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Developmental Disabilities Special Investigative Committee
May 19, 2009

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The Developmental Disabilities Special Investigative Committee met on Tuesday, May 19, 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; John Harms, Vice Chairperson; Greg Adams; Abbie Cornett; Tim Gay; and Arnie Stuthman. Senators absent: Norm Wallman. Additional senators present: Colby Coash. []

SENATOR LATHROP: Okay, I think we're ready to start. I think everybody knows everyone here so we'll...Senator Coash, you're welcome to sit up here with us if you like. Our de facto member, Senator Coash, has also joined us. For those of you that don't know Senator Coash, he has considerable experience in the area of treating and helping folks with developmental disabilities, so he's a welcome addition anytime he shows up. And with that, we have Director Wyvill with us today and it's...I've told everyone on the board or the committee that it's sort of open mike day and we're going to let people ask questions as they need to. We don't have anything structured, John, but there might be some questions after the last two hearings. So with that, if any of you have questions, otherwise...well, we're not going to let you go, so. (Laugh) []

SENATOR STUTHMAN: Can we have questions first? []

SENATOR LATHROP: Yes, certainly. Yes, Senator Stuthman. []

SENATOR STUTHMAN: Thank you, Senator Lathrop. Director Wyvill, in your opinion is the progress moving in the right direction with BSDC or are we still slipping, spinning, and sliding, and are we accomplishing anything down there in the respect of trying to accomplish the goal of getting recertification in that direction? []

JOHN WYVILL: Yes. []

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SENATOR STUTHMAN: Boy, that was a short answer for a long question. But you feel that we are making progress? []

JOHN WYVILL: With Claire's leadership, yes. []

SENATOR STUTHMAN: With the leadership role. So in your opinion, then, if it continues on we should be able to make some accomplishment in trying to get the recertification? []

JOHN WYVILL: We have to continue on our path of improvements, Senator; yes. []

SENATOR STUTHMAN: And that is what you're doing right now. []

JOHN WYVILL: Yes. []

SENATOR STUTHMAN: Okay. Thank you. []

SENATOR LATHROP: Senator Cornett. []

SENATOR CORNETT: Last week, towards the end of our discussion, I asked Mister, is it Dufresne or Duphrase (phonetic)? []

JOHN WYVILL: Derrick Dufresne. []

SENATOR CORNETT: Dufresne. When he kept saying that we had capacity to address both the people in the hospital and the waiting list, and I finally asked him specifically, right now, in real time...not do we have the ability to reach capacity some day; do we have the capacity right now for the people that are in the hospital, for them to go to community-based services? And I believe Senator Lathrop followed up with a question

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that ten people, I believe, were placed in nursing homes. And is that really considered appropriate placement? []

JOHN WYVILL: Senator, I appreciate the opportunity to answer that question. Let me answer the... []

SENATOR CORNETT: Because I noticed in the paper he said, again after the meeting, that we have capacity. []

JOHN WYVILL: Okay. Let me answer the nursing home question first. If my numbers are correct, the last time I saw I think we have five individuals that are in temporary nursing home placement, and six, I think, are in what's considered permanent placement, and those decisions are made by the guardians for that. Those ones with the temporary placements, we are working with them to find appropriate places, and some of them are scheduled or will be going to the ENCOR unit that has been...is in the process of being constructed. []

SENATOR CORNETT: So back to the first half of my question,... []

JOHN WYVILL: Okay. []

SENATOR CORNETT: ...at this moment do we have capacity to properly place the people are in the hospital and the people that are in temporary placement at nursing homes. []

JOHN WYVILL: Okay. There's a two-part question, Senator, and I don't want to be evasive or seeming like I'm dancing around it. There are two questions...answers. Number one, there is capacity out there in terms of vacancies that providers can put individuals in, but the question is, is to find the appropriate safeguards in there. And that's the ones that we have to build and that requires working with the provider on a

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case-by-case basis and provide those services there. We believe we have the capacity there but we have to make sure we have a match and build that for them. []

SENATOR CORNETT: So basically...and we're running into the same discussion in regards to the meaning of a word. The gentleman that testified last week said we had capacity but what he really meant was we have the ability to achieve capacity. What I'm asking you is, right now, today, could we move those people in the hospital or the five people that are in a nursing home to a community-based program? Do we have the appropriate--I don't want to use the term "bed"--but the appropriate placement available today for those people without having to do any remodeling, refitting? []

JOHN WYVILL: Senator, the trouble I'm having with that is you just can't put somebody somewhere overnight. You have to make sure that they have a transition plan. You have to make sure you have the properly trained staff and you have to make sure that you have the appropriate nursing coverage. And it also has another factor which is guardian consent. []

SENATOR CORNETT: Taking the guardian consent out of the matter, what I'm hearing, right now, and the transition plan-- because I understand the transition plan is a period of time--right now, we do not have placement available that is currently staffed to meet the needs of the people that are currently in the hospital or temporary placement in a nursing home. []

JOHN WYVILL: That's correct. []

SENATOR CORNETT: Thank you. []

SENATOR LATHROP: I do have something that I'd like to explore with you and it really comes as a consequence of a conversation I had with Senator Coash, and so I hope he has a chance to jump in on this too. What's the current census at BSDC, John? []

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JOHN WYVILL: 184. []

SENATOR LATHROP: 184. And in general numbers, how long has it been at 184 or roughly at 184? []

JOHN WYVILL: I believe last week it went down to 184. []

SENATOR LATHROP: From? []

JOHN WYVILL: 185. []

SENATOR LATHROP: Okay. So it's been...has it been in that 180, mid-180's for a time? []

JOHN WYVILL: At least about a month. []

SENATOR LATHROP: Okay. And I assume that if you could get guardian consent you would have moved any one of those 185 people who could be safely moved, to a community setting, is that right? []

JOHN WYVILL: When we have guardian consent, yes. []

SENATOR LATHROP: So what we have are, in round numbers, about 185 people that want to stay there. []

JOHN WYVILL: There's approximately 20 or 30 that have guardian consent to consider placement elsewhere. []

SENATOR LATHROP: Twenty or 30? []

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JOHN WYVILL: Yes. []

SENATOR LATHROP: And they've said essentially that if you find the right place, we'll take a strong look at it. []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: It's kind of a noncommittal but at least they're open to the idea. []

JOHN WYVILL: Well, we have some individuals that have expressed a desire for the Mosaic opportunity. We have some that we're working with the providers in the area to try and see if we can find an appropriate match. So there's several different areas (inaudible). []

SENATOR LATHROP: Here's the question and it's kind of a math question involving costs at BSDC. If you have 185 people there, because of the fixed costs are going to be spread over 185 people, the cost per person is less now than it will be when you get down to 183. Right? In other words, the more people you move out the greater the cost per person is to run BSDC, am I right? []

JOHN WYVILL: Yes, not counting the additional funding. []

SENATOR LATHROP: The additional funding being the money that's going with the person that leaves. []

JOHN WYVILL: That's going with the budget that's being appropriated the facility. The additional money. []

SENATOR LATHROP: Which additional money, John? []

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JOHN WYVILL: The additional money, the \$32 million. []

SENATOR LATHROP: The \$32 million? Okay. I guess this is what I'm driving at and maybe I'll just kind of express myself and then give you a chance to comment on it. If the goal is to get down to 100, as we achieve that goal, assuming that we can do it because we have a significant amount of guardian opposition as I understand, but if we could get to 100 our cost per person is going to be significantly higher. And I'm wondering if we aren't, by essentially looking for a way to move people out of there who are right now content to be there, if we aren't increasing our cost per patient at BSDC, and in addition to that, paying for that person to be somewhere else? In other words, are we money ahead just purely from a financial point of view? Are we money ahead or are we spending more money moving these people to a different setting that they don't necessarily want to go to and still keeping BSDC in business? Has anybody done the math on that? []

JOHN WYVILL: I think right now we have an overlap, Senator, because we have...right now we have to support and maintain the facility as well as move individuals out. And the appropriations request that was approved, we put additional money in community-based services for the two years to cover the folks moving in as well as factor in those that may choose to go into the ICF/MRs in the Medicaid budget. I think for one year there's going to be an overlap and then in the second year of the BSDC biennium you're looking at a reduction in their overall budget. []

SENATOR LATHROP: So by having those people move, even paying the fixed costs of running BSDC for a smaller number of people and paying for those people that actually move out of BSDC, assuming you can get them to, you'll pay less money in the second year after they've moved than you will under the current system. []

JOHN WYVILL: Less money at BSDC (inaudible) there will be cost in the

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community-based services. []

SENATOR LATHROP: Okay. Every time...there's a certain fixed cost with running the plant down at Beatrice, am I right,... []

JOHN WYVILL: That's correct. []

SENATOR LATHROP: ...whatever that number is. Every time somebody leaves, the fixed costs don't go down; just the variable costs, right? Things like the personnel to care for that individual. []

JOHN WYVILL: Some of the fixed costs can go down because then there's not as many buildings to have and the electricity bills, the gas bills, and some of those fixed costs. []

SENATOR LATHROP: They go down marginally until at least we close one of the cottages, right? []

JOHN WYVILL: Close one of the cottages or close one of the bigger buildings. As you saw, those big dormitory-style buildings which would have significant cost savings. []

SENATOR LATHROP: I'm just wondering if our costs go down--maybe this is a different way to put it and anybody on Appropriations that can talk about money better than me is welcome to jump in--but the costs go down every time somebody leaves. But does it go up in the community setting that they're going into by more than we're saving having them leave? []

JOHN WYVILL: It depends on the individual and then the support and services that they have on a case-by-case basis, Senator. What I was trying to articulate is that you're going to have for awhile, as the population goes down, it's almost dual track in spending, and which is what I believe what you are trying to... []

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SENATOR LATHROP: It's kind of what I'm driving at. []

JOHN WYVILL: Yeah, and we will have that for at least one year. []

SENATOR LATHROP: But ultimately if BSDC remains open as the Governor has pledged, then we will have a great deal of those fixed costs. At some point we can't close some of those buildings. They'll have to be open no matter what the population is, and we get down to whatever those fixed costs are. And by the time we move some people into the community, we're now paying for some of the people in the community that used to be at BSDC. And have we done the math and said, we're saving money on this or we're not? []

JOHN WYVILL: We have...what? []

SENATOR LATHROP: He's just got a question when I'm done. []

JOHN WYVILL: Okay. We have presented to the committee previously what it costs and an average cost for an individual being served at BSDC as those being placed out in the community. And we have seen, historically, those costs in the community are cheaper than at the facility. []

SENATOR LATHROP: I grant you that, that once that person leaves, the cost per patient for that one patient is going to be less in the community, but is the savings equal to what we're going to see the costs go down at BSDC? Does that make sense? []

JOHN WYVILL: It make sense but I'm not sure how to answer your question right now. I'd have to think about that. []

SENATOR LATHROP: Okay. And maybe you can and you can get back to me on it,

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John, because I look at it and I see the people...I mean, at one point we said, well, we may have to have a lawsuit, and then we got away from that quickly and I was glad to see that. Then last week I think we said something about, but if they don't leave we may have to have the Department of Health and Human Services...the U.S. Department of Justice may have to get involved with the people that don't consent to leave. And I'm wondering, if these people want to stay there, just as a strategy...we have the behavioral people and we have people that aren't behavioral but want to stay because maybe they've lived there 30 years. If that's the group of people we're down to, are we saving money by making these people leave when they want to stay? []

JOHN WYVILL: I think the focus is properly serving individuals regardless of the cost, not as a cost-saving mechanism. []

SENATOR LATHROP: Well, then, if that's the standard--and I appreciate that, believe me. I appreciate that if the measure is properly serving them and they say they want to stay, why are we talking about getting the U.S. Department of Justice involved and getting these people to move? []

JOHN WYVILL: That's a reference to the Governor's April 10 letter sent to Kathy Campbell that we shared with the committee earlier in a previous meeting, and I'd direct your attention to that. If you... []

SENATOR LATHROP: What's in that? A strategy? []

JOHN WYVILL: That outlined the administration's position on dealing with individuals that are having challenges with a hospital placement. []

SENATOR CORNETT: Suing them. []

JOHN WYVILL: I can provide you with another copy of Senator Campbell's letter that

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we shared. []

SENATOR LATHROP: Okay. Well, maybe the next time we get together you can be prepared to tell us if we are...if the savings...I just...it seems to me if these people want to stay there and we have the plant and we have the place to live, are we saving money by essentially having them move, most of them in one way or another not what they wanted to do in the first place. []

JOHN WYVILL: Well, Senator, I appreciate the question and I can certainly think about it and get back with you. I think we have an obligation under the United States Supreme Court case, under Olmstead , to provide the most integrated setting. []

SENATOR LATHROP: We went through that back on June 23 of last summer when Bruce Mason and Jodi Fenner gave us a great discussion on that, and both of them, I think, agreed that Olmstead says we have to make that available to them but they don't have to take advantage of it, which means we can't force them, because of Olmstead, out of BSDC. Right? []

JOHN WYVILL: Um-hum. []

SENATOR LATHROP: So they don't have to take advantage of an accommodation. So I appreciate that that's the measure and I understand Olmstead and the ADA in that regard. I'm just wondering, we seem to be pursuing a course where we're trying to get people to leave there, and I'm wondering if anybody has done the math. For a bunch of people that want to stay, are we going to save money when we finally get them to leave by whatever means--litigation, the Department of Justice, or any other course that might be taken--that's my question. And if you need time to think about it and you want to get back to me, I'd appreciate that. []

JOHN WYVILL: Sure. []

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SENATOR LATHROP: Senator Gay. []

SENATOR GAY: Yeah, sorry for being late, we were at another meeting, but just catching the tail end of your question, and so you're asking a static...you're saying the static population and what's break even, where's the equilibrium to say it's cost-effective to do this. But on the other hand, if we're in flux now you hear a hundred today of...that's the number. I don't know what the number is but I don't know if we have that direct number of how many residents are going to be there. Where you go after that is what's best for the residents for their life, the numbers will work out some other way. But to get that place back on track and get it going, I hate to hear what's the cost, what's the cost, what's the cost. I think there's opportunities in community-based programs, but I don't know, is a hundred the new number, or where are we at? Because I think we're getting off the wrong hand if we say here's our number, It's an influx situation. You've got a lot of work down there and I think what we're saying is, where's this going to go at what point. But I hate when we start throwing numbers around and I hope we're looking at that. []

SENATOR LATHROP: No. Well, the only number I'm using one is the Governor had which was he wanted to get the population down to 90-120, am I right, John? Wasn't that his goal? []

JOHN WYVILL: That is our goal. []

SENATOR LATHROP: That's where the numbers came from. I didn't make them up. And my point... []

SENATOR GAY: Yeah. No, no. But even 30 residents, depending on their needs, could be a big change in the financial picture. But what I'm saying, are we to that point...my question was going to be are we at the point yet that you could put those numbers

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together, or can you different scenarios: 90, 100, 110, whatever, some guidelines. But I don't know...or have you got to the point where you can make a decision and say here's the population we're going to serve and these are the people staying, these are the ones we think we might be able to say, hey, there's a better opportunity for you down the road? Are you that far down the road or where are you at? []

JOHN WYVILL: No, Senator, we are doing the independent objective assessments and then, you know, with the numbers I think what I'm hearing is a broad overall policy discussion about the future of developmental disability services in the state of Nebraska because what I'm hearing is a rhetorical question is, what drives our policy? Is our policy for serving the individuals based on purely a financial or in the best interest of the individuals? And I'm not trying to suggest financial is inappropriate. I'm just saying, is that the discussion? []

SENATOR GAY: Well, it's the same thing again and again. We have these meetings and I don't see any...where we're going, I mean, and it's the same questions you ask of where's that point. I'm just kind of wondering where we're at in the whole review. And I know I missed a couple meetings. I'm not going to...but, you know, at some point we need to just make up our mind and say, here's what we're doing and tell us all here's what we're going to do. And I haven't seen that yet and, you know, I don't know if the number is 100 or 110, whatever, but at one point we should know exactly what that is. I don't know if that's August or September... []

SENATOR LATHROP: Maybe we have to wait for the assessment before they can... []

SENATOR GAY: Well, those assessments are...when's the deadline for that? []

JOHN WYVILL: Ted Kastner has committed that to I believe by July 1, however the caveat I point out to that is that when he came before you we've added an additional component of including the families in the assessments, which potentially may delay

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some of that, getting the feedback on that, so I just want to let you... []

SENATOR GAY: Yeah, I've never seen so many moving targets, though, when an assessment is going to be done, when it isn't. It gets frustrating sitting here listening to all this stuff, and I don't mean that in a...it just does. I think...you know, you hire people to do a job. Let's get it done and get some answers to these questions. []

SENATOR LATHROP: I couldn't agree more. Senator Coash, did you have a question?
[]

SENATOR COASH: Well, I was kind of going back to what Senator...you were kind of first, I'm sorry. []

SENATOR CORNETT: Oh, no, no. Go ahead., []

SENATOR COASH: Okay. I was kind of going back to what Senator Cornett was asking about capacity, and I don't think it's any secret to you or the committee. I work in the community-based side of things and this is my perspective and I just want to get it and see if you have a different one. And if I could answer a little bit some of your question, I believe there is capacity out in the community-based side, but that doesn't mean it's used to capacity and there's a...John's talked about the guardian resistance and that's definitely a part of that unused capacity. But I have the ear of the community-based providers who are saying, yeah, I do have some room; I could serve some people but I'm unwilling to do so at this point. I guess I have my thoughts as to why that is. What are you hearing, John, for the committee to hear? On the community-based side what are the barriers to using the capacity that I believe is out there? []

JOHN WYVILL: Senator Coash, yes, that's a very good question and there's several different things that I have picked up from the providers that contribute to them. One of the challenges is a sustained, qualified work force to serve the individuals in service. So

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any time you have a provider expanding capacity you also come with it a commitment that they're going to sustain that, and then we've heard from previous testimony in front of this committee that has been the challenge. The second area of challenge is a potential startup costs for certain providers to have accessible, up-to-code buildings in this environment. That we have that is a potential challenge. The third...one of the third areas of a challenge is the challenge of, in the environment that we're in now with the heightened scrutiny of community-based services, some providers are not willing to make those expansions because they're not willing to take those risks under the scrutiny with some of our individuals that fall under the jurisdiction of the Department of Justice. And we cannot make a provider take an individual. So those are just the tip of the iceberg on some of the challenges and some of the capacity. Some of the challenges for the providers, too, is in what are they going to provide services in terms of an extended family home, a group home, or what the setting is. And then they're going to have to deal with commitments of zoning and other challenges, and also the challenge of individuals, quite frankly, to "not in my backyard." They're all in favor of serving individuals with developmental disabilities but... []

SENATOR COASH: If I could just respond. I think John is right. Those are all barriers and he's right that the department at this time cannot make a provider serve somebody. And the work force is an issue. Startup costs are an issue. The one thing I would want the committee to know, there's also currently, I believe, a disconnect between needs of the people and the services which really drives everything, is the person's need, and how the department currently allocates the resources to meet that person's needs. And providers are going to have told me--and I am a provider--that they feel like they're going to be hung out to dry by serving some very difficult individuals that need services. And there's a couple of things I see coming down that I'm hopeful for. The relationship between the department and the providers is...I think communication is starting to open a little bit better and I'm optimistic about that. Also the study of the rate methodology that is part of the appropriation I think is going to be an important part of that. To try to get the needs of the people and services more aligned with the allocation of the

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resources the department has. You know, it's going to play pretty big, I believe also, in the serving of folks who are currently on the waiting list, so I'll leave it at that. []

SENATOR LATHROP: Senator Cornett. []

SENATOR CORNETT: Possibly we are having a difference in understanding of what the word "capacity" means. To me, capacity means the number of people that you could place in a community-provider setting. What I'm hearing from you and Mr. Wyvill is capacity needs the future potential to be able to place someone; not the actual ability to place someone at this moment. It is increasing the work force, getting zoning permits, building...and a willingness. Is there another word or term other than capacity that we can use to differentiate between what our potential is and what our reality is, because there seems to be a difference in the two. []

JOHN WYVILL: I would have to think about that. []

SENATOR LATHROP: Senator Stuthman. []

SENATOR STUTHMAN: Thank you, Senator Lathrop. I wanted to expand a little bit on what Senator Lathrop was talking about as far as the number at BSDC and at what point, at what level should we get down to, you know. I think it was just a shot on the board, you know, the 90-100, and I will agree with that part of it. But I think there needs to be some type of business plan as to the amount of staffing that we've got there and, you know, the cost of the individuals. At what level are we going to get down to where it's going to be the same cost at BSDC and we eliminate individuals and put them into another environment atmosphere and create an additional expense, so there will be actually a dual expense in my opinion. I think that, you know,...and I have no idea what number would be the workable number to get down to it at BSDC if we want to keep that open. And I truly do agree that we should keep it open. But it maybe be 100. It may be 150. It may be 180 where that would be the working number with the staff

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expenditures is a workable situation, where if we eliminate another 40 or 30 people, put them in community-based. Create another expense and not have a savings at BSDC. That's the...those are the...or that is the business plan that I would like to get some information onto, and I think the Governor would appreciate that, too, as to what level, if we want to keep it open, would be a working environment. Because, you know, the people aren't cutting the locks to get out of there and getting into community-based. We almost have to physically move them out of there to the community-based. You know, in the future I think community-based services will be the key issue, but since these individuals had been there, you know, for many, many years and some of them almost for a lifetime, that's home to them. And I would like to see a business plan where it would designate 140 is the number, 100 is the number, where current expenses and current utilization of staff is a workable situation, and if we could get that I would be... []

SENATOR LATHROP: Do you think you can provide that to us, John? []

JOHN WYVILL: Okay. []

SENATOR LATHROP: Okay. []

SENATOR GAY: Thank you. I've got a question. []

SENATOR LATHROP: Sure. []

SENATOR GAY: If what Senator Stuthman is saying, coming up with that number, you've got to say here's exactly the services we provide at BSDC. A business does something. Here's what we focus on; here's what we're good at and here's what we provide. I don't know if we've gotten to that point yet where we can say that's what we provide and the need is 180. It might be 280 people for all we know that need these services that we can provide well, and they're high needs. And if not, you're in a community-based setting. But until we define what we are and what it is, the numbers

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you can throw around. We need to get down and define what BSDC is and what services we provide, and I have not heard that unless...and like I say, unless I've missed it. []

SENATOR LATHROP: No, I agree. I agree that there has been a... []

SENATOR GAY: So we keep going over this. We need to decide that. []

SENATOR LATHROP: Well, frankly, I think it's a lot of frustration because we don't have a lot of information and that really is going to lead me to the next question I had which is, do you talk to John McGee? []

JOHN WYVILL: Yes, I do. []

SENATOR LATHROP: How frequently do you talk to John McGee? []

JOHN WYVILL: Um, now at least once a month. []

SENATOR LATHROP: Do you talk to him more frequently than once a month? []

JOHN WYVILL: If he's on campus or things like that, but we set up a weekly...a monthly conference call or meeting with him to discuss what's going on and what we're doing from my perspective... []

SENATOR LATHROP: Have you talked...do you talk to him other than at those monthly conferences? []

JOHN WYVILL: It just depends. It might be an e-mail. I can't tell you precisely what's that because he interacts with a variety of different people with our staff. []

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SENATOR LATHROP: Do you have any conversations with John McGee other than at the monthly staffing or meetings? []

JOHN WYVILL: Yes. []

SENATOR LATHROP: Have you had any conversations with him about authoring a report that he promised me back on April 1? []

JOHN WYVILL: Yes, I have. []

SENATOR LATHROP: What have you guys talked about? Do you know why we don't have a report today that tells us where we are at relative to the DOJ agreement? []

JOHN WYVILL: I think you have to ask John McGee that. He does not... []

SENATOR LATHROP: I know. I'm going to ask John McGee that. My question though, John, is whether or not you guys have had any conversations about that. []

JOHN WYVILL: I have asked for it. []

SENATOR LATHROP: Have you had any other conversations besides asking for a report from John McGee? []

JOHN WYVILL: I have had the monthly meetings with him and... []

SENATOR LATHROP: Have you talked about his report or why we don't have a report? We are nine months since the DOJ agreement was entered into. He was to provide quarterly reports to the state of Nebraska and to the Department of Justice. The first one he skipped; the second one that came up told us very little about where we were relative to the terms of the DOJ agreement; and his third report is overdue. Has he told

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you why he hasn't written a report and provided it to the state? []

JOHN WYVILL: He has offered...I believe some of the members of the team may have had health issues that may have contributed to the delay is my understanding. []

SENATOR LATHROP: He told me somebody had a flu and that the report would be two weeks later than we expected. That was a long time ago. Do you know of any other health concerns that may have delayed this report? []

JOHN WYVILL: Not that I am... []

SENATOR LATHROP: Has he told you why he hasn't written it to this point in time? Well, you haven't seen it, right? I should ask he's not written the report that we just haven't found out about. []

JOHN WYVILL: We have not got a draft yet. []

SENATOR LATHROP: Pardon me? []

JOHN WYVILL: We haven't even got a draft yet. []

SENATOR LATHROP: Okay. And has he explained to you why he has not written the report that is now well overdue? []

JOHN WYVILL: No. []

SENATOR LATHROP: You have no idea. He's never told you. Anyone else? Senator Cornett. []

SENATOR CORNETT: Have you asked for that report? []

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JOHN WYVILL: Yes, I have. []

SENATOR CORNETT: So you specifically asked for that report, and what does he say when you ask for it? []

JOHN WYVILL: The last time I e-mailed him I did not...I don't recall I got a response. []

SENATOR CORNETT: How long ago was that? []

JOHN WYVILL: I'm not sure. Either in April or early May. I'm not sure. []

SENATOR CORNETT: Who does John McGee work for? []

JOHN WYVILL: He is appointed by the United States District Court judge. He does not work for me. He does not work for the United States Department of Justice. []

SENATOR CORNETT: No, but he...he is appointed by them, correct? []

JOHN WYVILL: Hum? []

SENATOR CORNETT: And he's appointed by them to work with the state of Nebraska on this issue? []

JOHN WYVILL: Work with the state of Nebraska and work with the United States Department of Justice. []

SENATOR CORNETT: What steps have you taken since he did not bother to respond? []

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JOHN WYVILL: I've asked him for the report, Senator. []

SENATOR CORNETT: You haven't went above him? []

JOHN WYVILL: There is nobody above him. []

SENATOR CORNETT: The people that appointed him? []

JOHN WYVILL: I have not done that. []

SENATOR LATHROP: We're still paying him though. []

JOHN WYVILL: Um-hum. []

SENATOR LATHROP: That's a yes? []

JOHN WYVILL: Yes. []

SENATOR LATHROP: Senator Harms. []

SENATOR HARMS: John, we put \$15 million into the budget for the waiting list and I'm concerned and I pushed hard to get some money placed into that budget and at the same time had some concerns about whether or not we would have enough room to handle that, and I (inaudible) you were part of that discussion early. With \$15 million, you know, guessing the first year we thought could be about between 200 or 250 people. It depends upon what kind of services they would need. That would carry over to the second year and then we put another \$5 million on top of that which made that a total of \$10 million the second year which would double the capacity or double the number of people going into it. Are we going to be able to handle these folks? I guess that's what I worry about. []

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SENATOR COASH: At BSDC? []

SENATOR HARMS: Yes. []

SENATOR COASH: I'll give you my impression, Senator Harms. Beatrice is a small community and the work force within that community that's going to go and do the work--and I want to point out that the work at BSDC is tough and so not every...and we hear all the time not everybody is cut out. The folks that Nebraska serves at BSDC are not in the community typically for a reason and it has to do with the difficulty of serving them. With all that said, everybody in Beatrice--and I'm painting a broad stroke here--they've already worked there or they are working there, so I have big concerns about whether...many of the problems that the Department of Justice and CMS found had to do with the lack of the work force; not the lack of people trying their best or trying to do the right thing. But Beatrice is small and everybody has worked there or they're there and they're not going back. []

SENATOR HARMS: But the waiting list was not just all some (inaudible). []

SENATOR LATHROP: His question was related to the waiting list... []

SENATOR COASH: To the waiting list? []

SENATOR HARMS: Yeah, the waiting list is really what I'm at. []

SENATOR COASH: Okay, sorry. With the waiting list I have...I'm optimistic about it and I've explained this to a few people. Right now, in the community-based programs, it's pretty full of high-need individuals and that's because the only people who have been served from the waiting list over the past ten years have been people with pretty high needs. And so providers are pretty top-heavy in that way. Folks who will be served off of

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the waiting list will start to relieve some of that pressure are not the most difficult to serve. The difficult folks to serve are already at BSDC or have found places in the community because we didn't have a choice. So I am optimistic about that. As far as the work force goes, I think providers can find the work force but I'll go back to the relationship with the department has got to improve and providers have to feel like they're not going to be hung out to dry for serving some really difficult folks. And we've got to find a better way to align the need of the people we serve with the reimbursement the providers get, because it's way out of whack now and it's got to get balanced. []

SENATOR HARMS: I guess (inaudible) listening to you and with that discussion it really means we don't have a system. []

SENATOR COASH: No. []

SENATOR HARMS: I mean it really does. That's what you really have said and we really don't have a structure or a system that we are able to (inaudible) work on this. I mean that's my biggest fear and I've also said that from the day we got into this and now we're got \$15 million (inaudible) in there to try to help the parents, I mean the people who need the help at least start and hope to be able to continue to do that even greater in the future. But I surely don't want us to fail. []

SENATOR COASH: Um-hum. []

SENATOR LATHROP: I appreciate Senator Coash's comments but maybe we ought to give Mr. Wyvill an opportunity to respond to that to see if he agrees that the system isn't in place. []

JOHN WYVILL: I think the...if I understood the question correctly, Senator, you were asking me about the concerns about implementing or taking people off the waiting list. Obviously there is going to be a concern about whether or not providers can take the

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individuals and services, those on the waiting list. As everyone knows in here, consist of day services, residential services, and respite services, and a combination possibly of those three. So there's going to be a challenge in terms of taking that on in addition with the folks moving out of BSDC, in addition to trying to have the appropriate staff to ensure they're supposed to come off the waiting list. And that's going to be a challenge from a labor perspective from our service coordination staff in light of everything else that we are working on. []

SENATOR HARMS: (Inaudible.) []

SENATOR LATHROP: Senator Coash. []

SENATOR COASH: Thank you, Senator Lathrop. Senator Gay just left but I think he was right on, John, when he said if we're really going to get to the best way that BSDC ought to be run, we really need to define its role within the continuum of services. Where do you see BSDC's role in that continuum of services? Is it...? I'll give you some examples and I'll let you...is it serving people who behaviorally can't be served safely in the community? Is it people who are medically...have medical needs that can't be served in a community-based setting? Is BSDC's role the last ditch and when nobody else will serve you, the state will step in and say, since I can't provide a provider to serve you and I can't force them to do it, here's where you are? I mean, Senator Gay is right. We have to define that role for BSDC: this is your department. Where do you see the future of BSDC and its role for folks with disabilities in our state? []

JOHN WYVILL: Senator, that's a very good question and I appreciate the opportunity to expand and elaborate. I see right now a three-pronged approach. There's obviously first and foremost the facility will be there for those that have some high behavioral challenges. Right now, second is the expansion of the intensive treatment services at the facility which will help support the providers when there's some challenges in the... []

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SENATOR COASH: You're talking about the ITS program? []

JOHN WYVILL: Pardon? []

SENATOR COASH: Are you talking about the ITS? []

JOHN WYVILL: The ITS program, intensive treatment service...I apologize for the acronym. And then one of the things that we would like to look at, long-term, looking around the corner, is expand the role and the presence of the medical unit at the facility to not only assist and help individuals that are in BSDC but as the census goes down expand the role in providing support to providers down the road which will be in conjunction with telemedicine and telehealth. And then at the same time that we're going on, on the community-based side, we have several things that are in the pipeline. There's the rules and regulations, there's going to be the rate methodology study. The rate methodology study is going to have a big impact on how we will adjust our waivers. Within the next year there's three adult waivers that have an impact down the road, as well as the training in support of individuals and services as part of the crisis management. So I think in the grand scheme of things, while the facility is getting smaller and there's an emphasis on a certain population, there is the expansion of the role for the services and expertise associated with the facility can benefit the entire system, and that's what the goal is. The whole goal is from the division's perspective is to support the providers and support the individuals and services by focusing our attention and energy in the future and enhancing quality improvement with the services and with the appropriate health and safety oversight with public health. []

SENATOR COASH: See, I think this committee and the body needs to see that. If that's the goal for BSDC, let's see that and let's focus on that. I mean, that kind of makes sense to me. My second question is, and I've got...Senator Lathrop has been more than generous about letting me participate in these. And the one we had last week when we talked to Sheryl Mitchell and Helen Meeks and people from regs licensure and public

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health, you know, I haven't seen anything in the paper lately and want to know, is there anything that we need to know about an investigation, somebody else getting hurt. You know, we always find out later, and I just wanted to give you an opportunity to let the committee know of anything that we ought to know about--I'm speaking we like I'm on the committee--but is there anything we ought to know about that...I'd rather hear it from you that see it coming through the newspaper. []

JOHN WYVILL: Okay. Senator, (inaudible) I appreciate you sharing that. That is the challenge that we have worked with Senator Gay and Senator Lathrop on in the context of ongoing investigations. And we provide under CO or undercover the critical incident report that (inaudible) get in and there were certain incidents that we provide the committee a heads up on in terms of that. And it's a fine line between health-protected information. And we're open...Senator, we're open to any strategies to keep you informed and enhance those communications. []

SENATOR COASH: Yeah, I don't want you to...and I didn't mean for you to share any specifics today, I just. If we've let somebody go, if there's something happening...I mean, Senator Lathrop said in our last committee, you know, said to Helen Meeks...or no, said to Dr. Schaefer, look, if something is going south let's know about it. And I...I want to know earlier than later so we can address it, so I wanted to give you the opportunity to share anything. []

SENATOR LATHROP: No response? I'll take that as a nothing to report. No new critical incidents or immediate jeopardies or anything like that we ought to know about? []

JOHN WYVILL: No. []

SENATOR LATHROP: Okay. I think that should probably do it. We've got to get back upstairs and deal with LB36. So thanks for coming down, John. []

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JOHN WYVILL: Okay. Thank you. []