes. [LR11]

SENATOR LATHROP: ...or accepted at a later point in time? [LR11]

TED KASTNER: No, I believe it was accepted at the same time. [LR11]

SENATOR LATHROP: Your proposal involved, among other things, replacing the medical director and the CEO? [LR11]

TED KASTNER: I can't recall exactly, but I know that there were senior positions including the CEO. [LR11]

SENATOR LATHROP: And it was just senior people. You were not bringing in physicians, nurses, physical therapists, occupational therapists? [LR11]

TED KASTNER: I don't believe so, no. [LR11]

SENATOR LATHROP: Did you receive any explanation for why your proposal was not accepted? [LR11]

TED KASTNER: No, but that's fairly typical. It's okay. We do apply for a lot of

competitive projects and... [LR11]

SENATOR LATHROP: I appreciate that. I'm just trying to find out why they didn't accept it or why they wouldn't. [LR11]

TED KASTNER: Well, they found another vendor that they felt was more qualified I'm sure. [LR11]

SENATOR LATHROP: Okay. You've worked with Mr. York on our appeal and we've... [LR11]

TED KASTNER: So then I was...I was contacted again in June, mid-June, to help prepare for the appeal. [LR11]

SENATOR LATHROP: Okay. [LR11]

TED KASTNER: And that meant at that point helping prepare witness statements and collect some records. We had a very quick turnaround. It was only a couple of weeks. I think July 1 was the date by which some of those materials had to be sent prior to trial. [LR11]

SENATOR LATHROP: Okay. [LR11]

TED KASTNER: Things were pretty quiet through the summer. They started to get going again in early November. The hearing with CMS was, I think, November 20...19, 20. I testified at the hearing, and at that point then we began working with Mr. York on the brief that he needed to submit which was actually due...it was either Monday, Sunday. It was just in the last few days. And that process of writing that brief actually took us about four months. The...if you'll...as you may know, the judge asked that the state provide documents and other materials to support its position that it was...that it

should qualify for federal funding. And the CMS survey in question was from November 2007. It was a 250-page survey. There were 581 specific allegations of fact made by the CMS surveyors. Twenty-nine percent of those were based on documents; 79 percent were based on staff interviews and observations. So... [LR11]

SENATOR LATHROP: A voluminous record. [LR11]

TED KASTNER: Well, 581 specific facts needed to be rebutted. And we spent four months doing that and wrote a 400-page technical report to assist Mr. York and the state with the filing of their brief. [LR11]

SENATOR LATHROP: Okay. The...and so that was kind of the third...the second piece of your involvement here with the good old state of Nebraska. [LR11]

TED KASTNER: I would say that's still the first piece. There's three parts to it. Let me just back up and give you some context. I think there's three separate processes that I've been involved with. The first is the CMS appeal; the second is the settlement with the U.S. Department of Justice; and the third are what I call kind of domestic management issues around the facility itself. And I've been involved to more or less of a degree with each of those three but they are quite separate. And I think part of the challenge, particularly for the families I've been working with, is understanding that, for example, the evaluation that we're undertaking is in order to assist the state in satisfying its settlement agreement with the U.S. Department of Justice. It's got nothing to do with the facility. [LR11]

SENATOR LATHROP: I appreciate that and I do want to get to that and I want to spend a good deal, as much time as we can on that before everybody has to run upstairs, but you said you were involved in the drafting of the DOJ agreement... [LR11]

TED KASTNER: No, no, no. [LR11]

SENATOR LATHROP: Not the drafting. In the preparation of the DOJ agreement? [LR11]

TED KASTNER: No, not at all. [LR11]

SENATOR LATHROP: Had nothing to do with the DOJ agreement. [LR11]

TED KASTNER: No, the only... [LR11]

SENATOR LATHROP: Other than the assessments... [LR11]

TED KASTNER: Exactly. [LR11]

SENATOR LATHROP: ...that are necessarily part of the state discharging its responsibilities under that agreement. [LR11]

TED KASTNER: Right. [LR11]

SENATOR LATHROP: Got it. Tell us what you're doing with respect to those assessments. [LR11]

TED KASTNER: Okay. So, in I'd say mid to late January, we were asked by Mr. Wyvill to prepare a proposal that would allow us to perform an independent evaluation or assessment of the clients at the facility, and the purpose of that assessment was to assist in their program planning. And we made one request of Mr. Wyvill in preparing our proposal and that was that we would have access to the staff and the families whose loved ones we would be evaluating, and he granted that request. And I think that's been extremely valuable to us because it's allowed us to communicate directly with the families. It was a lot of anxiety about what we're doing, but I always think it's

better to involve people and have more of a transparent process than not. [LR11]

SENATOR LATHROP: A couple of questions about the assessment process so that we all have an understanding about what you are doing. Your idea is to find out where people fit after this assessment in this spectrum to see what kind of a placement they would...I know you're not going to make that judgment--you've been clear about that--but you're going to give us an assessment that the Department of Health and Human Services can look at and say this person is a suitable person for placement in the community. [LR11]

TED KASTNER: No. [LR11]

SENATOR LATHROP: No? [LR11]

TED KASTNER: No, we're... [LR11]

SENATOR LATHROP: Why don't you tell us ultimately what your assessment involves... [LR11]

TED KASTNER: Okay. [LR11]

SENATOR LATHROP: ...and what the purpose of it is. What are we going to do with it when you're done? [LR11]

TED KASTNER: I will start with the purpose because the purpose is pretty straightforward. It's really to assist in developing appropriate programs for the individuals that are currently at BSDC. It's not to determine where those programs would be provided or operated. So we're creating a document that identifies the health and habilitative needs of each client and making specific recommendations about the types of clinical or habilitative services that they might require. But we're not discussing

what location would be the most appropriate for the provision of those services, because, frankly, I've never been comfortable being that arbiter. I feel very strongly that, you know, because I'm a physician, parents and my patients guide the treatment process and tell me what is important to them in deciding what treatments might be preferable. So we're identifying the clinical needs and making that information available to everyone--the families, the staff at the facility, people here in Lincoln--and allowing them to use that for planning programs. [LR11]

SENATOR LATHROP: Tell us what you're looking at. [LR11]

TED KASTNER: Okay. [LR11]

SENATOR LATHROP: Are you just looking at records? Are you talking to staff? Are you actually, as a physician, doing a physical assessment of each patient? [LR11]

TED KASTNER: Okay. We are collecting data from four different sources. The first are the clinical records from the facility. The clients have been seen by numerous professionals and there's a wealth of information there that we've been able to look at. We are...we developed an instrument to collect data from the families, so we are mailing a survey tool to them and asking them to provide us information about their loved one. We are also using a set of standardized instruments--I don't know if I need to go into those--but they're widely used in the profession to assess a person's functional and habilitative needs. And the fourth instrument is the instrument that I'm using which is what we're calling a quality assurance tool. I'm physically looking at each patient; I am not laying hands on individuals. I am a physician but I'm not licensed to practice medicine in Nebraska so I'm not performing a physical examination. I'm not making a diagnosis or recommending treatment. But my function is really that of a quality assurance role to physically see each client and verify that what we are getting from the facility, through the instruments and from the families, is reasonably accurate. Those four sources of information are going to generate somewhere between 20,000 and

30,000 pages of information. Probably about 20,000 pages of records from the facility; another 10,000 pages of material that we're collecting. The 10,000 pages need to be entered into various spreadsheets for analysis. Once we... [LR11]

SENATOR LATHROP: And that's not per patient but for all of the patients? [LR11]

TED KASTNER: Total. Yeah, yeah. [LR11]

SENATOR LATHROP: That's what you estimate the volume of material. [LR11]

TED KASTNER: Yeah, about 20,000 pages from the facility. [LR11]

SENATOR LATHROP: Senator Gloor. [LR11]

SENATOR GLOOR: I don't want to interrupt but I just had a couple questions of my own if I could, Senator Lathrop? [LR11]

SENATOR LATHROP: Yeah, go ahead. [LR11]

SENATOR GLOOR: My background before I came down here was in healthcare. I wasn't a clinician; I was an administrator. But I have to tell you, I'm quite impressed with your...how hard you seem to have worked to have specialties and subspecialities that show a passion for what you do. They certainly don't pay worth a hoot, so... [LR11]

TED KASTNER: Oh, thank you. [LR11]

SENATOR GLOOR: ...you're obviously doing what you do because you have a commitment. I'm quite impressed with your background. But how much of what you're doing and sharing with us is related to care currently being provided to the clients that are down there, first as getting us to a plan of correction to be able to address the

concerns of the Department of Health and Human Services, CMS? [LR11]

TED KASTNER: What...this evaluation? [LR11]

SENATOR GLOOR: I'm just trying to get an understanding... [LR11]

TED KASTNER: Yeah. No, I think that's important. [LR11]

SENATOR GLOOR: ...of how much is the here and now versus... [LR11]

TED KASTNER: This evaluation project is to satisfy a component of the settlement agreement between the state and the U.S. Department of Justice. It's separate from the CMS plan of correction and it's separate from management issues at the facility and that's what we're saying to the families. Is this...this is a process that began in July of 2008 and we're now implementing that step of the settlement agreement. [LR11]

SENATOR GLOOR: Okay. That's...thank you. That... [LR11]

TED KASTNER: And helping them separate things so that they can see that this isn't a backdoor way for, as you were suggesting, me to come in and say, well, this is someone who should live in the community; this is someone who should stay at the facility. We wanted to be able to go to everyone and say, this is what we believe are the clinical needs of these individuals, and start from there. And that would be the basis for whatever program planning would follow but there would be a good foundation for that program planning. [LR11]

SENATOR GLOOR: I apologize. It's just that background (inaudible). [LR11]

SENATOR LATHROP: That's all right. That's all right. In fact, as we proceed to comply with the DOJ agreement, things theoretically should improve at BSDC. [LR11]

TED KASTNER: It's like that boot-strapping thing. [LR11]

SENATOR LATHROP: But that's not the point of what you're doing. [LR11]

TED KASTNER: There's so many...there's like three separate processes kind of all moving forward at the same time and I would agree that things are improving. [LR11]

SENATOR LATHROP: Yeah. [LR11]

SENATOR CAMPBELL: Thank you, Senator. Dr. Kastner, as a part of your process, are you visiting or seeing and reviewing the medically fragile folks that were taken from the facility? [LR11]

TED KASTNER: I will see a certain number of them. Somewhere around 20-25 individuals in the community I will end up having had a chance to look at. [LR11]

SENATOR CAMPBELL: Okay. But have you visited the ones that are still in the hospitals? [LR11]

TED KASTNER: I visited eight at BryanLGH, two at St. Elizabeth's, and two at Utica Community Care, and I have another 12, I believe, to visit in the next three days. [LR11]

SENATOR CAMPBELL: Okay. Thank you. [LR11]

SENATOR LATHROP: That was a question I was going to ask, too, and that is what's the group that you're assessing? Is it...obviously it's beyond BSDC, but is it going to be everyone that's in BSDC currently? [LR11]

TED KASTNER: We have already seen the 191 people that were on our list from

BSDC. [LR11]

SENATOR LATHROP: Okay. And in addition to that you're going to see some of the people that were removed under the...in January, as medically fragile, into the hospitals. [LR11]

TED KASTNER: I think we're seeing the folks who are still in hospital or a nursing home. We're not looking at the folks who are in community residences or community programs. [LR11]

SENATOR LATHROP: Okay. So if we looked at the group of people, it's everybody at BSDC and everybody that was moved at BSDC who is either still in the hospital or in a nursing home. [LR11]

TED KASTNER: That is our intent. [LR11]

SENATOR LATHROP: Okay. [LR11]

TED KASTNER: There may be one or two folks that we missed but I believe that's what we're doing. [LR11]

SENATOR LATHROP: Okay. Ultimately, after you see the patient, review all the records, get the survey back from the family, and review the documents you've described, you'll prepare a report for each one of these patients. [LR11]

TED KASTNER: Yes. We are preparing what we call a client profile. We are doing that in a draft form. When we met with the families at the facility, they were, as you can imagine, quite concerned. And we said to them, we wanted to offer them an opportunity to participate and to have as much control as possible. And they said, well, then send us the document so we can look at it, and we agreed. So we are now sending the draft

profiles to the families for their review and comments, and they're sending them back, sometimes with comments, sometimes not. And then we have...we'll finalize the report, send it back to the family and to the facility, and they can all start from the same base, basically. [LR11]

SENATOR LATHROP: I appreciate the involvement of the family. Do you know when you expect to be done with this process? [LR11]

TED KASTNER: My guess is mid-July. [LR11]

SENATOR LATHROP: Okay. And I just have a couple more questions and then I'll see if anybody else wants to jump in. The scope of your assessment does not include an evaluation or a judgment about whether any of these people that are still in the hospitals ever were or continue to be medically fragile. Is that true? [LR11]

TED KASTNER: Correct. [LR11]

SENATOR LATHROP: You told us that your work is done to discharge one of the components of the DOJ agreement and that you were hired in January '09. [LR11]

TED KASTNER: Correct. [LR11]

SENATOR LATHROP: The DOJ agreement was inked or penned in July '08. My question is, were you ever contacted to do those assessments sooner or before January '09? [LR11]

TED KASTNER: No, I don't believe we were. [LR11]

SENATOR LATHROP: Do you know if anybody was ever contacted to do those assessments or why they weren't done before? In other words, why we let the time

between July and January go by without... [LR11]

TED KASTNER: I don't know. I have no idea. [LR11]

SENATOR LATHROP: Okay. Anybody else have questions? Senator Campbell. [LR11]

SENATOR CAMPBELL: Thank you, Senator. Dr. Kastner, one of the questions that we all continue to wrestle with, I think, in listening to the parents, is the issue of--and here I'm dealing with the medically fragile again--but they've been placed in a hospital and they may be awaiting a facility that does not yet exist, and so the concern is whether they should stay there or go to an interim facility. Are you dealing at all with the question of the suitability of an interim nursing home before they go to a final decision? [LR11]

TED KASTNER: No. We are really just looking at their clinical needs. [LR11]

SENATOR CAMPBELL: Okay. [LR11]

TED KASTNER: It's...I've had this conversation in New Jersey for 25 years. There are a lot of times when families will come to me and they'll say, you know, should my child live here or there? And I found very early that when I took a position on that type of a question, I was no longer able to participate as fully with all of the people that I needed to work with. If I said, I think your child should live in this group home or this ICF, then I had an adversarial relationship with someone, and I might be the ally of the parent but there was an adversary. So at the very beginning I learned not to, you know, fall into that trap and to focus on clinical programming which is what I've done for the last 25 years, and I think it's been useful because it allows me to work with everyone. And if I focus on the clinical program I know that I'm doing the right thing and allowing the families ultimately to decide what is the best location for those services to be provided. [LR11]

SENATOR CAMPBELL: In the information that you're reviewing, the clinical records particularly, are they thorough enough for you to do your work? [LR11]

TED KASTNER: Because we have so many data sources, I think we're able to collect information that is adequate, but I wouldn't say that any one single piece of data is adequate, you know, and specifically the BSDC materials. Sometimes we need to go a little bit further than what's in those materials to really get a good understanding of the clients. And I think again we've benefitted from the input from families being able to share with us information about their loved ones. So from all of the data sources I think we get an adequate amount of information but I don't think any single data source would be sufficient. [LR11]

SENATOR CAMPBELL: Thank you. [LR11]

SENATOR LATHROP: Senator Gloor. [LR11]

SENATOR GLOOR: Thank you, Senator Lathrop. My background is acute care, long-term care. Is the charting that we're talking about or the documentation we're talking about here a traditional charting that I would be familiar with, or is it different? When you talk about data sources, what runs through my mind would be a traditional patient chart. [LR11]

TED KASTNER: To the extent that BSDC and ICFs have a traditional chart, that's what we're looking at. We're looking at all of the individual discipline records and the treatment team records. So, you know, we're not just looking at the program plan which is the annual summary of the individual disciplinary evaluations but we're going back and looking at the disciplinary evaluations and other material that might be in a client's file. [LR11]

SENATOR GLOOR: And who can make official documentation? I mean, there are limits

as to who can really touch a chart, if I can put it that way. Who can make documentation when it comes to a patient or a client at BSDC? Can a therapy aide? [LR11]

TED KASTNER: Oh, I believe absolutely they can. There are means for direct care staff to enter material into a patient's clinical record... [LR11]

SENATOR GLOOR: Just about anybody that comes in contact. [LR11]

TED KASTNER: Right. [LR11]

SENATOR GLOOR: Okay. [LR11]

TED KASTNER: We're not looking at direct care staff documentation. Again, one of the data sources is for me to meet with the direct care staff and for the direct care staff to complete a couple of instruments. So we're getting input from the clinical professionals and from the direct care staff at BSDC. [LR11]

SENATOR GLOOR: Sounds to me to be a lot more efficient use of your time than pouring through reams and reams and reams of documentation (inaudible). [LR11]

TED KASTNER: We still have to pour through reams and reams, and we have actually 23 people who we've broken up into teams and 23 of my staff assisting in this process, so we've kind of tried to spread it out and make it as efficient as possible. [LR11]

SENATOR GLOOR: You have been at this long enough, do you have any ah-ha's that are worth sharing with us? Things that just have jumped out at you so far. And I understand you've got a report that you'll ultimately issue, but. [LR11]

TED KASTNER: I think one of the good things or the outcomes of this will be that there will be a clear statement of a client's needs and their concerns. And I don't know that

currently exists in the BSDC records. We're working with the management at the facility to give them the material that we generate and to incorporate that into their charts. I think they're undergoing a chart redesign at this point. So at the very beginning of that process they'll have what we believe to be a comprehensive listing of the client's health conditions, habilitative needs, and they can use that as a foundation for building what they're going to do, going forward. So I wouldn't call it an ah-ha, but there are ways to take what we're doing and add value to the other activities of the facility by giving it to senior management and hoping they can use that to build their new documentation system. You know, it's...you know, some of these clients have been there for quite a long time and, you know, parts of the record are over here and over there and things have been forgotten about. I actually talked to a mother yesterday. After reviewing her daughter's records, I think I know what caused her disability. I think it's a rare condition called Rett syndrome. And that was really fun because the mother really didn't have a good idea of what caused her daughter's disability, and to get some insight as to what the etiology might be, I think is very important for families because it relieves guilt and concern that they might have had an opportunity to do something and they missed it. And Rett syndrome is a really horrible illness so I think it was a very interesting discussion. I really enjoyed that. [LR11]

SENATOR GLOOR: Thank you. [LR11]

TED KASTNER: Okay. [LR11]

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

SENATOR STUTHMAN: Thank you, Senator Lathrop. Doctor, in your assessment of the clinical needs of these clients, this is what you're going to assess as far as what you feel are the needs of those individuals. Do you take into any consideration of what programs or what services are available for them right now or what they are receiving, or are you just, these are the needs of the individuals and they may be receiving all of

that type of stuff already. Is there a possibility of that, that when you put that forward and say this client needs this type of a service, and they may be getting it already? Do you find that in your past history, that a lot of them are receiving the services that are needed for that type of situation? [LR11]

TED KASTNER: I believe there are some clients that are receiving all the services that they need. I also believe that there are some clients that are not receiving all of the services that they should. And when we've identified that, we can incorporate that into the report and the family can work with either the facility or whatever provider they happen to work with to have that need met. So we have seen clients whose records indicate that there is a need for a service or treatment and we think they could be getting a little bit better care. So we're doing that on an individual basis, bringing that to the attention of the facility, and we hope that at the conclusion of the project to be able to aggregate that type of recommendation to be able to look at the entire population of residents that are still at the facility when we finish. [LR11]

SENATOR STUTHMAN: But there is a good possibility that some of the clients are receiving all of the needed services at the present time, and you're just going to document that. [LR11]

TED KASTNER: Yes. [LR11]

SENATOR STUTHMAN: Okay. Thank you. [LR11]

SENATOR LATHROP: We don't often get some guy from out of town, an expert in here, and I'm going to ask this question and first acknowledge that it's probably beyond the scope of what you're here for but I'm going to pick your brain if I can. We have talked about what BSDC might look like five years from now or even two years from now. And most of the focus has been on the high-behavior folks but we have some people who we wouldn't classify as high behaviors that are still part of the population at BSDC but

might have been there for 31 years or might have been there since they were five years old and it's the only place they know. Can you tell us, if you will, the challenges or if we ask somebody who's been there 31 years--they may not have heavy behaviors; they might even be mild or moderately developmentally disabled--but that's been home for 31 years, can we just pluck them out of there? Or what's the consequence of pulling somebody out of there because they fit or they're only mildly or moderately developmentally disabled without behaviors but it's home for the last 30 years or the only place they know. [LR11]

TED KASTNER: Well, as I said, I learned a long time ago that my focus as a clinician should be on clinical needs and not residential services, and the decision about where people receive treatment is best made by the families and guardians, and in this case the state discussing what would be the most appropriate location for the services to be provided. I really feel strongly about that and I don't feel that I'm really qualified to offer an opinion about any specific individual and where they should be treated. [LR11]

SENATOR LATHROP: Right, right. But there are...it is problematic if you have the parents or the guardians saying this is the only place Tommy has known; he's been here since he was 12 and he's, you know, 45 years old. It's problematic for...just to pluck him out of there because of their need for consistency, the fact that this is the only place they call home. And I do think, my own experience--and forgive me for going on about this--but it's probably one of the biggest challenges we have. It's easy to identify the people that probably aren't going to do well in the community, and then we have some people that might have done well in the community if they started there, but they've been here for 30-40 years. [LR11]

TED KASTNER: It's a challenge, I completely agree with you, and it's not going to be easy. But I hope that... [LR11]

SENATOR LATHROP: You would leave that to the parents and the guardians. [LR11]

TED KASTNER: I think they're the most qualified to make that decision. I'm... [LR11]

SENATOR LATHROP: Okay. That's helpful. I don't know if that's generated any other questions> I know we have to be up on the floor in a few minutes. [LR11]

SENATOR WALLMAN: Thank you, Senator Lathrop. [LR11]

SENATOR LATHROP: Senator Wallman. [LR11]

SENATOR WALLMAN: Yes, Doctor--and I'm sorry I'm late. In regards to this, like Senator--like to expound on Senator Lathrop's question--in a private ICF/MRs, I know like Mosaic, I know one person has been in there since he's 16, so he's 67 or 68 now. And how do the privates deal with this, do you know? Private ICF/MRs. [LR11]

TED KASTNER: How they deal with what, I'm sorry. What... [LR11]

SENATOR WALLMAN: In assessing clients, whether they stay there or move or...? You know, don't they have the same guidelines basically as we as the state? [LR11]

TED KASTNER: I couldn't tell you. They're both ICFs. I mean, to me that's the issue. They provide a certain level of care that is different from the waiver or different from generic community services. I don't know how Nebraska manages the access to the private ICF/MRs in the state, but because these are all Medicaid services and Medicaid is basically run by the states, you probably see a lot of variation from state to state. You know, Medicaid is really 50 state-by-state experiments and they're all different in some respect. Different states run different ways based on their history and resources and culture, and the solution to who resides at BSDC and who goes to Mosaic and who goes to the waiver is going to be a Nebraska solution. It's not going to be a solution that's derived from something outside of Nebraska. It's something you guys are going to

have to wrestle with and decide on. [LR11]

SENATOR WALLMAN: But we still have a standard guideline from CMS, don't we, what we have to go by, basically, to get Medicaid funding to be certified? [LR11]

TED KASTNER: To be certified to operate an ICF/MR. Correct. [LR11]

SENATOR WALLMAN: Okay. Thank you, Doctor. [LR11]

SENATOR LATHROP: Anyone else? I don't see any. We have to be upstairs on the floor in five minutes, so. We appreciate you coming down. It's been very helpful. It's good to put a face with a name and we appreciate what you're doing for these folks with your assessments. [LR11]

TED KASTNER: It was a pleasure meeting you. Thank you very much. [LR11]

SENATOR LATHROP: Thank you. [LR11]