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Executive Board of the Legislative Council
March 27, 2008

[LR283]

The Executive Board of the Legislative Council met at 12 noon on Thursday, March 31, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, to discuss LR283.

Senators present: Pat Engel, Chairperson; Don Preister, Vice Chairperson; Ernie Chambers; Philip Erdman; Mike Flood, Ray Janssen, Gail Kopplin; Vickie McDonald; Arnie Stuthman; and Lavon Heidemann.

SENATOR ENGEL: ...isn't here yet, Senator Heidemann, and then Senator Stuthman said he would be a little late. So, first of all, good afternoon, ladies and gentlemen, and welcome to the public hearing of the Executive Board of the Legislative Council. First of all, I would like to introduce to you the members of the board and board staff, and briefly explain the procedure we'll follow this afternoon. On my right is Janice Satra, our legal counsel to the committee; on her right, Senator Don Preister from Omaha, he's Vice Chair of the committee; and on his right is Senator Phil Erdman from Bayard. I'm Senator Pat Engel from South Sioux City; and to my left is Beth Otto, our committee clerk; and Senator Ray Janssen is from Nickerson; Senator Vickie McDonald from St. Paul; and Senator Gail Kopplin from Gretna. Since these proceedings are recorded and will be transcribed, I would like to ask you to turn off your cell phones if you have them, or at least put them on vibrate. First, the board will hear the testimony from the introducer of the resolution, followed by those in favor, being considered; and then testimony in opposition and then neutral testimony. And I would like to limit the introducer to five minutes, if possible, and all the rest of you to about three minutes. And we welcome anyone to testify if you have something to add, but would appreciate not repeating what we've already heard. And you can...and I would like to have those raise their hands who might be testifying today. Okay. And all the proponents? Opponents? Neutral? Okay, fine, right a problem. Now Senator Stuthman just arrived; he's from Platte Center. So with that, there are sign-in sheets available at the table, and please fill out the form completely before you come up and testify, and place it in the box. And then when you testify please state your name and spell it for the record. If you plan to testify, please come to the front row to allow for a smooth transition between the testifiers. Another form for those who wish to support or oppose the bill without publicly testifying is also available, so if you have other testimony you can fill those forms out. And if you have printed material, please give them to a page so they can be distributed to the board, and the board needs 15 copies of any material. If you do not have enough copies, the pages can make more copies to satisfy that. Now, today, we will begin with Senator Mike Flood, the introducer of LR283. And Senator Flood. [LR283]

SPEAKER FLOOD: Thank you, Chairman Engel, members of the Executive Board. For the record, my name is Mike Flood, F-I-o-o-d. I represent Legislative District 19, which includes the city of Norfolk and all of Madison County. Earlier this month, as you know, the U.S. Department of Justice issued a report to Governor Heineman, detailing its findings from a 2007 investigation of the Beatrice State Developmental Center. Justice

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Department's findings can only be described as shocking and troubling. The report detailed violations of basic human rights that should not be tolerated in any society, much less in a state facility devoted to serving the developmentally disabled. The Justice Department identified several areas in which the BSDC staff has failed its residents, including protection from harm, behavioral and mental health issues, healthcare, and discharge planning and placement. The safety, quality of life, and rights of those of BSDC are of the utmost concern to the state of Nebraska, and it is clear that the facility has reached a critical point in its ability to care for and protect its residents. It is time for the Legislature, as an independent and coequal partner, to take ownership in this problem. This resolution calls for the Executive Board to meet and appoint a seven-member special committee of the Legislature, known as the Developmental Disability Special Investigative Committee of the Legislature. This investigative committee would investigate and study, generally, the placement and quality of care statewide for the developmentally disabled. More specifically, the committee would investigate the quality of care and related staffing issues at BSDC, including, (1) making a determination of whether adequate funding and capacity exists for persons to be served in the community, (2) options for service provisions for current residents of BSDC at other 24-hour-care facilities operated in this state by the state of Nebraska, and (3) the staffing practices at 24-hour-care facilities and the relationship to those practices to the quality of care provided to the developmentally disabled. Finally, the committee would be authorized to study and investigate the Department of Health and Human Services with respect to services for the developmentally disabled. As far as the staffing of the committee, the Executive Board would be authorized to provide the committee with a legal counsel, committee clerk, and other staff from existing legislative staff. The committee would be authorized to hold hearings and issue subpoenas as deemed necessary by the committee. The committee would be expected to issue a report with its findings and recommendations to the Legislature no later than December 31, 2008. Before wrapping up, it needs to be said that there are professional and caring people working at the Beatrice State Developmental Center, and there are competent people in management at Health and Human Services. To be sure, the substandard care in Beatrice was magnified by the fact that employees were forced to work unnecessarily long hours of overtime. Nevertheless, there have been repeated severe and inexcusable breakdowns in the care provided at BSDC, breakdowns that the state needs to address. In light of the Justice Department's study and with the added prospect of losing millions of dollars of federal funding, it is vital the Legislature acts to find solutions. With that, thank you for the consideration of LR283. I'll answer any questions that you may have. [LR283]

SENATOR ENGEL: Anyone have any questions for Senator Flood? Senator Preister. [LR283]

SENATOR PREISTER: Thank you, Senator. Speaker, I appreciate the scope of what you've laid out for the study. One thing that I am interested in is your thoughts on

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whether or not you think it's of any value to this group to look back at how we got to this position. Looking back, sometimes can be used to place blame. My goal is not that. But if we know how we got somewhere, at least we can prevent going there in the future. And I'm just thinking of that because ten years ago I had volunteers from the veterans home in Omaha come to me, and I tried to introduce legislation and work on that, and we ended up with a new veterans home but we've still got the same problem. So my question is, is that something that you see having value, in addition to what you've outlined? [LR283]

SPEAKER FLOOD: Yes. We didn't get to where we're at overnight, in my opinion, and to understand where we're at I think it's implied that the committee will have to understand what decisions have been made in the last 30 years with regard to care for the developmentally disabled at Beatrice,... [LR283]

SENATOR PREISTER: Okay, thank you. [LR283]

SPEAKER FLOOD: ...and statewide. [LR283]

SENATOR PREISTER: Yes. [LR283]

SENATOR ENGEL: Are there any other questions of Senator Flood? Senator Chambers has just arrived. Senator Erdman, I'm sorry I didn't see you there. [LR283]

SENATOR ERDMAN: Senator Chambers casts a large shadow; I understand that. Mr. Speaker, the actual responsibilities of the committee are starting on page 2 and going into line 3. The first question I have, the recommendations are going to be reported no later than December 31. I'm wondering if that's not too late, because potentially any recommendation would likely want to be known either by the other members of the Legislature or the public, and then that would be an issue that would have to be either addressed statutorily in legislation for the next year or something else. And I just picked out a date of December 15 just as a date; maybe others have other ideas. I think you want to give the committee as much time as they need to go through and issue a recommendation. I think a month...and that would give you a month from that date until potentially the last day of bill introductions to have a full month of days to be able to work on what that possible recommendation may include. But I'm wondering, and just your perspective on how the date was chosen, and if you would have any concerns about possibly making that date a little earlier, assuming the committee could still complete their work in that time. [LR283]

SPEAKER FLOOD: I chose no later than December 31 to give the committee the flexibility to do what they needed to do in the event that there was more information at the very end that they wanted to understand before they made their recommendations. But I would expect that the committee counsel, working with the chair of whoever that is

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of this committee, and the members, would be concurrently working on any legislation they felt necessary prior to December 31, so that there was an understanding of what needed to be accomplished. I have confidence in our bill drafters in this branch of government to be able to accomplish what the recommendations are within the ten-day period, and I don't know that we need to change the date. I think we all expect the committee to do its work in a timely fashion and get those recommendations out and the bills drafted, so I don't see any reason to change the date. [LR283]

SENATOR ERDMAN: Okay, and I appreciate that. My only response to that is, is that in your answer is the assumption that this would be the only solution that would come from this committee. And as a member of the Health Committee for eight years, whether it's mental health or any other issue, I will assure you that even though a recommendation is made, it doesn't mean it's a consensus. And if it was a consensus, that would be great. I'm just interested in making sure that the public is aware. The last question that I have is in that same section. There is a sentence that says the committee shall also study the Department of Health and Human Services with respect to such facilities, and those are the 24-hour-care facilities. They are already studying the staffing practices and the quality of care. Can you explain to me what that sentence intends to accomplish? What the additional authority is that is granted to the committee in that area? [LR283]

SPEAKER FLOOD: Which paragraph are you in? [LR283]

SENATOR ERDMAN: It's number 2 on page 3. It is line...it's the fifth line from the bottom, starting with "The" in the middle of that line, "The committee shall also study the Department of Health and Human Services with respect to such facilities." As it ties in with the 24-hour-care facilities, we're already asking them to study staffing, we're already looking at determinations of funding. [LR283]

SPEAKER FLOOD: Oh, five from the bottom. [LR283]

SENATOR ERDMAN: I'm just trying to figure out what that last sentence, that second to the last sentence in that section refers to. [LR283]

SPEAKER FLOOD: Well, I think that refers to the operation of state facilities that care for the developmentally disabled that are owned and operated by the state, which at this time would be limited to Beatrice State Developmental Center and Hastings Regional Center, due to the fact the Bridges program is currently located on that campus. There may also be low-functioning adults or developmentally disabled adults that are in our behavioral health system that may be placed at the two other regional centers in the system that is located in Norfolk and Lincoln. [LR283]

SENATOR ERDMAN: And I don't disagree. My only observation is that I think that's

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already covered, because we're not talking about specific locations, but rather the residents and the quality of care statewide. There are people... [LR283]

SPEAKER FLOOD: Well, and I also think that sentence implies that the committee will look into the relationship between the department and the facilities that has led to some of the breakdown of...or some of the issues that have brought these folks to the table. [LR283]

SENATOR ERDMAN: Is it...? Let me maybe clarify. Is it an oversight issue? The first part of this we're talking about the actual facilities, the quality of care, the staffing. Is this sentence designed to say that the committee shall also examine the oversight of the department for those facilities and services? [LR283]

SPEAKER FLOOD: I believe that is a reasonable assumption. [LR283]

SENATOR ENGEL: Are there any other questions of Senator Flood? If not, thank you, Senator Flood. [LR283]

SPEAKER FLOOD: Thank you. [LR283]

SENATOR ENGEL: And you'll be sticking around, I'm sure. If you want to close, you can decide. [LR283]

SPEAKER FLOOD: Yes, I will reserve closing, I guess. [LR283]

SENATOR ENGEL: Yes. Thank you. Okay, the next testifier. Please sit down. (Inaudible). Welcome. And have you signed in yet? [LR283]

JOHN WYVILL: I'm not going to read all this. [LR283]

SENATOR ENGEL: I hope not. Have you signed in? [LR283]

JANICE SATRA: Yes, he did. [LR283]

SENATOR ENGEL: Okay, thank you. [LR283]

JOHN WYVILL: (Exhibit 1) Good afternoon, Senator Engel and members of the Executive Board. I am John Wyvill, W-y-v-i-l-l, director of the Division of Developmental Disabilities, Department of Health and Human Services. I'm here today to provide information in support of LR283 and recent actions taken by the Legislature to address problems at Beatrice State Developmental Center. I look forward to working with members of the Developmental Disabilities Special Investigative Committee of the Legislature when they are appointed and begin their work. We welcome the review and

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suggestions on how to improve the care and quality of life at BSDC and as people transition to appropriate community settings. All stakeholders--parents, advocates, policymakers, and our department--are focused on the safety for clients and the quality of life. Ultimately, we all want the same thing--for all Nebraskans to reach their fullest potential in life. As a point of personal privilege, I would first like to also address and apologize for the discrepancies in the voluntary and mandatory overtime hours we provided Senator Cornett, which differed from the data in the United States Department of Justice report. My testimony explains why the discrepancies occurred and what has been done to ensure more accurate data will be collected and provided in the future to members of the legislative body. In the interest of time I won't read that right now. Since I became director last fall, we have worked collectively and collaboratively with our federal partners to remedy their concerns. Many of the issues raised by CMS and DOJ are consistent with our inability to adequately address our continuing staffing shortages. Staffing levels have been an ongoing concern at the Beatrice State Developmental Center for years, and I'd like to provide some brief information about our efforts to recruit employees. In 2006, we surveyed applicants and found that most learned about employment with BSDC through word-of-mouth and through past and current employees. Radio had proven to be the next most productive recruitment tool. We increased our recruitment efforts and while these have helped, they have not alleviated the staffing shortage. In 2006, BSDC took part in 21 career and job fairs across the state, from Omaha to Scottsbluff. In 2007, BSDC was represented in 19 career and job fairs, and so far this year in six. For the past several years, we have placed radio ads throughout southeast Nebraska on stations in Lincoln, Beatrice, Fairbury, and newspaper advertisements in several towns in the area. Further detailed efforts are provided in my written testimony, and I won't read through the rest of the information. There have been some questions also about the waiting list for adult developmental disability services. There is not a waiting list for BSDC's intermediate care facility for the mentally retarded--that's an ICF/MR. The last admission was in June 2007. Over the past ten years, there has been an average of 8.4 admissions to BSDC per year. There was a discussion last week about how moving 100 people will affect the waiting list. A person at BSDC has funding already available to "purchase" their services. Based on legislative action last week, when a person leaves BSDC, money will follow them out into the community. When a person enters services from the community waiting list, there must be "new dollars" spent. Providers may indeed be adding or opening new/additional services to serve clients relocating from BSDC to community services. In your packet is the copy of the presentation I previously provided on the department's five-point action plan. While I won't take the time to go over the entire presentation in detail, I'll reiterate the plan's main points, which are to: increase staffing to eliminate mandatory overtime; implement an integrated community-based care plan; enhance client care and safety; reallocate funding to implement community-based care; and, communicate with families, guardians, stakeholders, elected officials, and communities to fully inform and engage them. Client safety is always our primary concern. We believe that with the steps we have put in place, BSDC will be able to continue its

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mission while providing safe and appropriate care to some of the state's more vulnerable citizens. Thank you very much, and I'll be glad to answer any questions you may have. [LR283]

SENATOR ENGEL: Thank you, Mr. Wyvill. Any questions of Mr. Wyvill? Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Engel. Mr. Wyvill, the staffing problem, has that...have you seen an increase? Is there more people coming to work there, or what? Give me the situation that you're at right now. Are you being able to hire more? [LR283]

JOHN WYVILL: The challenge that we're having right now is that we have several individuals that have volunteered from within this agency to help out temporarily on a 30-day assignment. In addition, we are bringing in staffing, temporary agencies, to help out with the staffing needs as we right-size down and reduce the number of census. The challenge that we have is that with the staffing level that we have, is that people on the staff having to work overtime. [LR283]

SENATOR STUTHMAN: Okay. Thank you. [LR283]

SENATOR ENGEL: I'd like to mention something, Mr. Wyvill. As far as I do understand that according to the union contract, you can't pay bonuses and incentives for particular jobs, right, for...? [LR283]

JOHN WYVILL: I'm sorry. I didn't hear. [LR283]

SENATOR ENGEL: I'm sorry, I'll speak up a little louder. I understand, according to the union contract, I think there was a little confusion over that before, that you can pay incentives and bonuses to those who...you need...and especially in positions in your...at Beatrice and so forth. Is that true? [LR283]

JOHN WYVILL: Okay. Senator, I don't know the answer to that question right now. I'm going to have to get back to you on that one. [LR283]

SENATOR ENGEL: Okay. Well, I think there is a representative here from the union, so he can probably answer that. Thank you. [LR283]

JOHN WYVILL: Okay. [LR283]

SENATOR ENGEL: Because I guess the way I feel about it, when you're short of expertise in certain areas I think it should be a supply and demand. You have to pay what it takes to get those people who can take care of these people. And that's just my

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personal opinion, so. Any other questions? If not, thank you very much. [LR283]

JOHN WYVILL: Okay. Thank you. [LR283]

MIKE MARVIN: (Exhibit 2) Good afternoon, Senator Engel, members of the Executive Board. My name is Mike Marvin, M-a-r-v-i-n. I'm the executive director of NAPE/AFSCME, the union representing the employees at the Beatrice State Developmental Center and the other 24-hour facilities. I'm having the clerk distribute a press statement we released today, and I have a very brief statement I would like to make to you. First, I'd like to thank Senator Flood for introducing this resolution. It's...something like this is long, long overdue. I do have concerns, however, that the press that the Beatrice State Developmental Center is receiving is overshadowing the same problems at our regional centers and our veterans homes. Last fall, many NAPE members testified about these problems in front of the HHS Committee, and in this session we testified about the same problems at the Business and Labor Committee. And if you recall, about six weeks ago the Lincoln Regional Center lost its accreditation for understaffing. With chronic understaffing in our veterans home, I really don't understand how they escaped any kind of sanctions. I would ask that the scope of this resolution be expanded to look at all HHS 24-hour facilities. And with that I would be happy to answer any questions you have. [LR283]

SENATOR ENGEL: Are there any questions of Mr. Marvin? Can you answer the question I asked? [LR283]

MIKE MARVIN: Yes, Senator Engel, in our last negotiations we recognized that there was a problem hiring people at these facilities and in other areas, so the union introduced language that would allow this. This is in Section 11.1.1 of the collective bargaining agreement. [LR283]

SENATOR ENGEL: Thank you very much. Thank you for your testimony. [LR283]

MIKE MARVIN: Thank you. [LR283]

SENATOR ENGEL: Next proponent. [LR283]

DAVE MERRILL: (Exhibit 3) Chairperson Engel and members of the Executive Board, my name is Dave Merrill, M-e-r-r-i-l-l, and I'm the executive director of Region V Services, and testifying today on behalf of the Nebraska Providers' Network, an association of public and private providers of supports for people with developmental disabilities, ranging from Scottsbluff to Omaha. On behalf of NPN and Region V Services, I would like to thank Senator Flood for bringing this resolution forward and members of the Legislature for considering it. I believe that the appointment of a Special Investigative Committee of the Legislature is the last, best hope to increase awareness

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of the issues facing Beatrice State Developmental Center and community services in Nebraska. The resolution is particularly well-drafted in that it recognizes that there is one system in Nebraska and an interrelationship between BSDC and community services. It asks an extremely relevant question as to whether adequate funding and capacity exists in the community. It shows foresight because the issues and challenges at BSDC are also issues and challenges in the community. In the '70s, Nebraska was a leader in the field of developmental disabilities. Professionals and families came from all over America and the world to see what we were doing. The first step to restoring a leadership position in Nebraska is to look at some hard truths about what we've done over the last two decades and the results for people with disabilities and their families. This investigative committee is a logical and necessary step towards improving a system that has appeared stagnant for some time. Thank you for your time and I'd be happy to answer any questions. [LR283]

SENATOR ENGEL: Thank you. Any questions for Mr. Merrill? I see none. Thank you very much for your testimony. [LR283]

DAVE MERRILL: I would add that the subpoena power is really an important feature because whether you're an employee of the state of Nebraska or a provider receiving funding from the state of Nebraska, the subpoena offers some protection for individuals and agencies. Thank you. [LR283]

SENATOR ENGEL: Thank you. Next testifier. Next proponent. [LR283]

NANCY WEBB: (Exhibit 4) My name is Nancy Webb, N-a-n-c-y W-e-b-b. I am the daughter of Ollie Webb. My mom spent many years in Beatrice. After she left, she became a great leader in People First of Nebraska, helping others. She spoke in many places around the world. She helped me get out of Beatrice. I lived in Beatrice State Home from the time I was 5 years old until I was 27 years old. Let me tell you what it was like to live to Beatrice. I did not like living there. Even when I didn't do anything, still they put you over the tub and spanked you. We couldn't go anywhere outside without staff. The food was not good. We got three meals a day and nothing more. I went to school in Beatrice. I worked with the babies. We were not paid for any work. My bed was in a dormitory with about 20 other women. One day, the head guy of Beatrice told me I was getting out of Beatrice. I didn't think that was a good idea. This was my home where I grew up. It was all that I knew. I was afraid. I did not want to leave. Kathy Kosse and Nancy Murphy were two nice women from ENCOR, came to pick me up and take me to new apartment in Omaha. It took awhile for me to feel comfortable there. After awhile I felt like home. Omaha has been my home ever since. Life has opened for me. I have many friends. I am partly retired after working for 33 years where I was paid. I volunteer at the doggy day care, Noah's Bark. And next month I will be going to Tulley's Kennels where I will help the puppies to socialize with people. I love animals and they love me. I live with an extended family. I love where I live. I have my own room, my own

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things, and my kitty cat. I don't want to ever go back to Beatrice again. I want to see the people there get out of Beatrice into the community. Beatrice is not a good place for anyone. And my mom always said, let my people go. [LR283]

SENATOR ENGEL: Thank you very, very much, Ms. Webb. Are there any questions of Ms. Webb? I would like to thank you very much for your testimony. The next proponent. [LR283]

PATTY SMITH: (Inaudible)? [LR283]

SENATOR ENGEL: Please. And sign in please. [LR283]

PATTY SMITH: (Exhibit 5) Good afternoon, Chairman Engel and members of the committee. My name is Patty Smith, S-m-i-t-h. I'm the president of The Arc of Nebraska, and I'm testifying on behalf of The Arc, a support and advocacy organization, as I'm sure most of you know, for people with developmental disabilities and their families. The Arc of Nebraska is a state-affiliated chapter of The Arc of the U.S. and has 17 local chapters, and we represent approximately 2,500 members in the state of Nebraska. I am the mother of a daughter with developmental disabilities and grandmother of a young man who has DD. I have worked as a professional in the field for 33 years and I thank you for this opportunity to speak today. The Arc of Nebraska speaks in support of LR283 which would create the DD Special Investigative Committee. We thank Senator Flood, Governor Heineman, and Rogert for their...I'm sorry, that was wrong...for their specific actions which begin to address the needs of the residents of BSDC and the people with developmental disabilities and their families who reside in the community. The Arc called for a systematic deinstitutionalization of people in October 2006 that was based on the fact that we felt there was abuse, neglect, and maltreatment of people with developmental disabilities. Last year, the report released in December, "An Indictment of Indifference," by the Nebraska Advocacy Services chronicles the long-standing problems of BSDC. We appreciate the concern and the actions of the members of the Unicameral. Our concern is that CMS, DOJ, NAS--Nebraska Advocacy Services, have done in-depth investigations of BSDC. DOJ has issued its requirements for remedial action. As stated before, The Arc continues to recommend comprehensive, systematic review and changes within the system of supports for children and adults with developmental disabilities. We must provide options, including community choices for residents of BSDC, and we must strengthen our community-based services. And this is one of the things that has worried me considerably. I have watched the community-based services be held at almost a level that there was not growth. I believe last year the reduction was 2 percent. Many of the people who are coming into the system are not funded at any higher levels than what is needed because of the way they go about it. What happens is, there are not sufficient funds within the DD system. And this is something that has to be addressed in order for the systems to grow and accept the people and do what is needed. And I was happy to hear John Wyvill say that

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the money is going to follow the person from Beatrice, because as many of you know, the costs in Beatrice are extraordinary. I think John told me somewhere in the area of maybe of \$145,000 or \$150,000 per year per person. We went to the Governor back in...when we issued a plea for deinstitutionalization in 2006, and we asked for rebalancing of the monies. If people understood the rebalancing of the monies that are available, we would have a much easier time of trying to build the community-based services in a stronger manner, and still at the same time we would be able to sustain what we already have going. And I will go on then. According to the State of the State, there's...it's in your packet...of Developmental Disabilities in 2008, Nebraska is no longer in the forefront of the states, as Dave has just said. Currently, there are 40 states within the United States who have closed all or most of their institutions. They have closed 140 institutions, and 7 now additional ones have been closed in Puerto Rico. So the closing of institutions is not something that should be new to people. But in Nebraska, we treat it as though that we don't know how this is done. It is done all the time. I've spoken to the leaders in many of the other states. They have systemically moved people and have been very successful at this. And so I urge you to take a look at it. I gave you the papers on...it's number 14; it's page 3 of your packet, that tells what happens to the places when they either close them or don't close them. It's an amazing list if you look and see. Because what they do is you will see in that list of that 140 places they are...some of them are prisons, some of them are turned into places for the National Guard, some are turned into resource places, some are completely blown up. I remember on in New Hampshire that they were going to make into a prison place after they got the people out of it, and it wasn't suitable for prisoners. A statement like that should tell us about what happens to some of these buildings and why are we not acting. Why are we not acting to change this? And so I would beg you to take a look at some of these reports that I have given you today, because in the State of the States, it's brand new. It just came out. And like I say, it's 147 closures in the 40 states, plus Puerto Rico. Why should we think about this? The studies have found that people with disabilities who live in the community have a higher quality of life and the cost is much less, as I have mentioned. The states can no longer afford to operate...this state...Nebraska can no longer afford a large congregate facilities, either in terms of money spent or the rights and protections of the residents. We cannot continue practices that will result in abuse, neglect, and lack of treatment at any price. I mentioned that I've been at this for 33 years as a profession, because I have my daughter and I went to work in the field. I have been coming to meetings like this off and on--except the 17 years I was in Washington, D.C., and I went to the same kind in Washington, D.C.--but we have been doing these meetings forever. And things have not changed. And so I am happy that the Legislature has become engaged and they're saying we have to change, and we have to be equal partners. You all have the purse strings, and it has to change. And there is as big a change to try and get people out of Beatrice as there is to strengthen the community-based services. And just in case anybody is wondering, we deinstitutionalized over 2,000 people in the past. We had people of every level of disability. We had people with severe, profound, multiply

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needful for medical care, and they were all served. They've been served all across this state. What has happened is people forget this. They forget that this has happened, and they think, oh, no, we can't do that. Yes, you can. We've done it before and we can do it again. And so I just point to you, and I would love to have all of you come to visit all the different places in Omaha where people live, because there's all kinds of places. People say, oh, group homes. There aren't that many group homes. There's apartments. My daughter has an apartment in my lower level of my house. There are people like Nancy who live with a home family. There's all kinds of options that people have. So the key element in restructuring the Health and Human Services is accountability. And I would beg you and plead with you to understand that the issues of accountability have not been done the way they were supposed to be. Within the law, we had a law in developmental disabilities that there was to be a piece of legislation that we had committees that looked after the community and the people in Beatrice. I don't know if anybody is doing that right now. It's in the DD law. Also, in 2002, we had a bill that came forth, LB1120. You don't have a copy of that but I've got a copy of it. And that was to make it an Olmstead plan, and it never happened. And so the person had asked if we go backwards and see what happened. There were a lot of things that didn't happen when they should have happened, and so I would just point that one out to you. And I will close with that we have not seen an adequate or ongoing procreation for the DD services providers, however the infrastructure of the system of community-based services can be fortified with resources as you have proposed last week. I don't want to repeat. The Nebraska Unicameral can act to support the improvement and the quality of care of the residents of BSDC at the same time that they are strengthening the communities. Again, Nebraska was one of the leaders, as stated before, but we want you to take a look at not just the quality of care. We want you to look at the quality of life. And this is something that I mentioned just a minute ago. We had quality of life teams. I don't think we have them right now. That's in the law. You might want to look into that. It is time to help our citizens. It is time to uphold the innate and unalienable rights of people with DD. Help bring the people in Beatrice out of the darkness, as was stated by Lee Terry's father in the film that he did in 1968. Incidentally, most of you aren't old enough to remember that, but Lee Terry did the documentary, and the next year you were asking if they could draft the bills, you know? The following year, after 1968, the Unicameral passed 14 laws that set up the community-based services, in one setting, in one session of the Unicameral. Fourteen laws. So it can be done. The Arc of Nebraska is ready to help in any way that we can. We are the affiliate of The Arc of the U.S. and the state chapters across our state. We offer our organization and ourselves as resources. We live the disability experience and we are willing to share our knowledge and our expertise. Thank you. [LR283]

SENATOR ENGEL: Thank you very much. Any questions of Ms. Smith? Senator Erdman. [LR283]

SENATOR ERDMAN: Just one question. I noticed when I was asking the question of

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the Speaker, you were nodding. You've been before the Health Committee a number of times, from reports being completed. Does December 15 give you any more comfort than December 31 for a deadline on a recommendation? [LR283]

PATTY SMITH: I would agree with you, that it should be made earlier than later. In fact, I'm concerned...I didn't put in my testimony but I've been very concerned about the length of the investigative committee, because they have all these reports. The investigations are all but done, because you've got the DOJ, you've got the "Indictment of Indifference," you've got how many CMS reports--I think three or possibly four. And virtually they are like...we even thought about bringing the copies into to you so we could wheel them in and show you how many reports we've got. I mean, they're this thick. And it's time to do, as you said, Senator Preister, to look at what happened in the past, but then act on today. [LR283]

SENATOR ERDMAN: They may need that time just to read all those reports. [LR283]

PATTY SMITH: That would keep you really busy. It's one of the problems. I remember being in Washington, D.C. People don't have time to read all this stuff. [LR283]

SENATOR ENGEL: You can give those all to Senator Erdman, and he'll have them read before December 15. [LR283]

PATTY SMITH: Okay. [LR283]

SENATOR ENGEL: Are there any other questions of Ms. Smith? If not, thank you very much for your testimony. [LR283]

PATTY SMITH: Okay. Thank you. [LR283]

SENATOR ENGEL: The next proponent. [LR283]

DEAN SETTLE: (Exhibit 6) Senator Engel, other senators, Senator Flood, I'm Dean Settle, D-e-a-n S-e-t-t-l-e. I have several hats. I'm the local director of the Community Mental Health Center here in Lancaster County. But today I appear before you wearing the hat of being a board member of the National Alliance of Mentally Ill, Nebraska Chapter. And I serve on that board, and we too are here to support LR283. We believe that there are all kinds of reasons to proceed with the investigation and to find adequate care and support the transition of people into the community in the least restrictive manner and as soon as possible. This is a lot of deja vu for me. The first time I ever came to Nebraska I came as a part of a federal team that looked at the institution at Nebraska in 1975 and 1976, and served as the team that reviewed that institution at that time, and we believed that it should be reduced to 200 beds. And that was over 30 years ago. At the time I first saw Beatrice, there were around 2,200 people living there.

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So I've seen many, many changes. I had a sister-in-law who died down there about four years ago. So I've been in and out of the institution for over 30 years, have seen many, many changes, but there are some constants that need to be honored. People generally are better off in the community near their families, near their doctors, near their churches. They're more...it's more humanizing, it's more correct, it's the state-of-the-art to move people into the community as soon as possible, and allow them to connect with families and with friends and to live a better quality of life. There will also be institutional problems as long as you run the institution--the facilities, the human resource issues, the harm that patients do to other patients, the injuries that you all incur as a state employer, as far as workers' comp claims, where people are injured transporting people, transferring people, trying to break up fights. You need to make sure that you reduce your liability in many, many ways, by moving people quickly into the community. Well, back to my hat with NAMI. We too support LR283. We want to see this proceed. We want to see the investigation proceed and these problems resolved and solutions in the community found. Certainly, people who are developmentally disabled also, from time to time, develop serious mental illnesses. And I note in the report that you have received that a majority of the people at Beatrice, 167 of your residents, have a mental health diagnosis, and 86 percent of the people living at Beatrice currently are taking psychotropic medications. So you have a huge dual diagnosis kind of responsibility and response ahead of you, which leads me to some of my concerns about moving people into the community. You need to move people into a community where psychiatric care is available and where proper psychiatric support, as they live and work and flourish in the DD community, the mental health community needs to be there to help support, help provide proper medications, help provide any kind of behavioral support that can be brought to the table. I noticed that there's currently an open position for a psychiatrist at Beatrice, and I think that's a statewide concern and we need to address, somehow, adequate psychiatry and in all parts of the state, and it becomes even more imperative as you move people into a new community. They need to establish that doctor relationship. They need to have a source of medications, and they need to have the ability to be part of a team if you're dealing with someone who is dually diagnosed. Persons with dual diagnoses can live and work in the community. We at the Mental Health Center here in Lincoln see many, many people who have that very same diagnosis. NAMI is anxious to make sure that adequate quality of behavioral health and mental health services to people with developmental disability diagnoses are provided that, both in the institution as well as, as they transfer into the community. We need trained workers, not only at Beatrice today. I note 120 or 130 open positions. But as people move into the community, you're going to need the same kind of focus of having adequately, properly trained professionals who will work with persons with developmentally disabled conditions, as well as people who are dually diagnosed with mental health overlays. NAMI is a grassroots organization. We have chapters throughout the state. We work with families. We work with individuals who are mentally ill. We have a variety of programs that can work with peers, person to person, families to families. We stand ready to do anything we can to make the transfer of persons from

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Beatrice into the community work smoothly and support those persons as they move into the community and support the families as they reconnect and they deal with finding proper care in the community for their persons. Thank you very much. [LR283]

SENATOR ENGEL: Thank you, very much, Mr. Settle. Any questions Senator Chambers. [LR283]

SENATOR CHAMBERS: I appreciate your testimony, even if there were not the brutality, the abuse, the neglect--behavior which I deem criminal in the sense of being prosecutable misbehavior going on. If people are kept in institutions for long periods of time, they are more or less conditioned to live in an institution and never to live in an ordinary environment. Would you agree with that as a general statement? [LR283]

DEAN SETTLE: I do agree. [LR283]

SENATOR CHAMBERS: So if we really mean that we're going to try to bring people into the mainstream or among ordinary people in ordinary situations, you have to put them in that environment in order for them to learn how to live in it. [LR283]

DEAN SETTLE: It would seem proper at this very moment that if I were involved in programming at Beatrice I would be having a majority of the daily programs in the community and not at the institution. [LR283]

SENATOR CHAMBERS: Part of the reason I asked that, I've dealt with criminals outside the penitentiary and inside. I'm not an expert. But there are some men I know who have spent almost all their life, that they are as nice as they can be. When they get out, you wonder how did they get there in the first place? But then I look up, and that's where they are again, and they will, frankly, say they don't know how to live anywhere else. I just wanted to tailgate on some of the things that you said. [LR283]

DEAN SETTLE: It's my belief that persons who are developmentally disabled need a lot of options, and one of those options may very well be a state institution for a variety of behaviors that we can't tolerate in the community or because public safety is challenged in the community. But the vast majority, Senator, the vast majority belong in the community. That's where they came from, in most cases, and that's where they should finish their lives, earning money, living with their families, going to church, shopping, doing the things that your family and my family do in the community. [LR283]

SENATOR CHAMBERS: And not only for the sake and good of the individuals we're talking about. We need to condition society to accept people with these difficulties, as still being people, entitled to be treated as human beings, with dignity. So we need some learning that can occur as a result of living with and around these people, too. [LR283]

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DEAN SETTLE: I agree with you totally. [LR283]

SENATOR CHAMBERS: Okay. [LR283]

SENATOR ENGEL: Are there any other questions? If not, thank you very, very much, Mr. Settle. [LR283]

DEAN SETTLE: Thank you very much, Senators. [LR283]

SENATOR ENGEL: Next proponent. [LR283]

RICHARD ELLIS: (Exhibit 7) Senator Engel and members of the Executive Board, my name is Richard Ellis, E-I-I-i-s. I'm here today representing ADAPT Nebraska. ADAPT Nebraska is part of a national network of disability advocates who are fighting so people with disabilities can live in the community with real supports, instead of being locked up in nursing homes and other institutions. We would like to commend Speaker Flood for introducing LR283 and providing the opportunity for public discussion. There is a need for the Legislature to take action, however our concern is that over the past 18 months the situation at Beatrice Developmental Center, BSDC, has been repeatedly investigated by numerous entities, but never resolved. In fact, I dare say, the time has not been used for productive solution of problems, but has been squandered to shore up defenses of deplorable situations that have continued to add to a deteriorative environment. We need a committee to plan how we are going to move people into communities and to oversee implementation. We also need to look at ways to develop and augment the current home and community-based services, HCBS. The Centers for Medicare and Medicaid Services, CMS, has already offered a tool. The Money Follows the Person Demonstration Project was developed as part of the Deficit Reduction Act of 2005 to slow the growth in spending on Medicaid. CMS awarded the Nebraska Money Follows the Person Project \$27.5 million to move 900 people out of institutions into communities over the next five years. The project will provide and enhance Medicaid match for 200 persons with developmental disabilities to transition out of institutions. However, we need to transition more people to systematically close BSDC in a timely manner. NMFP will not be enough. We also need other strategies. These strategies should include the immediate transfer of funds from the BSDC budget into the budget of HCBS. And there must also be a change in the funding formula which currently offers disincentives to HCBS in the form of rate inequities. ADAPT sees the current administration placing obstacle to legislators who have tried to do their duty to resolve this abhorrent situation. Any attempt to solve the situation at BSDC has been far lacking. The Governor and DHHS have been willing to accept the troubled management and conditions at BSDC for a long period of time, and this tolerance is inexcusable. This administration is guilty of neglect and abuse of clients and residents of BSDC. They are allowing them, in some cases compelling them, to reside in a troubled institution without

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the assurance of safety and well-being. They also allow discontent to build among employees with forced overtime. Obviously these are systemic problems. An influx of money does not solve systemic problems. Just prior to this hearing, ADAPT hand-delivered our notice to the Office of the Governor demanding a meeting to discuss the merits of the five-point action plan. Clearly, the required information has routinely been withheld from legislators. Now that you have the information in front of you, we're calling on you to immediately exercise your oversight responsibilities. The reports by CMS, the Department of Justice, Nebraska Advocacy Services, and the Nebraska Consortium of Citizens with Disabilities' Agenda for Full Participation provide you with all the information you need. It is time for direct action. As Martin Luther King Jr. said, from the Birmingham County jail, you may well ask, "Why direct action? Why sit-ins, marches, and so forth? Isn't negotiation a better path?" You are quite right in calling for negotiation. Indeed, that is the very purpose of direct action. Nonviolent direct action seeks to create such a crisis and fosters such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored. We demand the Legislature define a plan for the systematic deinstitutionalization of the residents of BSDC. You must put a stop to the indifference which has allowed conditions to get this bad. The plan must: provide for individualized discharge planning to meet the transition needs of each resident, including habilitation services to facilitate successful transition; determine a way for BSDC funding to be moved in to the HCBS budget; ban all new admissions to BSDC; present a realistic time line for this purpose; include an in-depth educational plan for residents, parents, and guardians on the ways others have successfully moved into the community life after institutionalization; and create a plan for future use of the BSDC property. We hope this body will become involved in developing and instituting solutions. We need solutions, not more talk, talk, talk. ADAPT has tried repeatedly to work with the various government entities. All this has succeeded in doing was raising our blood pressure. We are past the time for bureaucratic double-speak. It's time for direct action. Thank you for your attention. [LR283]

SENATOR ENGEL: And thank you, Mr. Ellis. Any questions of Mr. Ellis? Senator Stuthman. [LR283]

SENATOR STUTHMAN: Thank you, Senator Engel. Richard Ellis, do you feel that we could go to a total community-based system for these disabled people, and totally quit the institution? [LR283]

RICHARD ELLIS: Yes, I do. [LR283]

SENATOR STUTHMAN: And you truly do that. [LR283]

RICHARD ELLIS: I truly believe that. There are 40 states in the United States that have already done it. There are ten that have not, Nebraska being among those ten. [LR283]

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SENATOR STUTHMAN: And you truly feel that these individuals, if they could stay in their community, they could have a better life the rest of their life also... [LR283]

RICHARD ELLIS: Oh, definitely. Better quality life. [LR283]

SENATOR STUTHMAN: ...by staying in that community if we could develop a community-based service? [LR283]

RICHARD ELLIS: Definitely, Senator. [LR283]

SENATOR STUTHMAN: Okay, thank you. [LR283]

SENATOR ENGEL: Any other questions? If not, thank you very much for your testimony, Mr. Ellis. [LR283]

RICHARD ELLIS: Thank you. [LR283]

SENATOR ENGEL: Are there any other proponents? How many more are going to testify today? One more, two more. Okay. Thank you. [LR283]

KATHY HOELL: (Exhibit 8) Hi. My name is Kathy Hoell, H-o-e-l-l. Before I go any further, I would like to request this committee an accommodation under the Americans with Disabilities Act, because of my speech impairment I may go over the time. [LR283]

SENATOR ENGEL: Take all the time you want. [LR283]

KATHY HOELL: Okay. I am the executive director of the Nebraska Statewide Independent Living Council, and I'm here testifying on their behalf. The Nebraska Statewide Independent Council is a federally mandated under the Rehab Act of 1972 as amended in 1992. We are a nonprofit organization dedicated to supporting, enhancing, and increasing independent living for Nebraskans with disabilities. First, we would like to commend Speaker Flood for introducing Legislative Resolution 283, and our organization would be glad to help in any way we can. However, we do have several concerns about how this will proceed. In the language in LR283 there is a mention of looking at other institutions. We are concerned that this committee will look at removing the residents from BSDC into other institutions, such as nursing homes. People need to be living independently as possible. They need to be living in their homes, communities, go to their own churches, doing everything you and I do every day of the week. I'm not going to...the need to rebalance our budget is tantamount here, but Ms. Smith already addressed that issue so I won't go into it. However, we do hope that you will pull in people from various disability groups, past residents of BSDC who have successfully moved from the institution to their homes. These people have a particular expertise that

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any legislative committee is not going to have unless they talk to people that have already successfully transitioned. And you need to talk to the family members. How have these family members coped with their person moving into the community after being in an institution? Institutions are like newborn babies. People who are in institutions are not taught anything. They don't know how to act in (inaudible). We should be providing these skills to these people so that they can live independently, that they can interact with the other parts of society. BSDC is like the pink elephant in the middle of the living room. (Inaudible) is it time for this Legislature to act and we need to start talking about the big pink elephant. Thank you. If you have any questions, I'll be glad to answer them. [LR283]

SENATOR ENGEL: Thank you, very much, Ms. Hoell, and I think that's what this task force is all about is for the concerns you brought up. Are there any questions of Ms. Hoell? If not, thank you very, very much. [LR283]

KATHY HOELL: Thank you. [LR283]

SENATOR ENGEL: Welcome. [LR283]

ERIC EVANS: (Exhibit 9) Good afternoon, Chairman Engel and members of the Executive Board. My name is Eric Evans; that's E-r-i-c E-v-a-n-s, and I'm the chief operating officer at Nebraska Advocacy Services, the Center for Disability Rights, Law and Advocacy. I want to express our appreciation to Senator Flood for introducing LR283 and I am appearing here today to offer our strong support for passage of LR283 by the Legislature. As you know, we reported the results of our investigation into conditions at the Beatrice State Developmental Center, and subsequent findings in December 2007. One of the recommendations outlined in our report was the establishment of a legislative process for examining and making recommendations to create a unitary system of services for people with developmental disabilities. Although the special investigative committee proposed in LR283 might not go quite as far as we had envisioned, we do see this as a good place to begin the conversation and to make recommendations about how to best move forward in order to create such a unitary system of services for people with developmental disabilities in Nebraska. We agree that the investigation proposed in LR283 should not be just about throwing stones. However in response to Senator Preister's question, we see the situation that we currently have at BSDC in the context of a critical incident in terms of state government. From the perspective of risk management, such incidents require an extensive examination into the policies, procedures, decision-making processes, and communication mechanisms which led to the incident becoming critical. However, without conducting such a critical incident analysis of the response of state government to the situation at BSDC, we are concerned that any recommendations made by the committee will be merely just another Band-aid to try to fix the situation. So we encourage you to look deeply into the situation. Although the Division of Developmental

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Disabilities has released a five-point plan through the press, and they did that on March 17, we must be careful to remember a basic principle of a systems theory that when you make a change in one component of the system, it will result in unanticipated and unintended changes in other parts of the system. So if you make a change in Beatrice, you can sure bet that there's going to be some changes over here in the community services that you don't anticipate and that you may not have intended. Unfortunately, we see the five-point plan as being somewhat a plan that was developed in isolation. And we want to strongly emphasize again the need for their being a unitary plan for the entire developmental disabilities service system. There is a lot of knowledge, skill, and expertise within Nebraska that the division has repeatedly not accessed during its efforts to address the situation at the BSDC, nor has the process been inclusive of major stakeholders in any significant way. Consequently, we urge the special investigative committee not only to access the wide range of expertise available in Nebraska, but also to utilize the consultant expertise within the Department of Justice. We hope the committee will be provided specifically with copies of the reports of the Department of Justice consultants as noted on page 43 of the letter of findings to Governor Heineman. We believe it's important to provide an opportunity for fair consideration to be given to the many competing interests involved in a discussion of the future of the BSDC. However, ultimately, it is the interests of the residents at Beatrice State Developmental Center that must be given first consideration. We are very concerned about the placement of individuals from BSDC into appropriate community-based programs and settings. It is in response to this concern that the first recommendation contained in our December 2007 report called for the establishment of a process for the independent evaluation and assessment of all residents at BSDC to determine whether the individual is ready for community placement and the types of services the individual would need in order to live in the community. The key term here is independent, because that is the best way to ensure that the evaluation and assessment is fair to the person, that it is not based...that the determination is not based on the interest of other persons. In closing, we want to bring your attention to something that the current resolution doesn't address...or maybe it does address but we would like to see it stated a little bit more forcefully and which we believe could be a serious mission. On page 4 of the Department of Justice report to Governor Heineman, the following chilling statement is found: Our safety consultant concluded that the nature of many abuse and neglect allegations and the frequency at which they are made, suggests a, quote, cultural undercurrent that betrays human decency at the most fundamental levels...basic human dignities are violated with considerable regularity at BSDC. We strongly encourage that the LR283 special investigative committee specifically look into determining the nature and cause of such a cultural undercurrent at BSDC, and the reasons for its persistence over time. Thank you very much. I'd be happy to answer any questions at this time. [LR283]

SENATOR ENGEL: Thank you, Mr. Evans. Any questions? Senator Chambers. [LR283]

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SENATOR CHAMBERS: Thank you, Mr. Evans, and I'm sure you are making available to the committee, the investigative committee, any assistance you and those with whom you work, available. [LR283]

ERIC EVANS: We stand ready to assist in any way that we can. Thank you. [LR283]

SENATOR CHAMBERS: I thought so, but I just...as you wanted some things explicit, I just wanted that too. [LR283]

ERIC EVANS: And I am happy to make that explicit. [LR283]

SENATOR CHAMBERS: Okay. [LR283]

ERIC EVANS: Thank you, Senator. [LR283]

SENATOR ENGEL: Any other questions? If not, thank you very, very much, Mr. Evans. Are there any other testifiers? If not, that will conclude the hearing on LR283...oh, I'm sorry. Are there any opponents? Anybody to testify in a neutral capacity? Now, we will close this hearing. Thank you. [LR283]

Chairperson

Committee Clerk